

U.S. Customs and Border Protection

19 CFR PART 103

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 5

[DOCKET NO. DHS-2009-0036]

RIN 1601-AA00

FREEDOM OF INFORMATION ACT REGULATIONS

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to amend the Department of Homeland Security's (DHS) regulations under the Freedom of Information Act (FOIA). The Department (DHS) is proposing to update and streamline the language of several procedural provisions, and to incorporate changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007, among other changes. DHS invites comment on all aspects of this proposal.

DATES: Comments and related material must be submitted to the docket for this rulemaking, DHS-2009-0036, on or before September 28, 2015.

ADDRESSES: You may submit comments, identified by docket number DHS- 2009-0036, by one of the following methods:

(1) Federal eRulemaking Portal: <http://www.regulations.gov>.

(2) *Fax:* 202-343-4011.

(3) *Mail:* By mail to the Department of Homeland Security, Office of the Chief Privacy Officer, ATTN: James Holzer, 245 Murray Lane SW., STOP-0655, Washington, DC 20528-0655.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change and may be read at <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: James Holzer, Senior Director, FOIA Operations, Office of the Chief Privacy Officer, Department of Homeland Security, at 1-866-431-0486.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Homeland Security has authority under 5 U.S.C. 301, 552, and 552a, and 6 U.S.C. 112(e), to issue FOIA and Privacy Act regulations. On January 27, 2003, the Department of Homeland Security (Department or DHS) published an interim rule in the **Federal Register** (68 FR 4056) that established DHS procedures for obtaining agency records under the FOIA, 5 U.S.C. 552, or Privacy Act, 5 U.S.C. 552a. DHS solicited comments on this interim rule, but received none.¹

In 2005, Executive Order 13392 called for the designation of a Chief FOIA Officer and FOIA Public Liaisons, along with the establishment of FOIA Requester Service Centers as appropriate. Subsequently, the Openness Promotes Effectiveness in our National Government Act of 2007 (OPEN Government Act), Public Law 110-175, required agencies to designate a Chief FOIA Officer who is then to designate one or more FOIA Public Liaisons (5 U.S.C. 552(j) and 552(k)(6)). Sections 6, 7, 9, and 10 of the OPEN Government Act amended provisions of the FOIA by setting time limits for agencies to act on misdirected requests and limiting the tolling of response times (5 U.S.C. 552(a)(6)(A)); requiring tracking numbers for requests that will take more than 10 days to process (5 U.S.C. 552 (a)(7)(A)); providing requesters a telephone line or Internet service to obtain information about the status of their requests, including an estimated date of completion (5 U.S.C. 552(a)(7)(B)); expanding the definition of “record” to include records “maintained for an agency by an entity under Government contract, for the purposes of records management” (5 U.S.C. 552(f)(2)); and introducing alternative dispute resolution to the FOIA process through FOIA Public Liaisons (5 U.S.C. 552(a)(6)(B)(ii) & (1)) and the Office of Government Information Services (5 U.S.C. 552(h)(3)).

DHS now proposes to revise its FOIA regulations at 6 CFR part 5, which apply to all components of DHS. This proposed rule would

¹ This rule proposes revisions to DHS’s FOIA regulations, but not its Privacy Act regulations. DHS intends to finalize its Privacy Act regulations by separate rulemaking.

implement changes required by the OPEN Government Act and make other revisions to DHS FOIA regulations to improve access to Departmental records.

DHS describes the primary proposed changes in the section-by-section analysis below. DHS invites public comment on each of the proposed changes described, as well as any other matters within the scope of the rulemaking.

II. Section-by-Section Analysis

The proposed rules continue to inform the public of the responsibilities of DHS in conjunction with requests received under the Freedom of Information Act as well as the requirements for filing a proper FOIA request.

DHS is proposing to amend Subpart A to eliminate the provision for “brick and mortar” public reading rooms, amend DHS rules for third-party requests for records, and add information about proactive DHS disclosures.

Section 5.1 General Provisions

DHS is proposing to amend this part to incorporate reference to additional DHS policies and procedures relevant to the FOIA process. These resources, which are available at <http://www.dhs.gov/freedom-information-act-foia>, also include descriptions of the types of records maintained by different DHS components. DHS is also proposing to amend this section to clarify the definition of a component for purposes of this proposed rule. Component means each separate organizational entity within DHS that reports directly to the Office of the Secretary. A full list of all DHS components would be provided in appendix I of this proposed rule (as well as in the web resources described above) for informational purposes.

DHS is proposing to add paragraph (d) to section 5.1, “Unofficial release of DHS information.” This proposed paragraph seeks to inform the public about how information that is not released through official DHS channels will be treated in the FOIA process. DHS does not consider information that is either inadvertently or inappropriately released by means other than the official release process used by DHS, whether in FOIA or otherwise, to be a FOIA release and accordingly, DHS does not waive its ability to assert exemptions to withhold some or all of the same records in response to a FOIA request.

Finally, DHS is proposing to remove at least two additional portions of current section 5.1. First, current paragraph (a)(1) clarifies that “[i]nformation routinely provided to the public as part of a regular

DHS activity . . . may be provided to the public without following this subpart.” Second, current paragraph (a)(2) provides that “Departmental components may issue their own guidance under this subpart pursuant to approval by DHS.” DHS considers each of these provisions to be self-evident, and therefore proposes to remove them from the regulation.

Section 5.2 Proactive Disclosures of DHS Records

DHS proposes to replace prior section 5.2, “Public Reading Rooms,” which was outdated, with a new section describing the proactive disclosure of DHS records. The FOIA requires DHS to make certain records available for public inspection and copying. Such records are available via the internet through the electronic reading rooms of each component. For those individuals with no access to the internet, the DHS Privacy Office or the component Public Liaison can provide assistance with access to records available in the electronic reading rooms. Contact information is provided in Appendix I to this subpart.

Section 5.3 Requirements for Making Requests

DHS proposes to amend paragraph 5.3(a) to eliminate the requirement that third-party requesters of records pertaining to an individual provide a written authorization from the individual that is the subject of the records (or proof of death of the individual) as a prerequisite to making such a request for records. As proposed, paragraph (a)(4) would inform third-party requesters that they may receive greater access if they provide written authorization from, or proof of death of, the subject of the records. In certain circumstances, they may in fact receive no access absent such authorization or proof. This paragraph would further advise that DHS may exercise its administrative discretion in seeking additional information from the requester to ensure that the proper consent has been received from the subject of the records.

DHS also proposes to amend paragraph (b) to direct requesters to contact the FOIA Public Liaison for each component if the requester has questions about how to describe the records that the requester seeks. DHS also proposes to amend this part to eliminate paragraph (c), which would be addressed under section 5.11, “Fees.” DHS proposes to insert a new paragraph (c), which describes the process under which DHS may administratively close a request if a requester fails to comply with a request for additional information.

Section 5.4 Responsibility for Responding to Requests

DHS proposes to insert a new paragraph (c), “Re-routing of misdirected requests,” to advise requesters that a component that is in receipt of a misdirected request within DHS will redirect such a request to the proper component without the need for further action from the requester. In the event that a component receives a request that should be directed outside DHS entirely, the component would inform the requester that DHS does not collect or retain the type of records requested. Proposed paragraph (c) would cover a different situation than current paragraph (c), which only applies “[w]hen a component receives a request for a record in its possession.”

DHS proposes to combine paragraph 5.4(c), “Consultations and referrals,” with current paragraph (d), “Law Enforcement Information,” which covers consultation and referral of law enforcement records. Proposed paragraph (d) would describe the process of consultation, coordination, and referral of all records, to include law enforcement records, consistent with equities of components, agencies, or departments other than the responding component. Proposed paragraph (e) restates much of the current content of section 5.7, “Classified information.”

DHS proposes to revise current paragraph (f), “Notice of referral.” Paragraph (f) currently provides that when a component refers a request to another component or agency, it ordinarily shall notify the requester of such referral. Consistent with current law, DHS proposes to insert an exception to this requirement, such that the component should not refer the records if disclosure of the identity of the component or agency would harm an interest protected by an applicable exemption. Instead, the component should coordinate the response with the other component or agency, as appropriate.

DHS proposes a new paragraph, paragraph 5.4(i), “Electronic records and searches,” to advise requesters of DHS’s responsibilities under the FOIA with regard to conducting searches of electronic records and databases. DHS adheres to the requirement in 5 U.S.C. 552(a)(3)(C), which states that agencies will make reasonable efforts to search for records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency’s automated information systems. Proposed paragraph 5.4(i) seeks to clarify to requesters the types of situations that would amount to “significant interference” with the operation of agency information systems such that DHS would not conduct a search for the requested records.

Section 5.5 Timing of Responses to Requests

DHS proposes to amend paragraph 5.5(a) to advise requesters that the response time for misdirected requests that are re-routed under paragraph 5.4(c) will commence on the date the request is received by the proper component, but in any event, no later than ten working days after the request is first received by any component. DHS proposes to amend paragraph (b), “Multitrack Processing,” to include a specific provision for a track for requests granted expedited processing.

DHS proposes to split current paragraph (c), “Unusual Circumstances,” into two separately designated paragraphs. As revised, the rule would include in paragraph 5.5(d) information on how DHS will aggregate multiple related requests submitted by a single requester or a group of requesters acting in concert.

DHS also proposes to redesignate current paragraph 5.5(d), “Expedited Processing,” as paragraph 5.5(e). DHS proposes in proposed paragraph 5.5(e) to amend text that describes the procedures for making a request for expedited processing of an initial request or an appeal (current paragraph (d)), to include two new available justifications for requesting expedited processing.

5.6 Responses to requests. DHS proposes to revise paragraph 5.6(a) to encourage components to communicate with FOIA requesters having access to the internet through electronic means, to the extent practicable. This new paragraph is intended to address the increasing number of FOIA requesters who are corresponding with DHS via electronic mail and web portals. DHS proposes to move paragraph (a) to paragraph (b), “Acknowledgment of Requests.” DHS proposes to amend this paragraph to specify that DHS and its components will acknowledge a request and assign the request an individualized tracking number if the request will take more than ten working days to process. DHS also proposes to require acknowledgment letters to contain a brief description of the request to allow requesters to more easily keep track of their requests. The provision in paragraph (a) referencing that the acknowledgment letter will confirm the requester’s agreement to pay fees would be addressed in proposed section 5.11(e).

DHS proposes to move paragraph (b), “Grants of requests,” to paragraph (c). DHS proposes to amend paragraph (b) by removing the description of the treatment of information, both released and redacted in documents provided to the requester. Substantially the same information is now included in a new proposed paragraph, paragraph 5.6(f), “Markings on Released Documents.” DHS proposes to move the remainder of current paragraph 5.6(c), “Adverse deter-

minations of requests,” to two paragraphs, (d) and (e), “Adverse determinations of requests” and “Content of denial.” The language regarding adverse determination of requests remains substantially the same. DHS proposes to describe the content and process for denial letters in the newly proposed paragraph (e), but does not intend this paragraph to significantly change the current regulatory requirements concerning denial letters.

DHS also proposes new paragraph (g), “Use of record exclusions,” which describes the DHS’s use of exclusions under 5 U.S.C. 552(c). This paragraph proposes to incorporate the requirement set forth by the Department of Justice’s Office of Information Policy (OIP) that all federal agencies obtain the approval of OIP prior to invoking an exclusion. This proposed paragraph also includes a requirement that DHS maintain an administrative record of the process of the invocation of the exclusion and approval by OIP.

5.7 Confidential commercial information. Proposed section 5.7, “Confidential commercial information,” would replace current section 5.8 of the current regulations, “Business information.” DHS proposes to reorder several paragraphs within this section. The changes are for clarity and to better advise requesters and providers of commercial information how DHS will treat requests for confidential commercial information, but the information contained in the proposed section remains substantively the same.

DHS proposes to amend the “Notice of intent to disclose” paragraph by splitting it into two paragraphs, proposed new paragraph (f), “Analysis of objections” and proposed new paragraph (g), “Notice of intent to disclose.” The proposed division of the information previously contained in a single paragraph is intended to improve clarity by highlighting in a separate paragraph that DHS will consider a submitter’s objections and specific grounds for nondisclosure in deciding whether to disclose the requested information. Otherwise, the information contained in the new proposed paragraphs remains substantively the same.

Finally, DHS proposes to include an exception to this section for commercial information provided to U.S. Customs and Border Protection (CBP) by a business submitter. Although CBP’s FOIA regulations (located at 19 CFR part 103, subpart A) are displaced by the DHS FOIA regulations, this rule proposes to allow CBP to continue treating commercial information in the same manner as it has since the promulgation of current 19 CFR 103.35.

5.8 Administrative appeals. This section corresponds to section 5.9 of the current regulations. In the time following the publication of the interim regulations in January 2003, DHS has designated Appeals

Officers for each component. As such, DHS proposes to amend paragraph (a) to direct requesters seeking to appeal adverse determinations to the DHS Web site or FOIA phone line for FOIA information to obtain the name and address of the appropriate appeals officer.

DHS proposes new paragraph (b) "Adjudication of appeal," which replaces former paragraph (c) "When appeal is required." The proposed new paragraph informs requesters that the DHS Office of the General Counsel or its designee component appeals officers are the authorized appeals authority for DHS. New proposed paragraph (b) also informs requesters about the treatment of appeals involving classified information. Finally, former paragraph (a)(3), which informs requesters that appeals will not normally be adjudicated if a FOIA lawsuit is filed, is incorporated into proposed paragraph (b).

DHS proposes to add a new paragraph (c), "Appeal decisions," which is substantially similar to current paragraph 5.9(b). Proposed paragraph (c) would advise requesters that appeal decisions will be made in writing, and that decisions will inform requesters of their right to file a lawsuit and about mediation services offered by the Office of Government Information Services. Proposed paragraph (c) would also advise requesters of what to expect if the appeals officer reverses or modifies the original administrative decision on appeal. DHS also proposes to add a new paragraph (d), "Time limit for issuing appeal decision," which advises requesters of the statutory 20-day time limit for responding to appeals, and also of the statutory 10-day extension of the 20-day limit available to the appeals officers in certain circumstances.

Finally, DHS proposes to add paragraph (e), "Appeal necessary before seeking court review," which advises requesters that an administrative appeal is generally required before seeking judicial review of a component's adverse determination. This language is substantially similar to current paragraph 5.9(c). This proposed paragraph also advises requesters that there is no administrative appeal requirement prior to seeking judicial review of a denial of request for expedited processing.

5.9 Preservation of records. DHS proposes to redesignate current section 5.10 "Preservation of records" as section 5.9. There is no change to the substantive information in the section.

5.10 FOIA requests for information contained in a Privacy Act system of records. DHS proposes to add the new above-referenced section, to explain to requesters how DHS treats FOIA requests for information protected by the Privacy Act. When applicable, DHS analyzes all requests under both the FOIA and the Privacy Act to ensure that the requester receives the greatest amount of information

possible under federal law. This proposed section also explains the circumstances under which a third-party requester can obtain access to information protected by the Privacy Act.

5.11 Fees. DHS proposes to address all fee issues in section 5.11. Most of this section remains essentially unchanged. Proposed changes to paragraph (b) would clarify some of the definitions used by DHS in determining a requester's fee category. For instance, paragraph (b)(1) "Commercial use request," would clarify that components will make determinations on commercial use on a case-by-case basis. Paragraph (b)(4) "Educational institution," would add several examples to help requesters understand the analysis that DHS will apply to determine whether a requester meets the criteria to be considered an educational institution. Paragraph (b)(6), "News media," clarifies the criteria used by DHS to determine whether a requester qualifies to be considered a member of the news media for fee purposes. Paragraph (b)(8) "Search," would eliminate superfluous language that does not improve the comprehensibility of the paragraph. Because these and similar proposed changes are consistent with current regulations and describe current process, DHS does not expect that they will result in additional costs for the government or the public.

DHS also proposes to change paragraph (c)(1)(iii), which discusses direct costs associated with conducting any search that requires the creation of a new computer program, as discussed in new proposed paragraph 5.4(i), to locate the requested records. This change is intended to improve comprehension and to more accurately describe the circumstances under which a requester may be charged for a computerized search or a search of electronic records. It does not represent a change in practice, as DHS currently charges direct costs for specialized data searches. Again, because these proposed changes are consistent with current regulations and describe current process, DHS does not expect that they will result in additional costs for the government or the public.

DHS proposes to restructure paragraph (c)(3)(d), "Restrictions on charging fees." Under this proposal, search fees, and in some cases, duplication fees may not be charged if a component fails to comply with the time limits in which to respond to a request provided no unusual or exceptional circumstances are present. This provision directly tracks a mandatory provision from section 6 of the OPEN Government Act of 2007, Public Law 110-175, 121 Stat. 2524, 5 U.S.C. 552(a)(4)(A)(viii).

In addition, DHS proposes to renumber former paragraph (d)(2) as paragraph (d)(3), and paragraph (d)(3) as (d)(4). DHS proposes minor

changes in paragraph (d)(4) to improve clarity. Current paragraphs (d)(4) and (d)(5) would be combined into proposed paragraph (d)(5). DHS proposes changes to paragraphs (e) and (f) to improve clarity; no significant changes are intended with respect to those paragraphs. DHS proposes no major changes to paragraphs (g), (h), (i), or (j), but proposes to modify a number of procedural provisions consistent with the practices of other agencies in this area. DHS also proposes minor changes to paragraph (k) to improve clarity. DHS proposes to eliminate current paragraph (l), “Payment of outstanding fees,” as the information in that paragraph is largely duplicative of the information contained within proposed paragraph (i)(3)—although proposed paragraph (i)(3) is discretionary, DHS anticipates that the result will be substantially the same as under current paragraph (l). Except in extraordinary circumstances, DHS will not process a FOIA request from persons with an unpaid fee from any previous FOIA request to any Federal agency until that outstanding fee has been paid in full to the agency. Finally, DHS proposes to insert a chart showing fee applicability, for ease of reference.

5.12 Confidential commercial information; CBP procedures.

As noted above, DHS proposes to include an exception to proposed § 5.7 for commercial information provided to U.S. Customs and Border Protection (CBP) by a business submitter. Although CBP’s FOIA regulations (located at 19 CFR part 103, subpart A) are displaced by the DHS FOIA regulations, because of the unique nature of CBP’s mission, this rule proposes to allow CBP to continue treating commercial information in the same manner as it has since the promulgation of current 19 CFR 103.35. CBP’s FOIA regulations, located at 19 CFR part 103, subpart A, will be removed no later than the effective date of the final rule for this rulemaking. CBP may, however, retain cCurrent 19 CFR 103.35 as an interim measure.

5.13 Other rights and services. DHS proposes no substantive changes to this section.

FEMA Regulations

DHS also proposes to remove FEMA’s outdated FOIA regulations at 44 CFR part 5, subparts A through E. FEMA is currently operating under DHS’s title 6 FOIA regulations for all purposes.

III. Regulatory Analyses

Executive Orders 12866 and 13563—Regulatory Review

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 has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

DHS has considered the costs and benefits of this proposed rule. Previously in this preamble, DHS has provided a section-by-section analysis of the provisions in this proposed rule and concludes this rule does not impose additional costs on the public or the government. This rule does not collect any additional fee revenues compared to current practices or otherwise introduce new regulatory mandates. The rule’s benefits include additional clarity for the public and DHS personnel with respect to DHS’s implementation of the FOIA and subsequent statutory amendments.

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 \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 note, agencies must consider the impact of their rulemakings on “small entities” (small businesses, small organizations and local governments). The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. DHS has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Based on the previous discussion in this preamble, DHS does not believe this rule imposes any additional direct costs on small entities.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (as amended),

5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects

6 CFR Part 5

Classified information, Courts, Freedom of information, Government employees, Privacy.

19 CFR Part 103

Administrative practice and procedure, Confidential business information, Courts, Freedom of information, Law enforcement, Privacy, Reporting and recordkeeping requirements.

44 CFR Part 5

Courts, Freedom of information, Government employees.

For the reasons stated in the preamble, the Department of Homeland Security proposes to amend 6 CFR chapter I, part 5, 19 CFR chapter I, part 103, and 44 CFR chapter I, part 5, as follows:

Title 6—Domestic Security

PART 5—DISCLOSURE OR PRODUCTION OF MATERIAL OR INFORMATION

■ 1. The authority citation for part 5 is revised to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 301; 6 U.S.C. 101 *et seq.*; E.O. 13392.

■ 2. In Chapter I, revise subpart A of part 5 to read as follows:

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Sec.

- 5.1 General provisions.
- 5.2 Proactive disclosures of DHS records.
- 5.3 Requirements for making requests.
- 5.4 Responsibility for responding to requests.
- 5.5 Timing of responses to requests.
- 5.6 Responses to requests.

- 5.7 Confidential commercial information.
 - 5.8 Administrative appeals.
 - 5.9 Preservation of records.
 - 5.10 FOIA requests for information contained in a Privacy Act system of records.
 - 5.11 Fees.
 - 5.12 Confidential commercial information; CBP procedures.
 - 5.13 Other rights and services.
- Appendix I to Subpart A—FOIA Contact Information

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

§ 5.1 General provisions.

(a)(1) This subpart contains the rules that the Department of Homeland Security follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552 as amended. The Freedom of Information Act applies to third-party requests for documents concerning the general activities of the government and of DHS in particular. When an individual requests access to his or her own records, it is considered a Privacy Act request. Such records are maintained by DHS under the individual's name or personal identifier. Although requests are considered either FOIA requests or Privacy Act requests, agencies process requests in accordance with both laws, which provides the greatest degree of lawful access while safeguarding an individual's personal privacy.

(2) These rules should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget at 52 FR 10012 (March 27, 1987) (hereinafter "OMB Guidelines"). Additionally, DHS has additional policies and procedures relevant to the FOIA process. These resources are available at <http://www.dhs.gov/freedom-information-act-foia>. Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under subpart B of part 5 as well as under this subpart. As a matter of policy, DHS makes discretionary disclosures of records or information exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

(b) As referenced in this subpart, component means the FOIA office of each separate organizational entity within DHS that reports directly to the Office of the Secretary.

(c) DHS has a decentralized system for processing requests, with each component handling requests for its records.

(d) *Unofficial release of DHS information.* The disclosure of exempt records, without authorization by the appropriate DHS official, is not an official release of information; accordingly, it is not a FOIA release. Such a release does not waive the authority of the Department of Homeland Security to assert FOIA exemptions to withhold the same records in response to a FOIA request. In addition, while the authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

§ 5.2 Proactive disclosure of DHS records.

Records that are required by the FOIA to be made available for public inspection and copying are accessible on DHS's Web site, <http://www.dhs.gov/freedom-information-act-foia-and-privacy-act>. Each component is responsible for determining which of its records are required to be made publicly available, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. Each component shall ensure that posted records and indices are updated on an ongoing basis. Each component has a FOIA Public Liaison who can assist individuals in locating records particular to a component. A list of DHS's FOIA Public Liaisons is available at <http://www.dhs.gov/foia-contact-information> and in appendix I to this subpart. If you have no access to the internet, please contact the Public Liaison for the component from which you are seeking records for assistance with publicly available records.

§ 5.3 Requirements for making requests.

(a) *General information.* (1) DHS has a decentralized system for responding to FOIA requests, with each component designating a FOIA office to process records from that component. All components have the capability to receive requests electronically, either through email or a web portal. To make a request for DHS records, a requester should write directly to the FOIA office of the component that maintains the records being sought. A request will receive the quickest possible response if it is addressed to the FOIA office of the component that maintains the records sought. DHS's FOIA Reference Guide contains or refers the reader to descriptions of the functions of each component and provides other information that is helpful in determining where to make a request. Each component's FOIA office and any additional requirements for submitting a request to a given

component are listed in Appendix I of this subpart. These references can all be used by requesters to determine where to send their requests within DHS.

(2) A requester may also send his or her request to the Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW STOP-0655, or via the internet at <http://www.dhs.gov/dhs-foia-request-submission-form>, or via fax to (202) 343-4011. The Privacy Office will forward the request to the component(s) that it determines to be most likely to maintain the records that are sought.

(3) A requester who is making a request for records about him or herself must comply with the verification of identity provision set forth in subpart B of this part.

(4) Where a request for records pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by that individual, in compliance with the verification of identity provision set forth in subpart B of this part, or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual, authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (*e.g.*, a copy of a death certificate or an obituary). As an exercise of its administrative discretion, each component can require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(b) *Description of records sought.* Requesters must describe the records sought in sufficient detail to enable DHS personnel to locate them with a reasonable amount of effort. A reasonable description contains sufficient information to permit an organized, non-random search for the record based on the component's filing arrangements and existing retrieval systems. To the extent possible, requesters should include specific information that may assist a component in identifying the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number. Requesters should refer to Appendix I of this subpart for additional component-specific requirements. In general, requesters should include as much detail as possible about the specific records or the types of records that they are seeking. Before submitting their requests, requesters may contact the component's FOIA Officer or FOIA public liaison to discuss the records they are seeking and to receive assistance in describing the records. If after receiving a request, a component determines that it does not reasonably describe the records sought, the component should inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to

reformulate or modify such a request may discuss their request with the component's designated FOIA Officer, its FOIA Public Liaison, or a representative of the DHS Privacy Office, each of whom is available to assist the requester in reasonably describing the records sought. If a request does not reasonably describe the records sought, the agency's response to the request may be delayed.

(c) If a request does not adequately describe the records sought, DHS may seek additional information from the requester. If the requester does not respond to the request for additional information within thirty (30) days, the request may be administratively closed at DHS's discretion. This administrative closure does not prejudice the requester's ability to submit a new request for further consideration with additional information.

§ 5.4 Responsibility for responding to requests.

(a) *In general.* Except in the instances described in paragraphs (c) and (d) of this section, the component that first receives a request for a record and maintains that record is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the component shall inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), shall not be considered responsive to a request.

(b) *Authority to grant or deny requests.* The head of a component, or designee, is authorized to grant or to deny any requests for records that are maintained by that component.

(c) *Re-routing of misdirected requests.* Where a component's FOIA office determines that a request was misdirected within DHS, the receiving component's FOIA office shall route the request to the FOIA office of the proper component(s).

(d) *Consultations, coordination and referrals.* When a component determines that it maintains responsive records that either originated with another component or agency, or which contains information provided by, or of substantial interest to, another component or agency, then it shall proceed in accordance with either paragraph (d)(1), (2), or (3) of this section, as appropriate:

(1) The component may respond to the request, after consulting with the component or the agency that originated or has a substantial interest in the records involved.

(2) The component may provide a combined or joint response to the request after coordinating with the other components or agencies that originated the record. This may include situations where the stan-

dard referral procedure is not appropriate where disclosure of the identity of the component or agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement component responding to a request for records on a living third party locates records within its files originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if a component locates material within its files originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the component that received the request should coordinate with the originating component or agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination should then be conveyed to the requester by the component that originally received the request.

(3) The component may refer the responsibility for responding to the request or portion of the request to the component or agency best able to determine whether to disclose the relevant records, or to the agency that created or initially acquired the record as long as that agency is subject to the FOIA. Ordinarily, the component or agency that created or initially acquired the record will be presumed to be best able to make the disclosure determination. The referring component shall document the referral and maintain a copy of the records that it refers.

(e) *Classified information.* On receipt of any request involving classified information, the component shall determine whether information is currently and properly classified and take appropriate action to ensure compliance with 6 CFR part 7. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another component or agency under any applicable executive order concerning the classification of records, the receiving component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the information, or should consider the information for classification. Whenever a component's record contains information classified by another component or agency, the

component shall coordinate with or refer the responsibility for responding to that portion of the request to the component or agency that classified the underlying information.

(f) *Notice of referral.* Whenever a component refers any part of the responsibility for responding to a request to another component or agency, it will notify the requester of the referral and inform the requester of the name of each component or agency to which the records were referred, unless disclosure of the identity of the component or agency would harm an interest protected by an applicable exemption, in which case the component should coordinate with the other component or agency, rather than refer the records.

(g) *Timing of responses to consultations and referrals.* All consultations and referrals received by DHS will be handled according to the date that the FOIA request initially was received by the first component or agency, not any later date.

(h) *Agreements regarding consultations and referrals.* Components may establish agreements with other components or agencies to eliminate the need for consultations or referrals with respect to particular types of records.

(i) *Electronic records and searches—(1) Significant interference.* The FOIA allows components to not conduct a search for responsive documents if the search would cause significant interference with the operation of the component's automated information system.

(2) *Business as usual approach.* A "business as usual" approach exists when the component has the capability to process a FOIA request for electronic records without a significant expenditure of monetary or personnel resources. Components are not required to conduct a search that does not meet this business as usual criterion.

(i) Creating computer programs or purchasing additional hardware to extract email that has been archived for emergency retrieval usually are not considered business as usual if extensive monetary or personnel resources are needed to complete the project.

(ii) Creating a computer program that produces specific requested fields or records contained within a well-defined database structure usually is considered business as usual. The time to create this program is considered as programmer or operator search time for fee assessment purposes and the FOIA requester may be assessed fees in accordance with 6 CFR 5.11(c)(1)(iii). However, creating a computer program to merge files with disparate data formats and extract specific elements from the resultant file is not considered business as usual, but a special service, for which additional fees may be imposed as specified in 6 CFR 5.11. Components are not required to perform

special services and creation of a computer program for a fee is up to the discretion of the component and is dependent on component resources and expertise.

(3) *Data links.* Components are not required to expend DHS funds to establish data links that provide real time or near-real-time data to a FOIA requester.

§ 5.5 Timing of responses to requests.

(a) *In general.* Components ordinarily will respond to requests according to their order of receipt. Appendix I to this subpart contains the list of components that are designated to accept requests. In instances involving misdirected requests that are re-routed pursuant to 6 CFR 5.4(c), the response time will commence on the date that the request is received by the proper component, but in any event not later than ten working days after the request is first received by any DHS component designated in appendix I of this subpart.

(b) *Multitrack processing.* All components must designate a specific track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (e) of this section. A component may also designate additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. Among the factors a component may consider are the number of pages involved in processing the request or the need for consultations or referrals. Components shall advise requesters of the track into which their request falls, and when appropriate, shall offer requesters an opportunity to narrow their request so that the request can be placed in a different processing track.

(c) *Unusual circumstances.* Whenever the statutory time limits for processing a request cannot be met because of “unusual circumstances,” as defined in the FOIA, and the component extends the time limits on that basis, the component shall, before expiration of the twenty-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. Where the extension exceeds ten working days, the component shall, as described by the FOIA, provide the requester with an opportunity to modify the request or agree to an alternative time period for processing. The component shall make available its designated FOIA Officer and its FOIA Public Liaison for this purpose.

(d) *Aggregating requests.* For the purposes of satisfying unusual circumstances under the FOIA, components may aggregate requests in cases where it reasonably appears that multiple requests, submit-

ted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. Components will not aggregate multiple requests that involve unrelated matters.

(e) *Expedited processing.* (1) Requests and appeals will be processed on an expedited basis whenever the component determines that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person who is primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

(2) A request for expedited processing may be made at any time. Requests based on paragraphs (e)(1)(i), (ii), and (iii) of this section must be submitted to the component that maintains the records requested. When making a request for expedited processing of an administrative appeal, the request should be submitted to the DHS Office of General Counsel or the component Appeals Officer. Address information is available at the DHS Web site, <http://www.dhs.gov/freedom-information-act-foia>, or by contacting the component FOIA officers via the information listed in Appendix I. Requests for expedited processing that are based on paragraph (e)(1)(iv) of this section must be submitted to the Senior Director of FOIA Operations, the Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW., STOP-0655, Washington, DC 20598-0655. A component that receives a misdirected request for expedited processing under the standard set forth in paragraph (e)(1)(iv) of this section shall forward it immediately to the DHS Senior Director of FOIA Operations, the Privacy Office, for determination. The time period for making the determination on the request for expedited processing under paragraph (e)(1)(iv) of this section shall commence on the date that the Privacy Office receives the request, provided that it is routed within ten working days, but in no event shall the time period for making a determination on the request commence any later than the eleventh working day after the request is received by any component designated in appendix I of this subpart.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the

basis for making the request for expedited processing. For example, under paragraph (e)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that he or she is a person whose primary professional activity or occupation is information dissemination, though it need not be his or her sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public’s right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful to establishing the requirement that there be an “urgency to inform” the public on the topic. As a matter of administrative discretion, a component may waive the formal certification requirement.

(4) A component shall notify the requester within ten calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request shall be given priority, placed in the processing track for expedited requests, and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

§ 5.6 Responses to requests.

(a) *In general.* Components should, to the extent practicable, communicate with requesters having access to the internet using electronic means, such as email or web portal.

(b) *Acknowledgments of requests.* A component shall acknowledge the request and assign it an individualized tracking number if it will take longer than ten working days to process. Components shall include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

(c) *Grants of requests.* Ordinarily, a component shall have twenty (20) working days from when a request is received to determine whether to grant or deny the request unless there are unusual or exceptional circumstances. Once a component makes a determination to grant a request in full or in part, it shall notify the requester in writing. The component also shall inform the requester of any fees charged under 6 CFR 5.11 and shall disclose the requested records to the requester promptly upon payment of any applicable fees.

(d) *Adverse determinations of requests.* A component making an adverse determination denying a request in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that the requested record is exempt, in whole or in part; the request does not reasonably

describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees, including requester categories or fee waiver matters, or denials of requests for expedited processing.

(e) *Content of denial.* The denial shall be signed by the head of the component, or designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied by the component in denying the request;

(3) An estimate of the volume of any records or information withheld, for example, by providing the number of pages or some other reasonable form of estimation. This estimation is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption; and

(4) A statement that the denial may be appealed under 6 CFR 5.8(a), and a description of the requirements set forth therein.

(f) *Markings on released documents.* Markings on released documents must be clearly visible to the requester. Records disclosed in part shall be marked to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted also shall be indicated on the record, if technically feasible.

(g) *Use of record exclusions.* (1) In the event that a component identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the head of the FOIA office of that component must confer with Department of Justice's Office of Information Policy (OIP) to obtain approval to apply the exclusion.

(2) Any component invoking an exclusion shall maintain an administrative record of the process of invocation and approval of the exclusion by OIP.

§ 5.7 Confidential commercial information.

(a) *Definitions.*

(1) *Confidential commercial information* means commercial or financial information obtained by DHS from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) *Submitter* means any person or entity from whom DHS obtains confidential commercial information, directly or indirectly.

(b) *Designation of confidential commercial information.* A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, either at the time of submission or within a reasonable time thereafter, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) *When notice to submitters is required.* (1) A component shall promptly provide written notice to a submitter whenever records containing such information are requested under the FOIA if, after reviewing the request, the responsive records, and any appeal by the requester, the component determines that it may be required to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The component has a reason to believe that the requested information may be protected from disclosure under Exemption 4.

(2) The notice shall either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish it.

(d) *Exceptions to submitter notice requirements.* The notice requirements of paragraphs (c) and (g) of this section shall not apply if:

(1) The component determines that the information is exempt under the FOIA;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987; or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous, except that, in such a case, the component shall give the submitter written notice of any final decision to disclose the information and must provide that notice within a reasonable number of days prior to a specified disclosure date. (e) *Opportunity to object to disclosure.*

(1) A component will specify a reasonable time period within which the submitter must respond to the notice referenced above. If a

submitter has any objections to disclosure, it should provide the component a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information constitutes a trade secret, or commercial or financial information that is privileged or confidential.

(2) A submitter who fails to respond within the time period specified in the notice shall be considered to have no objection to disclosure of the information. Information received by the component after the date of any disclosure decision will not be considered by the component. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(f) *Analysis of objections.* A component shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(g) *Notice of intent to disclose.* Whenever a component decides to disclose information over the objection of a submitter, the component shall provide the submitter written notice, which shall include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the component shall promptly notify the submitter.

(i) *Requester notification.* The component shall notify a requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

(j) *Scope.* This section shall not apply to any confidential commercial information provided to CBP by a business submitter. 6 CFR 5.12 applies to such information. 6 CFR 5.12 also defines "confidential commercial information" as used in this paragraph.

§ 5.8 Administrative appeals

(a) *Requirements for filing an appeal.*

(1) A requester may appeal adverse determinations denying his or her request or any part of the request to the appropriate Appeals Officer. A requester may also appeal if he or she questions the ad-

equacy of the component's search for responsive records, or believes the component either misinterpreted the request or did not address all aspects of the request (*i.e.*, it issued an incomplete response), or if the requester believes there is a procedural deficiency (*e.g.*, fees were improperly calculated). For the address of the appropriate component Appeals Officer, contact the applicable component FOIA liaison using the information in appendix I to this subpart, visit www.dhs.gov/foia, or call 1-866-431-0486. An appeal must be in writing, and to be considered timely it must be postmarked or, in the case of electronic submissions, transmitted to the Appeals Officer within 60 business days after the date of the component's response. The appeal should clearly identify the component determination (including the assigned request number if the requester knows it) that is being appealed and should contain the reasons the requester believes the determination was erroneous. To facilitate handling, the requester should mark both the letter and the envelope, or the transmittal line in the case of electronic transmissions "Freedom of Information Act Appeal."

(2) An adverse determination by the component appeals officer will be the final action of DHS.

(b) *Adjudication of appeals.* (1) The DHS Office of the General Counsel or its designee (*e.g.*, component Appeals Officers) is the authorized appeals authority for DHS;

(2) On receipt of any appeal involving classified information, the Appeals Officer shall consult with the Chief Security Officer, and take appropriate action to ensure compliance with 6 CFR part 7;

(3) If the appeal becomes the subject of a lawsuit, the Appeals Officer is not required to act further on the appeal.

(c) *Appeal decisions.* The decision on the appeal will be made in writing. A decision that upholds a component's determination will contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by the Office of Government Information Services, of the National Archives and Records Administration, as a non-exclusive alternative to litigation. If the adverse decision is reversed or modified on appeal, in whole or in part, the requester will be notified in a written decision and the request will be thereafter be further processed in accordance with that appeal decision.

(d) *Time limit for issuing appeal decision.* The statutory time limit for responding to appeals is generally 20 workdays after receipt.

However, the Appeals Officer may extend the time limit for responding to an appeal provided the circumstances set forth in 5 U.S.C. 552(a)(6)(B)(i) are met.

(e) *Appeal necessary before seeking court review.* If a requester wishes to seek court review of a component's adverse determination on a matter appealable under subsection (a)(1) of this section, the requester must generally first appeal it under this subpart. However, a requester is not required to first file an appeal of an adverse determination of a request for expedited processing prior to seeking court review.

§ 5.9 Preservation of records.

Each component shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 and/or 14 of the National Archives and Records Administration. Records will not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 5.10 FOIA requests for information contained in a Privacy Act system of records.

(a) *Information subject to Privacy Act.* (1) If a requester submits a FOIA request for information about him or herself that is contained in a Privacy Act system of records applicable to the requester (*i.e.*, the information contained in the system of records is retrieved by the component using the requester's name or other personal identifier, and the information pertains to an individual covered by the Privacy Act) the request will be processed under both the FOIA and the Privacy Act.

(2) If the information the requester is seeking is not subject to the Privacy Act (*e.g.*, the information is filed under another subject, such as an organization, activity, event, or an investigation not retrievable by the requester's name or personal identifier), the request, if otherwise properly made, will be treated only as a FOIA request. In addition, if the information is covered by the Privacy Act and the requester does not provide proper verification of the requester's identity, the request, if otherwise properly made, will be processed only under the FOIA.

(b) *When both Privacy Act and FOIA exemptions apply.* Only if both a Privacy Act exemption and a FOIA exemption apply can DHS withhold information from a requester if the information sought by the requester is about him or herself and is contained in a Privacy Act system of records applicable to the requester.

(c) *Conditions for release of Privacy Act information to third parties in response to a FOIA request.* If a requester submits a FOIA request for Privacy Act information about another individual, the information will not be disclosed without that person's prior written consent that provides the same verification information that the person would have been required to submit for information about him or herself, unless—

(1) The information is required to be released under the FOIA, as provided by 5 U.S.C. 552a (b)(2); or

(2) In most circumstances, if the individual is deceased.

(d) *Privacy Act requirements.* See DHS's Privacy Act regulations in 5 CFR part 5, subpart B for additional information regarding the requirements of the Privacy Act.

§ 5.11 Fees.

(a) *In general.* Components shall charge for processing requests under the FOIA in accordance with the provisions of this section and with the OMB Guidelines. Components will ordinarily use the most efficient and least expensive method for processing requested records. In order to resolve any fee issues that arise under this section, a component may contact a requester for additional information. A component ordinarily will collect all applicable fees before sending copies of records to a requester. If you make a FOIA request, it shall be considered a firm commitment by you to pay all applicable fees charged under § 5.11, up to \$25.00, unless you seek a waiver of fees. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* Generally, "requester category" means one of the three categories in which agencies place requesters for the purpose of determining whether a requester will be charged fees for search, review and duplication; categories include commercial requesters, noncommercial scientific or educational institutions or news media requesters, and all other requesters. The term "fee waiver" means that processing fees will be waived, or reduced, if a requester can demonstrate that certain statutory standards are satisfied including that the information is in the public interest and is not requested for a commercial interest. For purposes of this section:

(1) *Commercial use request* is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. A component's decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information.

(2) *Direct costs* are those expenses that an agency expends in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.*, the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

(3) *Duplication* is reproducing a copy of a record or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(4) *Educational institution* is any school that operates a program of scholarly research. A requester in this fee category must show that the request is authorized by, and is made under the auspices of, an educational institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research. To fall within this fee category the request must serve the scholarly research goal of the institution rather than an individual research goal.

Example 1. A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution if the request adequately describes how the requested information would further a specific research goal of the educational institution.

Example 2. A request from the same professor of geology seeking immigration information from the U.S. Immigration and Customs Enforcement in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

Example 3. A student who makes a request in furtherance of the completion of a course of instruction would be presumed to be carrying out an individual research goal, rather than a scholarly research goal of the institution, and would not qualify as part of this fee category.

Note: These examples are provided for guidance purposes only. Each individual request will be evaluated under the particular facts, circumstances, and information provided by the requester.

(5) *Noncommercial scientific institution* is an institution that is not operated on a “commercial” basis, as defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote

any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and not for a commercial use.

(6) *Representative of the news media* is any person or entity organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast “news” to the public at large and publishers of periodicals that disseminate “news” and make their products available through a variety of means to the general public, including but not limited to, news organizations that disseminate solely on the Internet. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use. In contrast, data brokers or others who merely compile and market government information for direct economic return shall not be presumed to be news media entities. “Freelance” journalists must demonstrate a solid basis for expecting publication through a news media entity in order to be considered as working for a news media entity. A publication contract would provide the clearest evidence that publication is expected; however, components shall also consider a requester’s past publication record in making this determination.

(7) *Review* is the page-by-page, line-by-line examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under 6 CFR 5.7 or 6 CFR 5.12, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve information from electronic records. Components shall ensure that searches are

done in the most efficient and least expensive manner reasonably possible by readily available means.

(c) *Charging fees.* In responding to FOIA requests, components shall charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section. Because the fee amounts provided below already account for the direct costs associated with a given fee type, unless otherwise stated in § 5.11, components should not add any additional costs to those charges.

(1) *Search.* (i) Search fees shall be charged for all requests subject to the restrictions of paragraph (d) of this section. Components may properly charge for time spent searching even if they do not locate any responsive records or if they determine that the records are entirely exempt from disclosure.

(ii) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be as follows: Managerial— \$10.25; professional—\$7.00; and clerical/administrative—\$4.00.

(iii) Requesters will be charged the direct costs associated with conducting any search that requires the creation of a new computer program, as referenced in section 5.4, to locate the requested records. Requesters shall be notified of the costs associated with creating such a program and must agree to pay the associated costs before the costs may be incurred.

(iv) For requests that require the retrieval of records stored by an agency at a federal records center operated by the National Archives and Records Administration (NARA), additional costs shall be charged in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) *Duplication.* Duplication fees will be charged to all requesters, subject to the restrictions of paragraph (d) of this section. A component shall honor a requester's preference for receiving a record in a particular form or format where it is readily reproducible by the component in the form or format requested. Where photocopies are supplied, the component will provide one copy per request at a cost of ten cents per page. For copies of records produced on tapes, disks, or other media, components will charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. For other forms of duplication, components will charge the direct costs.

(3) *Review.* Review fees will be charged to requesters who make commercial use requests. Review fees will be assessed in connection

with the initial review of the record, *i.e.*, the review conducted by a component to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, when the appellate authority determines that a particular exemption no longer applies, any costs associated with a component's re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review fees will be charged at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) *Restrictions on charging fees.* (1) No search fees will be charged for requests by educational institutions (unless the records are sought for a commercial use), noncommercial scientific institutions, or representatives of the news media.

(2) If a component fails to comply with the time limits in which to respond to a request, and if no unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (d)(1) of this section, may not charge duplication fees.

(3) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(4) Except for requesters seeking records for a commercial use, components will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(5) When, after first deducting the 100 free pages (or its cost equivalent) and the first two hours of search, a total fee calculated under paragraph (c) of this section is \$14.00 or less for any request, no fee will be charged.

(e) *Notice of anticipated fees in excess of \$25.00.* (1) When a component determines or estimates that the fees to be assessed in accordance with this section will exceed \$25.00, the component shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review and/or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester accordingly. If the requester is a noncommercial use requester, the notice will specify that the requester is entitled to his or her statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees,

two hours of search time at no charge, and will advise the requester whether those entitlements have been provided.

(2) In cases in which a requester has been notified that the actual or estimated fees are in excess of \$25.00, the request shall not be considered perfected and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees he or she is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with his or her statutory entitlements, designates that he or she seeks only that which can be provided by the statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable, designate an exact dollar amount the requester is willing to pay. Components are not required to accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the component estimates that the total fee will exceed that amount, the component will toll the processing of the request while it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The component shall inquire whether the requester wishes to revise the amount of fees he or she is willing to pay and/or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) Components will make available their FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Although not required to provide special services, if a component chooses to do so as a matter of administrative discretion, the direct costs of providing the service will be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(g) *Charging interest.* Components may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the component. Components will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* When a component reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose

of avoiding fees, the component may aggregate those requests and charge accordingly. Components may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. For requests separated by a longer period, components will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) and (3) of this section, a component shall not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (*i.e.*, payment before copies are sent to a requester) is not an advance payment.

(2) When a component determines or estimates that a total fee to be charged under this section will exceed \$250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. A component may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any component or agency within 30 calendar days of the billing date, a component may require that the requester pay the full amount due, plus any applicable interest on that prior request and the component may require that the requester make an advance payment of the full amount of any anticipated fee, before the component begins to process a new request or continues to process a pending request or any pending appeal. Where a component has a reasonable basis to believe that a requester has misrepresented his or her identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which a component requires advance payment, the request shall not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of the component's fee determination, the request will be closed.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request

are subject to a statutorily-based fee schedule program, the component will inform the requester of the contact information for that source.

(k) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request shall be furnished without charge or at a reduced rate below that established under paragraph (c) of this section, where a component determines, on a case-by-case basis, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) In deciding whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government, components will consider the following factors:

(i) The subject of the request must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested records must be meaningfully informative about government operations or activities in order to be “likely to contribute” to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public’s understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester’s expertise in the subject area as well as his or her ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The public’s understanding of the subject in question must be enhanced by the disclosure to a significant extent. However, components shall not make value judgments about whether the information at issue is “important” enough to be made public.

(3) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, components will consider the following factors:

(i) Components shall identify any commercial interest of the requester, as defined in paragraph (b)(1) of this section, that would be

furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) A waiver or reduction of fees is justified where the public interest is greater than any identified commercial interest in disclosure. Components ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(5) Requests for a waiver or reduction of fees should be made when the request is first submitted to the component and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester will be required to pay any costs incurred up to the date the fee waiver request was received.

(6) *Summary of fees.* The following table summarizes the chargeable fees (excluding direct fees identified in § 5.11) for each requester category.

Category	Search fees	Review fees	Duplication fees
Commercial-use	Yes.....	Yes	Yes.
Educational or Non-Commercial Scientific Institution..	No.....	No	Yes (100 pages free).
News Media.....	No.....	No	Yes (100 pages free).
Other requesters.....	Yes (2 hours free)..	No	Yes (100 pages free).

§ 5.12 Confidential commercial information; CBP procedures.

(a) *In general.* For purposes of this section, “commercial information” is defined as trade secret, commercial, or financial information obtained from a person. Commercial information provided to CBP by a business submitter and that CBP determines is privileged or confidential commercial or financial information will be treated as privi-

leged or confidential and will not be disclosed pursuant to a Freedom of Information Act request or otherwise made known in any manner except as provided in this section.

(b) *Notice to business submitters of FOIA requests for disclosure.* Except as provided in paragraph (b)(2) of this section, CBP will provide business submitters with prompt written notice of receipt of FOIA requests or appeals that encompass their commercial information. The written notice will describe either the exact nature of the commercial information requested, or enclose copies of the records or those portions of the records that contain the commercial information. The written notice also will advise the business submitter of its right to file a disclosure objection statement as provided under paragraph (c)(1) of this section. CBP will provide notice to business submitters of FOIA requests for the business submitter's commercial information for a period of not more than 10 years after the date the business submitter provides CBP with the information, unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(1) *When notice is required.* CBP will provide business submitters with notice of receipt of a FOIA request or appeal whenever:

(i) The business submitter has in good faith designated the information as commercially- or financially-sensitive information. The business submitter's claim of confidentiality should be supported by a statement by an authorized representative of the business entity providing specific justification that the information in question is considered confidential commercial or financial information and that the information has not been disclosed to the public; or

(ii) CBP has reason to believe that disclosure of the commercial information could reasonably be expected to cause substantial competitive harm.

(2) *When notice is not required.* The notice requirements of this section will not apply if:

(i) CBP determines that the commercial information will not be disclosed;

(ii) The commercial information has been lawfully published or otherwise made available to the public; or

(iii) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(c) *Procedure when notice given.* (1) *Opportunity for business submitter to object to disclosure.* A business submitter receiving written notice from CBP of receipt of a FOIA request or appeal encompassing its commercial information may object to any disclosure of the commercial information by providing CBP with a detailed statement of

reasons within 10 days of the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays). The statement should specify all the grounds for withholding any of the commercial information under any exemption of the FOIA and, in the case of Exemption 4, should demonstrate why the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. The disclosure objection information provided by a person pursuant to this paragraph may be subject to disclosure under the FOIA.

(2) *Notice to FOIA requester.* When notice is given to a business submitter under paragraph (b)(1) of this section, notice will also be given to the FOIA requester that the business submitter has been given an opportunity to object to any disclosure of the requested commercial information.

(d) *Notice of intent to disclose.* CBP will consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose commercial information. Whenever CBP decides to disclose the requested commercial information over the objection of the business submitter, CBP will provide written notice to the business submitter of CBP's intent to disclose, which will include:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(2) A description of the commercial information to be disclosed; and

(3) A specified disclosure date which will not be less than 10 days (exclusive of Saturdays, Sundays, and legal public holidays) after the notice of intent to disclose the requested information has been issued to the business submitter. Except as otherwise prohibited by law, CBP will also provide a copy of the notice of intent to disclose to the FOIA requester at the same time.

(e) *Notice of FOIA lawsuit.* Whenever a FOIA requester brings suit seeking to compel the disclosure of commercial information covered by paragraph (b)(1) of this section, CBP will promptly notify the business submitter in writing.

§ 5.13 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Appendix I to Subpart A—FOIA Contact Information

Department of Homeland Security Chief FOIA Officer

Chief Privacy Officer/Chief FOIA Officer, The Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW., STOP-0655, Washington, DC 20528-0655.

Department of Homeland Security Deputy Chief FOIA Officer

Deputy Chief FOIA Officer, The Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW., STOP-0655, Washington, DC 20528-0655.

Senior Director, FOIA Operations

Sr. Director, FOIA Operations, The Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW., STOP-0655, Washington, DC 20528-0655, Phone: 202-343-1743 or 866-431-0486, Fax: 202-343-4011, Email: foia@hq.dhs.gov.

Director, FOIA Production and Quality Assurance

Public Liaison, FOIA Production and Quality Assurance, The Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW., STOP-0655, Washington, DC 20528-0655, Phone: 202-343-1743 or 866-431-0486, Fax: 202-343-4011, Email: foia@hq.dhs.gov.

U.S. Customs & Border Protection (CBP)

FOIA Officer/Public Liaison, 90 K Street NE., 9th Floor, Washington, DC 20229-1181, Phone: 202-325-0150, Fax: 202-325-0230.

Office of Civil Rights and Civil Liberties (CRCL)

FOIA Officer/Public Liaison, U.S. Department of Homeland Security, Washington, DC 20528, Phone: 202-357-1218, Email: CRCL@dhs.gov.

Federal Emergency Management Agency (FEMA)

FOIA Officer/Public Liaison, 500 C Street SW., Room 7NE, Washington, DC 20472, Phone: 202-646-3323, Email: fema-foia@dhs.gov.

Federal Law Enforcement Training Center (FLETC)

FOIA Officer/Public Liaison, Building #681, Suite 187B, Glynco, GA 31524, Phone: 912-267-3103, Fax: 912-267-3113, Email: fletc-foia@dhs.gov.

National Protection and Programs Directorate (NPPD)

FOIA Officer/Public Liaison, U.S. Department of Homeland Security, Washington, DC 20528, Phone: 703-235-2211, Fax: 703-235-2052, Email: *NPPD.FOIA@dhs.gov*.

Office of Biometric Identity Management (OBIM) FOIA Officer

Department of Homeland Security, Washington, DC 20598-0628, Phone: 202-298-5454, Fax: 202-298-5445, E-Mail: *OBIM-FOIA@ice.dhs.gov*.

Office of Intelligence & Analysis (I&A)

FOIA Officer/Public Liaison, U.S. Department of Homeland Security, Washington, DC 20528, Phone: 202-447-4883, Fax: 202-612-1936, Email: *I&AFOIA@hq.dhs.gov*.

Office of Inspector General (OIG)

FOIA Public Liaison, DHS-OIG Counsel, STOP 0305, 245 Murray Lane SW., Washington, DC 20528-0305, Phone: 202-254-4001, Fax: 202-254-4398, Email: *FOIA.OIG@oig.dhs.gov*.

Office of Operations Coordination and Planning (OPS)

FOIA Officer/Public Liaison, U.S. Department of Homeland Security, Washington, DC 20528, Phone: 202-447-4156, Fax: 202-282-9811, Email: *FOIAOPS@DHS.GOV*.

Science & Technology Directorate (S&T)

FOIA Officer/Public Liaison, U.S. Department of Homeland Security, Washington, DC 20528, Phone: 202-254-6342, Fax: 202-254-6739, Email: *stfoia@hq.dhs.gov*.

Transportation Security Administration (TSA)

FOIA Officer/Public Liaison, Freedom of Information Act Branch, 601 S. 12th Street, 11th Floor, East Tower, TSA-20, Arlington, VA 20598-6020, Phone: 1-866-FOIA-TSA or 571-227-2300, Fax: 571-227-1406, Email: *foia.tsa@dhs.gov*.

U.S. Citizenship & Immigration Services (USCIS)

FOIA Officer/Public Liaison, National Records Center, FOIA/PA Office, P.O. Box 648010, Lee's Summit, MO 64064-8010, Phone: 1-800-375-5283 (USCIS National Customer Service Unit), Fax: 816-350-5785, Email: *uscis.foia@uscis.dhs.gov*.

United States Coast Guard (USCG)

Commandant (CG-611), 2100 2nd St. SW., Attn: FOIA Officer/
Public Liaison, Washington, DC 20593-0001, FOIA Requester Ser-
vice Center Contact: Amanda Ackerson, Phone: 202-475-3522, Fax:
202-475-3927, Email: efoia@uscg.mil.

United States Immigration & Customs Enforcement (ICE)

Freedom of Information Act Office, FOIA Officer/Public Liaison, 500
12th Street SW., Stop 5009, Washington, DC 20536-5009.

FOIA Requester Service Center Contact, Phone: 866-633-1182,
Fax: 202-732-4265, Email: ice-foia@dhs.gov.

United States Secret Service (USSS)

Freedom of Information and Privacy Acts Branch, FOIA Officer/
Public Liaison, 245 Murray Drive, Building 410, Washington, DC
20223, Phone: 202-406-6370, Fax: 202-406-5586, Email:
FOIA@uss.s.dhs.gov.

Please direct all requests for information from the Office of the
Secretary, Citizenship and Immigration Services Ombudsman, Do-
mestic Nuclear Detection Office, Office of the Executive Secretary,
Office of Intergovernmental Affairs, Management Directorate, Office
of Policy, Office of the General Counsel, Office of Health Affairs, Office
of Legislative Affairs, Office of Public Affairs and the Privacy Office, to
the DHS Privacy Office at: The Privacy Office, U.S. Department of
Homeland Security, 245 Murray Lane SW., STOP-0655, Washington,
DC 20528-0655, Phone: 202-343-1743 or 866-431-0486, Fax:
202-343-4011, Email: foia@hq.dhs.gov.

Appendix B to Part 5—[Removed]

- 3. Remove appendix B to part 5.

Title 19—Customs Duties

PART 103—AVAILABILITY OF INFORMATION

- 4. The authority citation for part 103 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C.
9701.

Section 103.31 also issued under 19 U.S.C. 1431; Section 103.31a
also issued under 19 U.S.C. 2071 note and 6 U.S.C. 943; Section
103.33 also issued under 19 U.S.C. 1628; Section 103.34 also issued
under 18 U.S.C. 1905.

§ 103.35 [Removed]

- 5. Remove § 103.35.

Title 44—Emergency Management and Assistance

PART 5—PRODUCTION OR DISCLOSURE OF INFORMATION

- 6. The authority citation for part 5 is revised to read as follows:
Authority: Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301.

Subparts A Through E—[Removed and Reserved]

- 7. Remove and reserve subparts A through E of part 5.
- 8. In § 5.86, revise the section to read as follows:

§ 5.86 Records involved in litigation or other judicial process.

Subpoenas duces tecum issued pursuant to litigation or any other adjudicatory proceeding in which the United States is a party shall be referred to the Chief Counsel.

JEH CHARLES JOHNSON,
Secretary.

[Published in the Federal Register, July 29, 2015 (80 FR 45101)]

General Notice

DATES AND DRAFT AGENDA OF THE FIFTY-SIXTH SESSION OF THE HARMONIZED SYSTEM COMMITTEE OF THE WORLD CUSTOMS ORGANIZATION

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

ACTION: Publication of the dates and draft agenda for the fifty-sixth session of the Harmonized System Committee of the World Customs Organization.

SUMMARY: This notice sets forth the dates and draft agenda for the next session of the Harmonized System Committee of the World Customs Organization.

DATES: July 24, 2015

FOR FURTHER INFORMATION CONTACT: Joan A. Jackson, Paralegal Specialist, Tariff Classification and Marking Branch, U.S.

Customs and Border Protection (202–325–0010), or Dan Shepherdson, Attorney Advisor, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (202–205–2598).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The United States is a contracting party to the International Convention on the Harmonized Commodity Description and Coding System (“Harmonized System Convention”). The Harmonized Commodity Description and Coding System (“Harmonized System”), an international nomenclature system, forms the core of the U.S. tariff, the Harmonized Tariff Schedule of the United States. The Harmonized System Convention is under the jurisdiction of the World Customs Organization (established as the Customs Cooperation Council).

Article 6 of the Harmonized System Convention establishes a Harmonized System Committee (“HSC”). The HSC is composed of representatives from each of the contracting parties to the Harmonized System Convention. The HSC’s responsibilities include issuing classification decisions on the interpretation of the Harmonized System. Those decisions may take the form of published tariff classification opinions concerning the classification of an article under the Harmonized System or amendments to the Explanatory Notes to the Harmonized System. The HSC also considers amendments to the legal text of the Harmonized System. The HSC meets twice a year in Brussels, Belgium. The next session of the HSC will be the fifty sixth and it will be held from September 16, 2015 to September 25, 2015.

In accordance with section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), the Department of Homeland Security, represented by U.S. Customs and Border Protection, the Department of Commerce, represented by the Census Bureau, and the U.S. International Trade Commission (“ITC”), jointly represent the U.S. The Customs and Border Protection representative serves as the head of the delegation at the sessions of the HSC.

Set forth below is the draft agenda for the next session of the HSC. Copies of available agenda-item documents may be obtained from either Customs and Border Protection or the ITC. Comments on agenda items may be directed to the above-listed individuals.

IEVA K. O’ROURKE,
Chief

Tariff Classification and Marking Branch

Attachment



WORLD CUSTOMS ORGANIZATION
 ORGANISATION MONDIALE DES DOUANES
 Established in 1952 as the Customs Co-operation Council
 Créée en 1952 sous le nom de Conseil de coopération douanière

HARMONIZED SYSTEM
 COMMITTEE
 -
 56th Session
 -

NC2118E1a

O. Fr.

Brussels, 16 July 2015.

**DRAFT AGENDA FOR THE 56TH SESSION
 OF THE HARMONIZED SYSTEM COMMITTEE**

From : Wednesday 16 September 2015 (10.00 a.m.)

To : Friday 25 September 2015

N.B. : From Monday 14 September 2015 (10.00 a.m.) to Tuesday 15 September 2015 : Pre-session Working Party (to examine the questions under **Agenda Item VI**) **The Report has been approved.**

I. ADOPTION OF THE AGENDA

- | | |
|--------------------|-----------|
| 1. Draft Agenda | NC2118E1a |
| 2. Draft Timetable | NC2119B1a |

II. REPORT BY THE SECRETARIAT

- | | |
|---|-----------------------|
| 1. Position regarding Contracting Parties to the HS Convention, HS Recommendations and related matters and progress report on the implementation of HS 2012 | NC2120E1a |
| 2. Report on the last meetings of the Policy Commission (73 rd Session), and the Council (125 th /126 th Sessions) | NC2121E1a |
| 3. Development of performance measurement indicators | NC2122E1a |
| 4. Approval of decisions taken by the Harmonized System Committee at its 55 th Session | NG0213E1
NC2117E1a |
| 5. Capacity building activities of the Nomenclature and Classification Sub-Directorate | NC2123E1a |
| 6. Co-operation with other international organizations | NC2124E1a |
| 7. New information provided on the WCO Web site | NC2125E1a |
| 8. Preparation and timing of HS 2017 publications | NC2126E1a |

9. Other

III. GENERAL QUESTIONS

- | | |
|--|-----------|
| 1. WTO Agreement on Trade Facilitation | NC2127E1a |
| 2. Implementation of HS 2017 – Status and challenges | NC2128E1a |
| 3. Possible amendments to the Correlation Tables between the 2012 and 2017 editions of the HS (Request by Japan) | NC2129E1a |

IV. RECOMMENDATIONS

- | | |
|--|-----------|
| 1. Recommendation of the Customs Co-operation Council on the use of standard units of quantity to facilitate the collection, comparison and analysis of international statistics based on the Harmonized System (24 June 2011) | NC2130E1a |
| 2. Recommendation of 1996 on the insertion in national statistical nomenclatures of subheadings for substances controlled under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (18 June 1996) (amended 25 June 1999, 1 July 2006 and 24 June 2011) | NC2131E1a |
| 3. Recommendation of 2009 on the insertion in national statistical nomenclatures of subheadings for substances controlled under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (26 June 2009) (amended 24 June 2011) | NC2132E1a |

V. REPORT OF THE HS REVIEW SUB-COMMITTEE

- | | |
|---|-----------|
| 1. Report of the 48 th Session of the HS Review Sub-Committee | NR1066E1b |
| 2. Matters for decision | NC2133E1a |
| 3. Possible amendment to the Nomenclature to facilitate the application of preferential rules of origin | NC2134E1a |

VI. REPORT OF THE PRESESSIONAL WORKING PARTY

- | | |
|--|-----------------------|
| 1. Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify separately two components of a pizza topping -“mozzarella cheese” in heading 04.06 (subheading 0406.10) and “pepperoni” in heading 16.01 (subheading 1601.00) | NC2135E1a,
Annex A |
| 2. Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify two products respectively called “Ostenil®” and “Ostenil®Plus” in heading 30.04 (subheading 3004.90) | NC2135E1a,
Annex B |
| 3. Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify a product called “Hospital gauze” in heading 30.05 (subheading 3005.90) | NC2135E1a,
Annex C |

4. Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify two electric carpets (references “HC-9045” (Product A) and “MC-10G” (Product B)) in heading 57.05 (subheading 5705.00) NC2135E1a, Annex D
5. Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify a reflective insulation (Product A – “Astro-E”) in heading 76.07 (subheading 7607.20) NC2135E1a, Annex E
6. Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify a telescopic arm called “extension rod for harvesting olives, almonds and pistachios and for pruning fruit and nut trees” (Product 4 (a)) in heading 84.66 (subheading 8466.10) NC2135E1a, Annex F
7. Possible amendment to the Compendium of Classification Opinions to reflect the decisions to classify a pneumatic rake and an electric rake for harvesting olives, almonds and pistachios (products 2 and 3) in heading 84.67 (respectively subheadings 8467.19 and 8467.29) NC2135E1a, Annex G
8. Possible amendment to the Compendium of Classification Opinions to reflect the decisions to classify three “smart watches” called “Samsung Galaxy Gear”, “Sony SmartWatch 3 (SWR50)” and “Apple Watch” in heading 85.17 (subheading 8517.62) NC2135E1a, Annex H
9. Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify certain drones in heading 85.25 (subheading 8525.80) NC2135E1a, Annex IJ
10. Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify a “TJ 5000 OFF ROAD” tractor and an “OTTAWA 4x2 OFF ROAD YT50” tractor in heading 87.01 (subheading 8701.90) NC2135E1a, Annex K
11. Possible amendment to the Compendium of Classification Opinions to reflect the decisions to classify a four-wheeled motor vehicle with six seats called “Transporter 6” and a four-wheeled motor vehicle with eight seats called “Villager 8” in heading 87.03 (subheading 8703.10) NC2135E1a, Annex L
12. Possible amendment to the Compendium of Classification Opinions to reflect the decisions to classify four seats for infants and toddlers called “Infant-to-Toddler Rocker -Model M5598” (Product 1), “Rainforest™ Bouncer -Model K2564” (Product 2), “Rainforest™ Jumperoo™-Model K6070” (Product 3) and “Graco Lovin’ Hug Infant Swing -Elyse” (Product 4) in heading 94.01 (subheading 9401.71) NC2135E1a, Annex M
13. Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify a pre-wired light-emitting diode (LED) downlight in heading 94.05 (subheading 9405.40) NC2135E1a, Annex N
14. Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify a stainless steel vacuum flask in heading 96.17 (subheading 9617.00) NC2135E1a, Annex O

VII. REQUESTS FOR RE-EXAMINATION (RESERVATIONS)

- | | |
|--|-----------|
| 1. Re-examination of the classification of a product containing more than 98.5% of sodium sulphate and the classification of a product containing more than 99.2% of sodium sulphate (Request by the Russian Federation) | NC2136E1a |
| 2. Re-examination of the classification of a "SHARP thin-film solar module, model <u>NA-F GK</u> " (Request by Mexico) | NC2137E1a |
| 3. Re-examination of the classification of certain titanium screws for medical applications (implants) (Request by Colombia) | NC2138E1a |
| 4. Re-examination of the classification of a dairy product called " <u>DANONE VITALINEA PRO JORDGUBB</u> " (Request by Norway) | NC2139E1a |
| 5. Re-examination of the classification of peroxyketals (Request by Japan) | NC2140E1a |
| 6. Re-examination of the classification of liquid maltitol (Request by Japan) | NC2141E1a |
| 7. Re-examination of the classification of certain "inflatable balls" (Request by Japan) | NC2142E1a |

VIII. FURTHER STUDIES

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| 1. Possible amendment to the Explanatory Note to heading 20.09 to clarify the classification of powdered juices | NC2143E1a |
| 2. Scope of the expression "original character" of juices in the Explanatory Note to heading 20.09 (Request by the Russian Federation) | NC2144E1a |
| 3. Possible amendment to the Explanatory Notes to establish a dividing line between the products of headings 95.03 and 95.06 | NC2145E1a |
| 4. Possible amendment to the Explanatory Notes to clarify the classification of a product called "Hospital gauze" (Request by Colombia) | NC2146E1a |
| 5. Possible misalignment of the Explanatory Notes to headings 03.05 and 05.11 (fish maws) (Request by the EU) | NC2147E1a |
| 6. Classification of powdered alcohol (Request by Singapore) | NC2148E1a
NC2097E1a
(HSC/55) |
| 7. Possible amendment to the Explanatory Notes to clarify the classification of vehicles intended for road transport | NC2149E1a |
| 8. Possible amendment to the Explanatory Notes to clarify the classification of goods put up together but not regarded as sets for retail sale | NC2150E1a |
| 9. Classification of a product referred to as " <u>Thai Chicken Red Curry</u> " (Request by Norway) | NC2151E1a
NC2102E1a
(HSC/55) |
| 10. Classification of a product referred to as "Crab flavour" (Request by the Russian Federation) | NC2152E1a |
| 11. Possible amendment to the Explanatory Note to heading 94.01 | NC2153E1a |

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| 12. Classification of a laundry ball containing ceramic beads commercially named “ <u>Hnzen Ball</u> ” (Request by Egypt) | NC2112E1a
(HSC/55) |
| 13. Classification of a perforated plastic tube called “Tif Drip” used for conducting water in irrigation systems (Request by Egypt) | NC2154E1a
NC2113E1a
(HSC/55) |
| 14. Classification of certain equipment used for processing wet waste from the production of ethyl alcohol (Request by Moldova) | NC2114E1a
(HSC/55) |

IX. NEW QUESTIONS

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| 1. Classification of certain alkyd resin solutions in white spirit (Request by Ukraine) | NC2155E1a |
| 2. Classification of a two-piece garment (Request by Norway) | NC2156E1a |
| 3. Classification of “selfie – sticks” (Request by the Secretariat) | NC2157E1a |
| 4. Classification of two “ <u>Xinshui</u> ” machines, models “ <u>XS950</u> ” and “ <u>XS1050</u> ” (Request by Moldova) | NC2158E1a |
| 5. Classification of a product called “ <u>Cristal Limon</u> ” (Request by Moldova) | NC2159E1a |
| 6. Classification of blanched ground-nuts (Request by South Africa) | NC2160E1a |
| 7. Classification of certain Flat Panel Display Modules (Request by Korea) | NC2161E1a |
| 8. Classification of a product referred to as “powder of freeze-dried cuttle fish (<u>Sepia officinalis</u>)” (Request by Japan) | NC2162E1a |

X. ADDITIONAL LIST

- 1.
- 2.

XI. CUSTOMS AND STATISTICS

XII. OTHER BUSINESS

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| 1. List of questions which might be examined at a future session | NC2163E1a |
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XIII. DATES OF NEXT SESSIONS

**MODIFICATION OF RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE ELIGIBILITY OF
CERTAIN AUTOMOTIVE PARTS FOR A PARTIAL DUTY
EXEMPTION UNDER SUBHEADINGS 9802.00.60 AND
9802.00.50 HTSUS**

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

ACTION: Notice of modification of one ruling letter and revocation of any treatment relating to the eligibility of certain automotive parts for a partial duty exemption under subheadings 9802.00.60 and 9802.00.50 of the Harmonized Tariff Schedule of the United States (HTSUS).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter, New York Ruling Letter (NY) M87369, dated November 7, 2006, relating to the eligibility of certain automotive parts for a partial duty exemption under subheadings 9802.00.60 and 9802.00.50 of the HTSUS. Similarly, CBP is revoking any treatment previously accorded to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 23, on June 10, 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 September 10, 2015.

FOR FURTHER INFORMATION CONTACT: Ross Cunningham, Valuation and Special Programs Branch, at (202) 325–0034.

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, this notice advises interested parties that CBP intends to modify one ruling letter pertaining to the eligibility of certain automotive parts for a partial duty exemption under subheadings 9802.00.60 and 9802.00.50 of the HTSUS. Although in this notice, CBP is specifically referring to the modification New York Ruling Letter (NY) M87369, dated November 7, 2006 (Attachment A), this notice covers any rulings on these products 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 (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 its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying New York Ruling Letter (NY) M87369, dated November 7, 2006 (Attachment A), in accordance with the analysis set forth Headquarters Ruling Letter (HQ) H263570 (Attachment B). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke 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: July 16, 2015

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY M87369

November 7, 2006

CLA-2-98:RR:NC:N1:101 M87369

CATEGORY: Classification

TARIFF NO.: 9802.00.5060

MR. JASON COMBS

C J INTERNATIONAL, INC.

7720 BLUFFTON ROAD SUITE A

FORT WAYNE IN 46809-2912

RE: The tariff classification of automotive parts from China.

DEAR MR. COMBS:

In your letter dated October 10, 2006 you requested a tariff classification ruling on behalf Connor Corporation in Fort Wayne, IN.

This ruling requests a determination as to whether the HTS 9802.00.5060 or HTS 9802.00.60000 would apply for items of US manufacture exported by Connor Corp. to China for further working and then imported back into the US by Connor Corp.

1. Item # A-3105W-1167: An outer steel ring is stamped in the US. This ring is then exported to China where it is zinc plated, an adhesive is applied to the inner diameter and then the rubber is molded to the inside of the ring. You have provided a sample of the finished product.
2. Item # 3556B40H01: A nylon plastic ring is molded in the US. This ring is then exported to China where an adhesive is applied to the inner diameter of the ring and then the rubber is molded to the inside of the ring. The sample provided is the nylon ring, as it looks when exported from the US.
3. Item # 53P22-1: The outer steel ring is stamped in the US. This ring is then exported to China where it is zinc plated, (sample provided is painted black), an adhesive is applied to the inner diameter and then the rubber is molded to the inside of the ring. The sample provided is the outer ring, as it looks when exported from the US and the finished product as it looks upon return to the US. The outer ring and the rubber are clearly distinguishable.
4. Item # 53P25-1: The outer steel ring is stamped in the US. This ring is then exported to China where it is zinc plated, (sample provided is painted black), an adhesive is applied to the inner diameter and then the rubber is molded to the inside of the ring. The sample provided is the finished product, as it looks upon return to the US. The outer ring and the rubber are clearly distinguishable.
5. Item 611491-4: The outer and inner steel rings are stamped in the US. These rings are then exported to China where they are zinc plated, (sample provided is painted black), an adhesive is applied to the inner diameter and then the rubber is molded to the inside of the

ring. The inner ring is then attached to the inside of the rubber. The sample provided is the outer ring, as it looks when exported from the US, and the finished product as it looks upon return to the US. The inner ring, outer ring, and rubber are clearly distinguishable.

Under subheading 9802.00.6000, HTSUS, articles of metal (except precious metal) manufactured in the U.S. or subject to a process of manufacture in the U.S., if exported for further processing, and if the exported article as processed outside the U.S., or the article which results from processing outside the U.S., is returned to the U.S. for further processing, may be entered with duty on the cost or value of the processing abroad upon compliance with applicable regulations.

Customs has previously held that for purposes of subheading 9802.00.6000, HTSUS, the term “ further processing” has reference to processing that changes the shape of the metal or imparts new and different characteristics which become an integral part of the metal itself and which did not exist in the metal before processing.

In all five cases mentioned above, there is no change in shape of metal nor are there any new and different characteristics which become an integral part of the metal itself and which did not exist in the metal before processing.

It is our opinion that the work performed in China is an alteration within the meaning of subheading 9802.00.5060, HTSUS. Provided the documentary requirements of section 181.64, Customs Regulations (19 CFR 181.64) are satisfied, the metal insert will qualify for a duty exemption under HTSUS subheading 9802.00.5060 when returned to the U.S.

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 Robert DeSoucey at 646-733-3008.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT B

HQ H263570

July 16, 2015.

OT:RR:CTF:VS H263570 RMC

CATEGORY: Classification

JASON COMBS

CJ INTERNATIONAL, INC.

7220 BLUFFTON ROAD SUITE A

FORT WAYNE, IN 46809-2912

Re: Modification of New York Ruling Letter (NY) M87369, Dated November 7, 2006, Concerning the Tariff Classification of Automotive Parts from China.

DEAR MR. COMBS:

This is in reference to New York Ruling Letter (NY) M87369 issued to you on behalf of your client, Connor Corporation, on November 7, 2006. In your ruling request, you asked whether five automotive parts qualified for a partial duty exemption under Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings 9802.00.50 and 9802.00.60. NY M87369 held that the automotive parts in question qualified as “articles returned to the United States after having been exported to be advanced in value or improved in condition by any process of manufacture or other means” under HTSUS subheading 9802.00.50. It has come to our attention that an error was made in NY M87369. For the reasons set forth below the automotive parts are not entitled to a partial duty exemption under either subheading 9802.00.50 or subheading 9802.00.60, HTSUS.

FACTS:

As described in New York Ruling Letter (NY) M87369, dated November 7, 2006, the following five automotive products are at issue:

1. Item # A-3105W-1167: An outer steel ring that is first stamped in the United States. This ring is then exported to China, where a manufacturer plates it with zinc, applies an adhesive to the inner diameter, and molds rubber to the inside of the ring.
2. Item # 53P22-1: An outer steel ring that is first stamped in the United States. This ring is then exported to China, where a manufacturer plates it with zinc, applies an adhesive to the inner diameter, and molds rubber to the inside of the ring.
3. Item # 53P25-1: An outer steel ring that is first stamped in the United States. This ring is then exported to China, where a manufacturer plates it with zinc, applies an adhesive to the inner diameter, and molds rubber to the inside of the ring.
4. Item 611491-4: Outer and inner steel rings that are stamped in the United States. These rings are then exported to China, where a manufacturer plates them with zinc, applies an adhesive to the inner diameters, and molds rubber to the inside of the rings. The inner ring is then attached to the inside of the rubber.

5. Item # 3556B40H01: A nylon plastic ring that is first molded in the United States. This ring is then exported to China, where a manufacturer applies an adhesive to the inner diameter of the ring and molds rubber to its inside.

ISSUE:

1. Whether products (1) through (4), which are all made of metal, qualify for a partial duty exemption under subheading 9802.00.60 of the HTSUS as an “article of metal . . . manufactured in the United States or subjected to a process of manufacture in the United States, if exported for further processing, and if the exported article as processed outside the United States, or the article which results from the processing outside the United States, is returned to the United States for further processing.”
2. Whether products (1) through (5) qualify for a partial duty exemption under subheading 9802.00.50 as “[a]rticles returned to the United States after having been exported to be advanced in value or improved in condition” through repairs or alterations.

LAW AND ANALYSIS:

I. Eligibility of Metal Goods for a Partial Duty Exemption under HTSUS Subheading 9802.00.60

Subheading 9802.00.60, HTSUS, provides a partial duty exemption for any article of metal (as defined in U.S. note 3(d) of this subchapter) manufactured in the United States or subjected to a process of manufacture in the United States, if exported for further processing, and if the exported article as processed outside the United States, or the article which results from the processing outside the United States, is returned to the United States for further processing. This tariff provision imposes a dual “further processing” requirement on eligible, U.S. articles of metal—one foreign, and when returned, one domestic. Metal articles satisfying these statutory requirements may be classified under this tariff provision with duty only on the value of such processing performed outside the U.S., provided the documentary requirements of section 10.9, Customs Regulations (19 CFR 10.9), are met.

In C.S.D. 84-49, 18 Cust.Bull. 957 (1983) we stated that for purposes of item 806.30, TSUS—the predecessor tariff provision to HTSUS subheading 9802.00.60—the term “further processing” refers to “processing that changes the shape of the metal or imparts new and different characteristics which become an integral part of the metal itself and which did not exist in the metal before processing; thus, further processing includes machining, grinding, drilling, threading, punching, forming, plating, and the like, but does not include painting or the mere assembly of finished parts by bolting, welding, etc.”

Although NY M87369 held that no “further processing” of the metal occurred in China under subheading 9802.00.60, that is incorrect. Here, metal rings that are manufactured in the United States are sent to China where a manufacturer plates them with zinc, applies an adhesive, and molds rubber

to the inside of the metal ring. Zinc plating—a process whereby metal is coated in a protective lawyer of zinc—does indeed “impart new and different characteristics which become an integral part of the metal itself and which did not exist in the metal before processing.” We have recognized this in previous rulings. *See, e.g.*, Headquarters Ruling (HQ) H555562, dated Nov. 26, 1990; HQ 556080, dated Aug. 27, 1991;

Despite the error on this point, however, NY M87369 correctly found that subheading 9802.00.60 did not apply because no evidence of further processing in the United States was presented. Subheading 9802.00.60 requires that the imported goods be “returned to the United States for further processing.” Therefore, we continue to hold that the products are ineligible for a partial duty exemption under subheading 9802.00.60, HTSUS.

II. Eligibility of All Goods for a Partial Duty Exemption under HTSUS Subheading 9802.00.50

Subheading 9802.00.50 creates a partial duty exemption for articles returned to the United States after having been exported to be advanced in value or improved in condition through repairs or alterations. The Court of Customs and Patent Appeals has held that “repairs or alterations” can be done only to articles that are complete when exported. Subheading 9802.00.50 therefore does not apply to “intermediate operations which are performed in the manufacture of finished articles.” *Dolliff and Co., Inc. v. United States*, 599 F.2d 1010 (C.C.P.A. 1979).

NY M87369 holding that all five articles at issue are eligible for a partial duty exemption under subheading 9802.00.50 is incorrect because the rings are not complete when exported. As noted above, the metal rings are exported to China for further processing and returned to the United States as finished goods, and the same is true of the nylon rings. The Chinese processing is therefore an “intermediate operation” performed in the manufacture of a finished good, which makes the products ineligible for a partial duty exemption under subheading 9802.00.50.

HOLDING:

We find that the automotive parts do not qualify for a partial duty exemption under either subheading 9802.00.60 or subheading 9802.00.50.

EFFECT ON OTHER RULINGS:

NY M87369, dated Nov. 7, 2006, is hereby modified.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**MODIFICATION OF RULING LETTER AND TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
CERTAIN SYNTHETIC SILICA GELS**

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

ACTION: Notice of modification of a ruling letter and treatment concerning the tariff classification of synthetic silica gel.

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 modifying one ruling letter pertaining to the tariff classification of two types of C-560 silica gel from Switzerland, under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also modifying any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on March 4, 2015, in Volume 49, Number 9, of the *Customs Bulletin*. Two comments were received in response to the proposed notice.

EFFECTIVE DATE: This modification is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 13, 2015.

FOR FURTHER INFORMATION CONTACT: Emily Beline, Tariff Classification and Marking 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), 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 9, on March 4, 2015, proposing to modify New York Ruling Letter, (NY) NY J83810, dated June 23, 2003, and proposing to revoke any treatment accorded to substantially identical transaction. Two 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 this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice

In NY J83810, dated June 23, 2003, CBP classified two of four submitted samples of silicon dioxide, referred to as "C-560" (40–60 microns, Lot 4863 and 200–500 microns, Lot 4934) under subheading 2811.22.50, HTSUS, which provides for Other inorganic acids...: Other inorganic oxygen compounds...: Silicon Dioxide: Other.

It is now CBP's position that both lots of "C-560" are properly classified under subheading 2811.22.10, HTSUS, which provides for, ... : Silicon Dioxide: Synthetic silica gel. CBP is modifying NY J83810 to alter only the classification of the two types of C-560. The remainder of the ruling remains intact.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY J83810 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise sample pursuant to the analysis set forth in HQ H237643 (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: July 16, 2015

IEVA K. O'ROURKE
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H237643

July 16, 2015

CLA-20T:RR:CTF:TCM H237643 ERB

CATEGORY: Classification

TARIFF NO.: 2811.22.10

MR. CHARLES SPOTO

ALBA WHEELS UP INTERNATIONAL, INC.

150-30 132ND AVENUE, SUITE 208

JAMAICA, NEW YORK 11434

RE: Modification of NY J83810; Tariff classification of two samples of silicon dioxide "C-Gel", synthetic silica gel, from Switzerland

DEAR MR. SPOTO:

On June 23, 2003, U.S. Customs and Border Protection (CBP) issued Wheels Up International, Inc. (Wheels Up) New York Ruling Letter (NY) J83810. NY J83810 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States, (HTSUS) of submitted samples of four grades of silicon dioxide, referred to as "C-Gels." We have since reviewed NY J83810 and find it to be in error with respect to two lots referred to as "C-560" (40-60 microns, Lot 4863, and 200-500 microns, Lot 4934), which is described in detail herein.

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), a notice was published in the *Customs Bulletin*, Volume 49, Number 9, on March 4, 2015, proposing to modify NY J83810, and any treatment accorded to substantially identical transactions. Two comments were received in opposition, and the arguments made therein were considered in this office's analysis below.

FACTS:

According to NY J83810, four samples were submitted to CBP for analysis, one of each of four grades of silicon dioxide being imported:

1. "C-560 HYD" (40-63 microns, Lot 5718);
2. Two types of "C-560" (40-60 microns, Lot 4863 and 200-500 microns, Lot 4934);
3. "C-18 C-490" (35-70 microns, Lot 1142)

At the time, the Lots 4863 and 4934, were classified in subheading 2811.22.50, HTSUS. Specifically CBP stated:

The technical information you submitted indicates the bound water content of both types of "C-560" is under 5 percent. The applicable subheading for the C-gel "C-560" (40-60 microns, Lot 4863 and 200-500 microns, Lot 4934), will be 2811.22.5000, HTSUS, which provides for Other inor-

ganic acids and other inorganic oxygen compounds of nonmetals: Silicon Dioxide: Other. The rate of duty will be Free.¹

Thus, in that ruling CBP made note that the bound water content of both types of C-560 was under 5%. The New York Laboratory was asked whether this product meets the criteria for silicon dioxide. Laboratory Report NY 20030621, dated May 15, 2003 stated the following in response:

The sample consists of four plastic containers of a white powder of varying mesh size as follows: Lot 4931 (0.200–0.500 MM), Lot 4863 (0.040–0.060MM), Lot 5718 (0.040–0.063MM), and Lot 1142 (0.035–0.070 MM). Laboratory analysis has determined that the four sample [sic] are an amorphous form of silica. Lot number 1142 also contains a coating of an unsaturated 18 carbon non cyclic hydrocarbon. Method reference uscl 25.01.

ISSUE:

Are the subject C-gels classified as synthetic silica gel under subheading 2811.22.10, HTSUS, or are they classified as other silicon dioxide under subheading 2811.22.50, HTSUS?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. 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 HTSUS provisions under consideration in this case are as follows:

2811	Other inorganic acids and other inorganic oxygen compounds of nonmetals:
2811.22	Other inorganic oxygen compounds of nonmetals: Silicon dioxide:
2811.22.10	Synthetic silica gel
2811.22.50	Other

Because the instant classification issue 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.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, though not dispositive or legally binding, may provide commentary on the scope of each heading of the HTSUS, and are the official interpretation

¹ The listing of Lot 4931 is a typo. The Lot at issue which was tested by CBP's labs is Lot 4934.

of the Harmonized System at the international level. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN 82.11 (M) Silicon Compounds discusses silicon dioxide of this heading. Therein it states, in relevant part:

It can be either in amorphous form (as a white powder “silica white”, “flowers of silica”, “calcined silica”; as vitreous granules – “vitreous silica”; in gelatinous condition – “silica frost”; “hydrated silica”), or in crystals (tridymite and cristobalite forms).

In Headquarters Ruling (HQ) 086755, dated September 28, 1990, CBP concluded that “Although most silica gels will have a bound water content of greater than 5 percent, there exists no strict minimum-bound-water-content-cutoff point for the classification of silica gel.” Multiple characteristics must be considered in determining whether a product is “synthetic silica gel” of subheading 2811.22.10, HTSUS or “other silicon dioxide” of subheading 2811.22.50, HTSUS; no single criteria, such as the bound water content, is sufficient to classify in either subheading.

The two C-gels at issue are inorganic amorphous forms of silica. CBP has had prior occasion to classify amorphous forms of silica. In all cases CBP has determined that the goods are properly classified in subheading 2811.22.10, HTSUS, as synthetic silica gel, without reference to the bound water content. See NY N237450, dated March 15, 2013, whereby CBP classified a sample of white, odorless, granules referred to as silica gel or base gel, as synthetic amorphous silicon dioxide under subheading 2811.22.10, HTSUS.² Further, the two C-gel products at issue do not contain any impermissible impurities. See *Degussa Corporation, v. United States*, 508 F.3d 1044, (November 26, 2007), where the Court of Appeals for the Federal Circuit reversed the Court of International Trade holding that surface-modified treatments changed the nature of the silica particle from hydrophilic (i.e. water-attractive) to hydrophobic (i.e. water-repellant) and this constitutes an impermissible impurity and cannot be classified under Chapter 28.

Therefore, silicon dioxide which can be described as synthetic silica gel is classified in subheading 2811.22.10, HTSUS, the *eo nomine* subheading for the merchandise.

The first set of comments received in this office in response to the notice of proposed modification of NY J83810, argues that the instant ruling is irreconcilable with HQ 086755. Both commenters state that this office is downgrading the importance of bound water content in the classification of amorphous silica. However, HQ 086755 states, and the instant ruling confirms, that the amount of bound water found in amorphous silica is crucial to the classification of a product being considered for classification under either subheading 2811.22.10 or 2811.22.50, HTSUS. This office is not eliminating the use of bound water content as a characteristic relevant to classification. However, it is not the sole characteristic to be considered.

² See also NY N114488, dated August 9, 2010 (classifying Silica Gel Siliaflash F60); NY L89849, dated January 31, 2006 (classifying silica gel from China); NY K85646, dated May 25, 2004 (classifying silica gel from China); NY H89314, dated March 18, 2002 (classifying New Fresh Step® Crystals (made of silica gel)); NY F88594, dated June 30, 2000, (classifying silica cat litter from China); NY D85977, dated January 5, 1999 (classifying silica gel from Japan) all under subheading 2811.22.10, HTSUS. Note: the bound water content of the silica gel was not discussed in any of those rulings.

The first commenter obtained via a Freedom of Information Act (FOIA) request, a memo, dated September 12, 1990, from Customs Office of Laboratories & Scientific Services (OLSS) to this office's predecessor, the Commercial Rulings Division regarding HQ 086755. Therein, OLSS stated, and the commenter quoted, that, "the amount of bound water found in the amorphous silica is crucial to its classification." But of importance here, OLSS continued to state, "We stress, however, that although most silica gels will have a bound water content of greater than 5%, the denotation of a strict "minimum bound water content" cutoff point for the classification [of] synthetic silica gel is not advised." The merchandise in HQ 086755 was analyzed for its bound water content, but also for its overall physical characteristics, including its physical form. That rationale is confirmed here. Merchandise under consideration as classified in the subheadings of 2811.22, HTSUS, will be analyzed for its bound water content as well as any other relevant characteristic, such as physical form or viscosity. The bound water content is not the sole characteristic by which these products will be classified.

HOLDING:

By application of GRI 1, the two types of "C-560" silica gel (Lots 4863 and 4934) are provided for in heading 2811, HTSUS. They are specifically provided for under subheading 2811.22.10, HTSUS, as "Other inorganic acids and other inorganic oxygen compounds of nonmetals:...Silicon Dioxide: Synthetic silica gel." The column one, general rate of duty is 3.7 percent *ad valorem*. Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at www.usitc.gov

The classification of C-560 HYD (40–63 microns, Lot 5718) and C-18 C-490 (35–70 microns, Lot 1142) of NY J83810 remains unchanged.

EFFECT ON OTHER RULINGS:

NY J83810, dated June 23, 2003, is hereby MODIFIED.

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

LEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

REVOCAION OF RULING LETTER AND REVOCAION OF TREATMENT RELATING TARIFF CLASSIFICATION OF TIRES FOR ALL TERRAIN VEHICLES

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

ACTION: Notice of revocation of one ruling letter and revocation of treatment relating to tariff classification of tires for all-terrain vehicles (ATVs).

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) is revoking Headquarters Ruling Letter (HQ) 966112, dated April 2, 2003, relating to the tariff classification of ATV tires under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Pursuant to section 625(c) (1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke HQ 966112 was published on June 10, 2015, in Volume 49, Number 23 of the *Customs Bulletin*. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 13, 2015.

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 commu-

nity'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, notice proposing to revoke (HQ) 966112, dated April 2, 2003 was published on June 10, 2015, in Volume 49, Number 23 of the *Customs Bulletin*. No comments were received in response to this notice.

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, 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 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 this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 966112 and any other ruling not specifically identified, according to the analysis contained in Headquarters Ruling Letter (HQ) H220277, which is attached to this document. 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), the attached ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Dated: July 17, 2015

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

Attachments

HQ H220277

July 17, 2015

CLA-2 OT:RR:CTF:TCM H220277 CkG

CATEGORY: Classification

TARIFF NO: 4011.69.00

JAMES CARROLL

AIR OCEAN IMPORT-EXPORT

20 N. CENTRAL AVE.

VALLEY STREAM, NY 11580

RE: Revocation of Headquarters Ruling Letter 966112; All-Terrain Vehicle tires

DEAR MR. CARROLL:

This is in reference to Headquarters Ruling Letter (HQ) 966112, issued by Customs and Border Protection (CBP) on April 2, 2003, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of tires for All-Terrain Vehicles (ATVs). We have reconsidered this decision, and for the reasons set forth below, have determined that classification of the tires in subheading 4011.10, HTSUS, as tires of a kind used on motor cars, was incorrect.

HQ 966112 is a decision on Protest 2704-02-100936. A protest pertains to specific entries of merchandise which have entered the U.S. and been liquidated by CBP. A final determination of a protest, pursuant to Part 174, Customs Regulations (19 CFR 174), cannot be modified or revoked as it is applicable only to the merchandise which was the subject of the entry protested. Furthermore, only a denial is voidable under 19 U.S.C. §1515(d). CBP lost jurisdiction over the protested entries in HQ 966112 when notice of disposition of the protest was received by the protestant. See, *San Francisco Newspaper Printing Co. v. U.S.*, 9 CIT 517, 620 F.Supp. 738 (1935).

However, CBP can modify or revoke a protest review decision to change the legal principles set forth in the decision. 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), 60 days after the date of issuance, CBP may propose a modification or revocation of a prior interpretive ruling or decision by publication and solicitation of comments in the *Customs Bulletin*. This revocation will not affect the entries which were the subject of Protest 2704-02-100936, but will be applicable to any entries of similar merchandise made 60 days after publication of the final notice of revocation in the *Customs Bulletin*.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke HQ 966112 was published on June 10, 2015, in Volume 49, Number 23 of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

The merchandise at issue was described in HQ 966112 as follows:

At issue are several types of Goodyear Dunlop tires for All-Terrain Vehicles (ATVs). The specific types of tires at issue are Models KT 705, KT 404 (which protestant argues is actually Model KT 405), KT 761 and KT 765.

In HQ 966112, the tires were classified in subheading 4011.10, HTSUS, which provides as follows: “ New, pneumatic tires, of rubber: Of a kind used on motor cars (including station wagons and racing cars).” Protestant argued for classification in subheading subheading 4011.91.50, HTSUS, now subheading 4011.69.00, HTSUS, which provides for “New pneumatic tires, of rubber: Other, having a “ herring-bone” or similar tread: Other.”

ISSUE:

Whether ATV tires are classified in subheading 4011.10, as tires of a kind used for motor cars, or in subheading 4011.69, as “other” tires having a herringbone or similar tread.

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification 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 HTSUS provisions under consideration are as follows:

- 4011: New pneumatic tires, of rubber:
- 4011.10: Of a kind used on motor cars (including station wagons and racing cars):
- 4011.10.10: Radial. . .
- 4011.10.50: Other. . .
- Other, having a “ herring-bone” or similar tread:
- 4011.69.00: Other. . .
- * * * *

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 follow, 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 8703, HTSUS, provides, in pertinent part, as follows:

This heading covers motor vehicles of various types (including amphibious motor vehicles) designed for the transport of persons; it **does not** , however, **cover** the motor vehicles of **heading 87.02**. The vehicles of this heading may have any type of motor (internal combustion piston engine, electric motor, gas turbine, etc.).

The heading also includes :

(1) **Motor cars** (e.g., limousines, taxis, sports cars and racing cars).

(2) **Specialised transport vehicles** such as ambulances, prison vans and hearses.

(3) **Motor-homes** (*campers*, etc.), vehicles for the transport of persons, specially equipped for habitation (with sleeping, cooking, toilet facilities, etc.).

(4) **Vehicles specially designed for travelling on snow** (e.g., snowmobiles).

(5) **Golf cars and similar vehicles.**

(6) **Four-wheeled motor vehicles** with tube chassis, having a motor-car type steering system (e.g., a steering system based on the Ackerman principle).

* * * *

ATVs are classified in heading 8703, HTSUS, which provides for “motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars.” See HQ 953745, dated April 7, 1993, NY F84501, dated January 31, 2000, NY I86623 dated October 8, 2002, and NY I89444, dated December 17, 2002. Subheading 4011.10, however, only provides for tires “of a kind used on motor cars.” Thus, we must determine whether an ATV is a “motor car” for the purposes of subheading 4011.10, HTSUS.

Motor cars are not defined in the legal text of the HTSUS or in the ENs, however, tariff terms are generally construed in accordance with their common and commercial meanings which are presumed to be the same. See *United States v. C.J. Tower & Sons*, 48 CCPA 21, C.A.D. 770 (1961), and related cases. In determining the common meaning of a term, it is appropriate to consult dictionaries, lexicons and other reliable sources of information. In HQ 966112, we consulted several dictionaries for the definition of “car” and concluded that the term was broad enough to encompass ATVs. However, the correct term to use when reviewing dictionaries and other lexicographic sources is “motor car”, and not “car” or “motor vehicle” as only the term “motor car” appears in subheading 4011.10.

A number of definitions of “motor car” establish that a motor car is commonly understood to be an engine-propelled vehicle for on road use. See *Webster’s Third New International Dictionary* (1986) (“automobile: a usu. 4-wheeled automotive vehicle designed for passenger transportation on streets and roadways and commonly propelled by an internal combustion engine...called also car or esp. Brit motorcar”); *The Oxford English Dictionary* (Second Edition) (“motor car”: A wheeled vehicle...propelled by a motor engine and used esp. as a private conveyance on the road; an automobile); *The Random House Dictionary of the English Language* (Second Edition, Unabridged, 1987) (“motor car: Chiefly Brit. an automobile”). Similarly, the *Oxford English Dictionary* online offers this definition of “motor car”: “2. A road vehicle powered by a motor (usually an internal-combustion engine), designed to carry a driver and a small number of passengers, and usually having two front and two rear wheels, esp. for private, commercial, or leisure use; an automobile.” See <http://www.oed.com/view/Entry/122742?redirectedFrom=motor%20car#eid>. The Cambridge Dictionary Online even defines “car” as “a road vehicle with an engine, four wheels, and

seats for a small number of people.” See <http://dictionary.cambridge.org/dictionary/american-english/car?q=car>.

A motor car is thus a wheeled motor vehicle used for transporting passengers, primarily designed for use on roads. All Terrain Vehicles are not designed for on-road use. ATVs are manufactured for use off the public roads. Accordingly, neither ATVs nor their tires are regulated by the Department of Transportation, which imposes strict labeling requirements for car tires. See NHTSA (National Highway Safety Administration) Interpretive Letter (May 15, 200), online at <http://iSearch.nhtsa.gov/files/21340.ztv.html>, which further notes that “We regulate “motor vehicles” which are defined, in part, as vehicles “ manufactured primarily for use on the public streets, roads, and highways.” All-terrain vehicles are instead regulated by the Consumer Product Safety Commission (CPSC). *Supra*. The CPSC warns that ATVs are not suitable for on-road use, and warns the public to “stay off paved roads” when using ATVs. See U.S. Consumer Product Safety Commission, *Top 10 Things Every Rider Must Know About ATVs*, online at www.atvsafety.gov/safetytips.html.

Moreover, the majority of ATVs are not designed for passenger transportation. The CPSC strictly warns against driving ATVs with a passenger or riding as a passenger, because “The majority of ATVs are designed to carry only one person. ATVs are designed for interactive riding – drivers must be able to shift their weight freely in all directions, depending on the situation and terrain. Interactive riding is critical to maintaining safe control of an ATV especially on varying terrain. Passengers can make it difficult for drivers to control the ATV.” *Supra*. Federal Regulations also primarily define ATVs as off-road, non-passenger vehicles:

“All-terrain vehicle means a land-based or amphibious nonroad vehicle that meets the criteria listed in paragraph (1) of this definition; or, alternatively the criteria of paragraph (2) of this definition but not the criteria of paragraph (3) of this definition:

- (1) Vehicles designed to travel on four low pressure tires, having a seat designed to be straddled by the operator and handlebars for steering controls, and intended for use by a single operator and no other passengers are all-terrain vehicles.
- (2) Other all-terrain vehicles have three or more wheels and one or more seats, are designed for operation over rough terrain, are intended primarily for transportation, and have a maximum vehicle speed higher than 25 miles per hour. Golf carts generally do not meet these criteria since they are generally not designed for operation over rough terrain.
- (3) Vehicles that meet the definition of “ offroad utility vehicle” in this section are not all-terrain vehicles. However, §1051.1(a) specifies that some offroad utility vehicles are required to meet the same requirements as all-terrain vehicles.

See 40 CFR § 1051.801.

We therefore agree that while All Terrain Vehicles are classified in heading 8703, they are not motor cars, but rather “other motor vehicles principally designed for the transport of persons” of heading 8703. EN 87.03(6) rein-

forces this distinction by separately providing for motor cars and ATVs (four-wheeled vehicles with a tube chassis, having a motor-car type steering system). Classification Opinions 8703.21/1 and 8703.21/2, issued by the World Customs Organization (WCO), confirm that item 6 in EN 87.03 refers to ATVs: **“Four-wheeled (two wheel-driven) All Terrain Vehicle (“A.T.V.”) with tube chassis, equipped with a motorcycle type saddle, handlebars for steering and off-the-road balloon tyres. Steering is achieved by turning the two front wheels and is based on a motor-car type steering system (Ackerman principle).”**

All Terrain Vehicles are therefore not motor cars for the purpose of sub-heading 4011.10, HTSUS. However, this would not automatically preclude tires for ATVs from being considered of a kind used on motor cars, if they shared the characteristics of such tires. Subheading 4011.10 is a “use” provision. As such, the tires must fall within the class or kind of tires used on motor cars. According to Additional U.S. Rule of Interpretation 1(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.”

Courts have provided several factors to apply when determining whether merchandise falls within a particular class or kind of good. They 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 ATV tires clearly indicate that they do not belong to the class or kind of tires used on motor cars. Data from the 2009 Tire and Rim Association (TRA) Yearbook indicates that tires for use on ATVs are on average smaller, have a lower ply and load ratings, and lower maximum psi than those for use with motor cars. For example, according to the TRA Yearbook, ATV tires have smaller rims, ranging in size from 6–14 inches, a smaller overall diameter (13–28 inches), lower ply rating (2, 4, or 6)¹, and a much lower maximum load rating (550–600 lbs) compared to passenger car tires, which range in size from a rim width of 12–24 inches, with an overall diameter of 21–33 inches, a ply rating of up to 12 and a maximum load rating of 2900 lbs. ATV tires also have far lower maximum inflation pressures, due to their use on rough terrain (a lower inflation pressure reduces shocks and punctures and ensures a smoother ride in off-road conditions such as mud, sand or dirt trails). Maximum inflation pressure for ATVs thus generally ranges from 3 to 7 psi, whereas maximum air pressure for automobile tires is up to 42 psi.

Moreover, the separate categorization of tires for ATVs and passenger cars in the TRA Yearbook indicates that these are separate products with separate markets, and are not fungible with each other. Additionally, in contrast to automobile tires, the front and rear tires of ATVs are not interchangeable;

¹ The ply rating identifies the maximum recommended load of a given tire. It is an index of the strength and does not necessarily represent the actual number of cord plies in a tire.

rear ATV tires are wider and of more substantial construction to accommodate the heavier load they bear due to engine placement. The tread designs for front and rear ATV tires also differ; ATV front tires are designed primarily for traction and ease in steering as well as channeling away debris, snow, mud, etc. The tire treads of the tires at issue are thus designed for rough terrain conditions rather than on-road use. The marketing of the tires further supports their use with ATV's, as the tires are clearly designated for such use in the submitted product literature. We further note that the subject styles are available from independent retailers, which also categorize them as ATV tires rather than tires for passenger cars. See e.g., <http://www.atvtires.net/products.asp>; <http://www.tirewholesalers.net/products/index.php/category/ATV+TIRE/manufacturer/DUNLOP>.

The above analysis of the Carborundum factors does not support classification in subheading 4011.10, HTSUS. Therefore the ATV tires are not of a kind principally used on motor cars. Depending on whether the individual tires have a herring-bone or similar tread, they will be classified in either subheading 4011.6, HTSUS, or 4011.9, HTSUS.

CBP has concluded in prior rulings that “herring-bone” refers to a tread pattern consisting of rows of short slanted parallel lines going in the opposite directions from the center of the tread with the slant alternating row by row. These short slanted rows would meet in the center of the tire tread to form a “V” shape. See HQ 958100, dated March 25, 1997. This is supported by the Explanatory Notes (EN) heading 40.11, in which tires classified in subheadings 4011.61–4011.69 (having a herringbone or similar tread) are pictured. All the tire treads pictured therein, except for one, have rows of short slanted parallel lines going in opposite directions with the slant alternating row by row, which stop in the center of the tire and form a “V”-like pattern. The remaining tread pictured in the EN has short slanted parallel lines with the slant alternating row by row which do not meet in the center, but instead extend below the opposite slanted line. This is not a standard herring-bone tread, but an example of a “similar” tread. The tread lugs may be one solid line from sidewall to center, individual raised ridges aligned in a herring-bone pattern, or a combination of a strip of tread and ridges forming the angled line. Examples of herringbone and similar treads are pictured below:



The types of tires at issue are similar to the examples pictured above, and are thus classified in subheading 4011.69, HTSUS, as “Other, having a herring-bone or similar tread: Other.”

Please note that the tires at issue may fall within the scope of antidumping and countervailing duty orders A-570-912 and C-570-913, concerning new pneumatic, off-road tires from China, and published by the U.S. Department of Commerce, International Trade Administration (ITA) on July 15, 2008. See 73 FR 40485. We note that the International Trade Administration is not necessarily bound by a country of origin or classification determination issued by CBP, with regard to the scope of antidumping orders or countervailing duties. Written decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from tariff classification and origin rulings issued by Customs and Border Protection. You can contact them at <http://www.trade.gov/ia/> (click on "Contact Us"). For your information, you can view a list of current AD/CVD cases at the United States International Trade Commission website at <http://www.usitc.gov> (click on "Antidumping and countervailing duty investigations"), and you can search AD/CVD deposit and liquidation messages using ACE, the system of record for AD/CVD messages, or the AD/CVD Search tool at <http://adcdvd.cbp.gov/index.asp?ac=home>.

HOLDING:

By application of GRIs 1 and 6, the ATV tires at issue are classified in subheading 4011.69, HTSUS, which provides for "New pneumatic tires, of rubber: Other, having a "herring-bone" or similar tread: Other." 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

EFFECT ON OTHER RULINGS:

HQ 966112, dated April 2, 2003, is hereby revoked.

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

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**REVOCAION OF A RULING LETTER AND REVOCAION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF A CERTAIN UNFINISHED DUVET
COVER**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to tariff classification of a certain unfinished duvet cover.

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) is revoking a ruling letter relating to the tariff classification of a certain unfinished duvet cover under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 49, No. 23, on June 10, 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 October 13, 2015.

FOR FURTHER INFORMATION CONTACT: Tatiana Salnik Matherne, Tariff Classification and Marking Branch: (202) 325-0351.

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 commu-

nity'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)), a notice was published in the *Customs Bulletin*, Vol. 49, No. 23, on June 10, 2015, proposing to revoke New York Ruling Letter (NY) K83054, dated March 5, 2004, in which CBP determined that the subject merchandise was classified under subheading 6302.32.20, HTSUS, which provides for "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of man-made fibers: Other." It is now CBP's position that the subject merchandise is properly classified under subheading 6307.90.98, HTSUS, which provides for: "Other made up articles, including dress patterns: Other: Other: Other."

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, 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 comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY K83054 to reflect the proper tariff classification of this merchandise under subheading 6307.90.98, HTSUS, as "Other made up articles, including dress patterns: Other: Other: Other," pursuant to the analysis set forth in HQ H181679, which is attached to this document. Addition-

ally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by it 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: July 17, 2015

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

HQ H181679

July 17, 2015

CLA-2 OT:RR:CTF:TCM H181679 TSM

CATEGORY: Classification

TARIFF NO.: 6307.90.98

MS. RHECI ABUSTAN
CHF INDUSTRIES, INC.
ONE PARK AVENUE
NEW YORK, NY 10016

RE: Revocation of NY K83054; Classification of an unfinished duvet cover from China.

DEAR MS. ABUSTAN:

This is in reference to New York Ruling Letter (NY) K83054, issued to CHF Industries, Inc. on March 5, 2004, concerning the tariff classification of an unfinished duvet cover from China. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the subject merchandise under subheading 6302.32.20, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of man-made fibers: Other.” Upon additional review, we have found this classification to be incorrect. For the reasons set forth below we hereby revoke NY K83054.

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*, Volume 49, No. 23, on June 10, 2015, proposing to revoke NY K83054, and any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

NY K83054, issued to CHF Industries, Inc. on March 5, 2004, describes the subject merchandise as follows:

The instant sample, referred to as a duvet shell, is an unfinished duvet cover. The cover is comprised of two panels. The top panel is made from 100 percent polyester woven pile fabric. The back is made from 100 percent nylon sateen woven fabric. It is sewn along three sides with an open end along the fourth. After importation, the open end will be hemmed, buttonholes will be made and buttons will be attached.

ISSUE:

Whether the unfinished duvet cover at issue should be classified under subheading 6302.32.20, HTSUS, as “Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of man-made fibers: Other,” or subheading 6307.90.98, HTSUS, as “Other made up articles, including dress patterns: Other: Other: Other.”

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.

GRI 2(a) states, in pertinent part, that:

Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled.

The HTSUS provisions under consideration are as follows:

6302	Bed linen, table linen, toilet linen and kitchen linen: Other bed linen:
6302.32	Of man-made fibers:
6302.32.20	Other * * *
6307	Other made up articles, including dress patterns:
6307.90	Other:
6307.90.98	Other

Legal Note 7 to Section XI (which includes Chapter 63) provides as follows:

For the purposes of this section, the expression “made up” means:

- (a) Cut otherwise than into squares or rectangles;
- (b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, tablecloths, scarf squares, blankets);
- (c) Hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics the cut edges of which have been prevented from unraveling by whipping or by other simple means;
- (d) Cut to size and having undergone a process of drawn thread work;
- (e) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded); or
- (f) Knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length.

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 on the contracting

parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system. CBP believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The following ENs are relevant to our discussion:

The ENs to GRI 2(a) provide, in pertinent part:

(I) The first part of Rule 2 (a) extends the scope of any heading which refers to a particular article to cover not only the complete article but also that article incomplete or unfinished, provided that, as presented, it has the essential character of the complete or finished article.

(II) The provisions of this Rule also apply to blanks unless these are specified in a particular heading. The term “blank” means an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into the finished article or part (e.g., bottle preforms of plastics being intermediate products having tubular shape, with one closed end and one open end threaded to secure a screw type closure, the portion below the threaded end being intended to be expanded to a desired size and shape).

Semi-manufactures not yet having the essential shape of the finished articles (such as is generally the case with bars, discs, tubes, etc.) are not regarded as “blanks.”

EN 63.02 provides that:

These articles are usually made of cotton or flax, but sometimes also of hemp, ramie or man-made fibres, etc.; they are normally of a kind suitable for laundering. They include:

- (1) **Bed linen** , e.g., sheets, pillowcases, bolster cases, eiderdown cases and mattress covers.

The courts have addressed the meaning of essential character with respect to GRI 2(a) in prior cases. *The Pomeroy Collection, Ltd. v. United States*, 559 F. Supp. 2d 1374 (Ct. Int'l Trade 2008); *Filmtec Corp. v. United States*, 293 F. Supp. 2d 1364 (Ct. Int'l Trade 2003); and *Baxter Healthcare Corp. of Puerto Rico v. United States*, 22 C.I.T. 82 (1998). The court has specifically noted that the focus of the essential character analysis for purposes of GRI 2(a) is whether or not the identity of the article to be made from the imported good is fixed or certain at the time of importation. *Baxter Healthcare Corp.*, 22 C.I.T. at 101. Following this directive, the longstanding position of CBP is that the term “essential character” for purposes of GRI 2(a) means the attribute which strongly marks or serves to distinguish what an article is; that which is indispensable to the structure, core or condition of the article; the aggregate of distinctive component parts that establishes the identity of an article as what it is, its very essence. *See* Headquarters Ruling Letter (HQ) 967975, dated March 24, 2006.

The essential character for purposes of GRI 2(a) is determined on a case-by-case basis based on the nature of a given article. *See* HQ H013671, dated January 16, 2009. As such, the debate hinges upon whether the subject merchandise has the essential character of a finished bed linen of heading

6302, HTSUS. If the merchandise does not have the essential character of a finished bed linen, then it may be classified as an “other made up” article under heading 6307, HTSUS.

In *Medline Industries v. U.S.*, 62 F.3d 1407, 1409–1410 (Fed. Cir. 1995), the Court of Appeals for the Federal Circuit (CAFC) discussed the meaning of the tariff term “bed linen.”¹ The CAFC defined bed linen as “linen or cotton articles for a bed; esp. sheets and pillow cases.” *Id.* at 1409 citing *Webster’s Third New International Dictionary* 196 (1981). The CAFC also cited to EN 63.02, which lists “sheets, pillowcases, bolster cases, eiderdown cases and mattress covers” as examples of bed linens. The CAFC stressed that a bed linen is not limited to an article found on all beds; rather a bed linen is a linen, cotton or other fabric article for a bed. *Id.* at 1410.

While the ENs to heading 63.02 do not mention duvet covers, the examples do include eiderdown cases. An eiderdown is “1. the soft, fine breast feathers, or down, of the eider duck, used as a stuffing for quilts, pillows, etc. [or] 2. a bed quilt stuffed with such feathers.” *Webster’s New World Dictionary Third College Edition* 434 (1988). A duvet is “a style of comforter, often filled with down, having a slipcover and used in place of a top sheet and blankets.” *Id.* at 423. An eiderdown is a quilt stuffed with down, and a duvet is a comforter often stuffed with down. Therefore, a duvet cover is very similar to an eiderdown case of heading 6302, HTSUS.

A duvet cover falls squarely within the definition of a bed linen because it is an article of fabric for a bed. Furthermore, it is very similar to eiderdown cases which are listed as an example of bed linens in EN 63.02. Finally, CBP has consistently classified duvet covers as a type of bed linen under heading 6302, HTSUS. *See, e.g.* New York Ruling Letter (NY) N070728, dated August 27, 2009, NY N058473, dated May 14, 2009 and NY N032135, dated July 11, 2008.

In NY K83054, CBP maintained that the subject merchandise was classifiable as a bed linen by application of GRI 2(a). GRI 2(a) allows for the classification of unfinished goods to be classified as finished goods. As noted above, a duvet cover is designed to encase a comforter. The duvet cover has one finished side which can be opened and closed by the consumer. Since the fourth side of the subject merchandise was completely unfinished, it did not have the essential character of a duvet cover and cannot be classified as a bed linen in heading 6302, HTSUS, by application of GRI 2(a).

Legal Note 7(e) to Section XI (which includes Chapter 63) defines “made up”, *inter alia*, as “assembled by sewing ...” Since the subject merchandise is assembled by sewing and has one unfinished edge, Legal Note 7(e) describes the subject merchandise’s condition. Heading 6307, HTSUS, covers “other made up articles.” Under GRI 1, the subject merchandise is classifiable as a

¹ When, as in this case, a tariff term is not defined by the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576.

made up article of heading 6307, HTSUS. CBP has consistently classified articles similar to the subject merchandise as other made up articles of heading 6307, HTSUS. *See, e.g.* NY G84989, dated December 20, 2000 and NY D81406, dated August 26, 1998.

Based on the foregoing, we conclude that the subject merchandise is classifiable by application of GRI 1 (Legal Note 7(e) to Section XI) under subheading 6307.90.98, HTSUS, which provides in pertinent part for “Other made up articles, including dress patterns: other: other: other...”

HOLDING:

By application of GRI 1 and Note 7(e) to Section XI, the subject merchandise is classified under subheading 6307.90.98, HTSUS, as “Other made up articles, including dress patterns: Other: Other: Other.” The general, column one rate of duty is 7 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 internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY K83054, dated March 5, 2004, 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,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

MODIFICATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN FOOTWEAR

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to tariff classification of certain footwear.

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) is modifying a ruling letter relating to the tariff classification of certain footwear under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*,

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 13, 2015.

FOR FURTHER INFORMATION CONTACT: Tatiana Salnik Matherne, Tariff Classification and Marking Branch: (202) 325-0351.

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)), a notice was published in the Customs Bulletin, Vol. 49, No.23, on June 10, 2015, proposing to modify New York Ruling Letter (NY) N252090, dated April 29, 2014, in which CBP determined that the subject merchandise was classified under sub-heading 6402.99.90, HTSUS, which provides for “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Other: Other: Valued over \$12/pair.”

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, 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 comment period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N252090 to reflect the proper tariff classification of this merchandise under sub-heading 6403.99.90, HTSUS, which provides for “Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: Other footwear: Other: Other: Other: Other: For other persons: Valued over \$2.50/pair” by application of GRI 1, pursuant to the analysis set forth in HQ H260547, which is attached to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by it 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: July 17, 2015

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

Attachment

HQ H260547

July 17, 2015

CLA-2 OT:RR:CTF:TCM H260547 TSM

CATEGORY: Classification

TARIFF NO.: 6403.99.90

MR. MICHAEL S. McCULLOUGH
VANDERGRIFT FORWARDING COMPANY INC.
9317 CHESHIRE ROAD
SUNBURY, OH 43074

RE: Modification of N252090; Classification of women's footwear.

DEAR MR. McCULLOUGH:

This is in response to your letter to the National Commodity Specialist Division (NCSA), dated July 23, 2014, in which you requested reconsideration of New York Ruling Letter (NY) N252090, issued to Eddie Bauer, LLC on April 19, 2014. In NY N252090, U.S. Customs and Border Protection ("CBP") responded to a request for tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of six styles of women's footwear from China. One of those footwear styles, identified as style 9XX20002 W. Lukla Pro, was classified in NY N252090 in subheading 6402.99.90, HTSUS, which provides for "Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Other: Other: Valued over \$12/pair." NCSA submitted a sample of the subject merchandise to the CBP Laboratories and Scientific Services for analysis and forwarded the results to this office for a response. We have reviewed NY N252090 and found it to be in error with regard to this footwear style. For the reasons set forth below, we hereby modify NY N252090.

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*, Volume 49, No. 23, on June 10, 2015, proposing to modify NY N252090, and any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

NY N252090, issued to Eddie Bauer, LLC on April 19, 2014, describes the subject merchandise as follows:

The submitted sample identified as style 9XX20002 W. Lukla Pro, is a women's low-cut lace-up athletic shoe with a rubber or plastics outer sole and a predominately PU coated leather upper (52%) that is thick enough to change the external surface appearance from leather to plastic. The shoe has many characteristics in both styling and construction of athletic footwear. You provided an F.O.B. value over \$12/pair.

In your letter dated July 23, 2014, you argued that the subject women's footwear, style 9XX20002 W. Lukla Pro, should be classified in heading 6403, HTSUS, which provides for "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather." You claimed that the upper of the subject footwear is made of solid leather with a PU coating, which was placed on the leather to prevent water absorption that would

weigh the footwear down. To support this claim you provided a laboratory report stating that leather comprises 52% of the external surface area of the upper of the subject footwear. You also provided a laboratory report stating that the upper of the subject footwear is comprised of the following materials: leather – 20.91%; coated leather – 36.29%; polyurethane – 3.07; textile – 39.48%; and plastic – 0.25%. CBP Laboratories and Scientific Services also examined the sample and confirmed that the external surface area was comprised of leather, textile and rubber or plastic, with the plastic coated leather as the constituent material of the upper.

ISSUE:

Whether the footwear at issue should be classified in heading 6402, HTSUS, as “Other footwear with outer soles and uppers of rubber or plastics,” or in heading 6403, HTSUS, as “Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather.”

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.

In addition, in interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

6402	Other footwear with outer soles and uppers of rubber or plastics:
	Other footwear:
6402.99	Other:
	Other:
	Other:
6402.99.90	Valued over \$12/pair
	* *
6403	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather:
	Other footwear:
6403.99	Other:
	Other:
	Other:
	For other persons:
6403.99.90	Valued over \$2.50/pair.

Note 4 to Chapter 64, HTSUS, provides in pertinent part, the following:

(a) The material of the upper shall be taken to be the constituent material having the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, edging, ornamentation, buckles, tabs, eyelet stays or similar attachments.

Explanatory Note (D) to Chapter 64, HTSUS, provides, in pertinent part, the following:

If the upper consists of two or more materials, classification is determined by the constituent material which has the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, protective or ornamental strips or edging, other ornamentation (e.g., tassels, pompons or braid), buckles, tabs, eyelet stays, laces or slide fasteners. The constituent material of any lining has no effect on classification.

Note 4 (a) to Chapter 64 provides that the material of the upper shall be taken to be the constituent material having the greatest external surface area. According to the record, upon laboratory examination of the sample, CBP concluded that the uppers of the subject footwear are comprised of plastic coated leather. Explanatory Note (D) to Chapter 64 provides that the constituent material of any lining has no effect on classification. Therefore, the plastic coating found on the uppers should not be considered and the constituent material of the upper having the greatest external surface area is leather. Heading 6402, HTSUS, provides for "Other footwear with outer soles and uppers of rubber or plastics." This heading does not cover footwear with leather uppers. Therefore, the subject footwear is not classified in this heading.

The subject footwear is classified in heading 6403, HTSUS, which provides for "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather."

HOLDING:

By application of GRI 1, the subject footwear is classified in heading 6403, HTSUS. Specifically, it is classified in subheading 6403.99.90, HTSUS, which provides for "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: Other footwear: Other: Other: Other: Other: For other persons: Valued over \$2.50/pair." The general, column one rate of duty is 10 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 internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY N252090, dated April 19, 2014, is hereby MODIFIED.

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

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division

MODIFICATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF CABLE LOCKS SET FROM CHINA

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

ACTION: Notice of modification of two ruling letters and revocation of treatment relating to the classification of cable locks from China.

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 CPB is modifying two ruling letters concerning the classification of cable locks under the Harmonized Tariff Schedule of the United States (HTSUS). CPB is also revoking any treatment previously accorded by CPB to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 23, on June 10, 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 October 13, 2015.

FOR FURTHER INFORMATION CONTACT: Tatiana Salnik Matherne, Tariff Classification and Marking Branch: (202) 325-0351.

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. 23, on June 10, 2015, proposing to modify two rulings pertaining to the classification of cable locks. Specifically, the notice referred to New York Ruling Letter (NY) N113938, dated July 16, 2010 and NY N077520, dated October 6, 2009. In NY N113938, CBP classified the subject cable lock's in subheading 8301.10.50, HTSUS, as "Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal: Padlocks: Not of cylinder or pin tumbler construction: Over 6.4 cm in width." In NY N077520, CBP classified the subject cable lock in subheading 8301.10.40, HTSUS, which provides for "Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal: Padlocks: Not of cylinder or pin tumbler construction: Over 3.8 cm but not over 6.4 cm in width." Upon reconsideration, we note that the width was incorrectly measured in both cases.

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 rulings 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 in 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 his 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 modifying NY N113938 and NY N077520, and any other ruling not specifically identified, to reflect the proper classification of the merchandise under subheading 8301.10.20, HTSUS, which provides for “Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal: Padlocks: Not of cylinder or pin tumbler construction: Not over 3.8 cm in width,” pursuant to the analysis set forth in H168717, which is attached to this document. 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: July 17, 2015

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

Attachment

HQ H168717

July 17, 2015

CLA-2: OT:RR:CTF:TCM H168717 TSM

CATEGORY: Classification

TARIFF NO.: 8301.10.20

KENNETH G. WEIGEL
ALSTON & BAIRD, LLP
THE ATLANTIC BUILDING
950 F STREET, NW
WASHINGTON, DC 20004

RE: Modification of NY N113938 and NY N077520; Classification of cable locks from China

DEAR MR. WEIGEL:

This is in response to your request, dated August 12, 2010, filed on behalf of Master Lock Company, LLC (“Master Lock”) for reconsideration of New York Ruling Letters (“NY”) N113938, dated July 16, 2010, and NY N077520, dated October 6, 2009, pertaining to the classification of cable locks. In NY N113938, Model 8120D was classified in subheading 8301.10.50, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal: Padlocks: Not of cylinder or pin tumbler construction: Over 6.4 cm in width.” In NY N077520, Cable Lock 8119DPF was classified in subheading 8301.10.40, HTSUS, which provides for “Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal: Padlocks: Not of cylinder or pin tumbler construction: Over 3.8 cm but not over 6.4 cm in width.”¹ We have reviewed these rulings and believe them both to be partly in error. For the reasons that follow, we hereby modify NY N113938 and NY N077520.

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*, Volume 49, No. 23, on June 10, 2015, proposing to modify NY N113938 and NY N077520, and revoke any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

The subject merchandise consists of two types of cable locks. The first is Cable Lock 8119DPF, a combination lock with a five foot long cable made of vinyl-coated, braided steel wire. The body of the lock is made of base metal and has a curved, plastic outer housing that covers part of the cable. The lock, which functions without a key, operates by way of four rotating numeri-

¹ We note that NY N077520 classified two different types of cable locks. Only the classification of Cable Lock 8119DPF is at issue in this reconsideration.

cal dials. Cable Lock 8119DPF can be used to secure a variety of items, such as power equipment, ladders, trailers, tool boxes, bicycles, and sports equipment.

The second lock at issue is Model 8120D, and is similar in form to Cable Lock 8119DPF. It consists of a vinyl-coated braided steel cable that is six feet in length and 3/8 of an inch in diameter. Its combination locking mechanism is made of base metal and is capable of being reset. It functions without a key, and operates via four rotating numerical dials. The body of the lock has a curved, plastic outer housing that covers part of the cable. Model 8120D is imported with a plastic mounting bracket for easy transport and can be used to secure bicycles, skateboards and other sports equipment.

Samples of both cable locks were received and examined by this office.

ISSUE:

Whether the width of the subject cable locks was properly measured.

LAW AND ANALYSIS:

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

The HTSUS subheadings at issue are as follows:

8301	Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal:
8301.10	Padlocks:
	Not of cylinder or pin tumbler construction:
8301.10.20	Not over 3.8 cm in width
8301.10.40	Over 3.8 cm but not over 6.4 cm in width
8301.10.50	Over 6.4 cm in width

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System at the international level. CBP believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The EN to heading 8301, HTSUS, states, in pertinent part:

This heading covers fastening devices operated by a key (e.g., locks of the cylinder, lever, tumbler or Bramah types) or controlled by a combination of letters or figures (combination locks)...

The heading therefore covers, *inter alia* :

- (A) Padlocks of all types for doors, trunks, chests, bags, cycles, etc., including key-operated locking hasps.

There is no dispute that the merchandise should be classified in subheading 8301.10, HTSUS, as a padlock of base metal. Rather, the question, at the 8-digit level, is how to measure the width of the subject locks. In your request for reconsideration, you cite *West Coast Cycle Supply Co. v. United States*, 66 Cust. Ct. 500 (1971) (“*West Coast Cycle Supply*”). There, the court considered the classification of two different types of bicycle padlocks with cables; under the TSUS, as under the HTSUS, classification depended on the width of the locks, and the sole issue before the court was how to measure the width. *Id.* at 501.

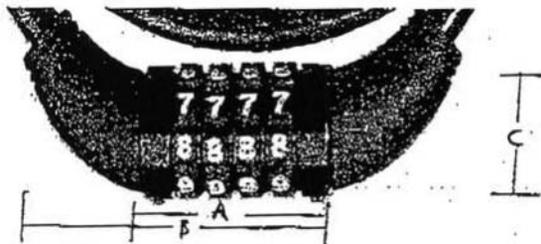
The court, noting that the terms “length” and “width” were not defined in the tariff, consulted multiple dictionaries before defining the term “length” as: “[e]xtension from end to end; the greatest dimension of a body; longitudinal extent: opposed to breadth and thickness”; “[t]he longest, or longer, dimension of any object, in distinction from breadth or width; extent from end to end; the longest straight line that can be drawn through a body parallel to the general direction of its sides”; “the measure of an object from end to end, or along its longest dimension.” *Id.* at 503. Based on these same dictionaries, the court defined the term “width” as “[s]pace between sides, or extent from side to side, breadth; as, the width of the river is two miles”; “[t]he dimension of an object measured across from side to side or in a direction at right angles to the length;” “the extent of a thing from side to side; breadth; opposite of length.” *Id.* at 503. Applying these definitions to the locks in front of it, the court found the width by measuring the dimension that was perpendicular to the length; in doing so, the court noted that “measurement of the ‘width’ of articles may vary somewhat dependant upon their particular shape or configuration.” *Id.* at 504.

In accordance with *West Coast Cycle Supply*, CBP has long classified the width of a padlock as the dimension perpendicular to the length, and has measured the width at the greatest point when the merchandise is in locked position. See, e.g., NY B85123, dated May 8, 1997; HQ H141716, dated January 11, 2011; HQ H166855, dated June 30, 2011. CBP also has a practice of including the cable of a padlock in the measurement of the padlock’s length. See, e.g., HQ H166855; NY K84951, dated April 28, 2004; ORR Ruling 75–0185, dated May 10, 1975.²

This analysis was reiterated in NY N113938, which classified model 8120D, a cable padlock. There, Master Lock advocated for classification in subheading 8301.10.20, HTSUS, as a padlock whose width did not exceed 3.8 cm. CBP disagreed, reasoning that the body, or “shoulders,” of the shackle, were more than mere protective bumpers and therefore had to be included in measuring the width of the lock. As a result, CBP classified model 8120D in subheading 8301.10.50, HTSUS, as a padlock whose width was over 6.4 cm. You argue that, in order to have arrived at this classification, CBP must have measured the body of the lock along the same dimension in which the cable

² We note that Ruling 75–0185 was decided under the TSUS. Decisions under the TSUS are not dispositive in interpreting the HTSUS. However, on a case-by-case basis they should be considered instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS. H. Conf. Rep. No. 576, p.550. See HQ 956328, dated August 5, 1994; HQ 967400, dated March 29, 2006.

runs- i.e., that CBP actually measured the lock along the dimension that constitutes its length, not its width. As a result, you argue for the width of the lock to be measured as per dimension "C" in the following diagram:



After reexamining the sample of model 8120D, we agree. The curved, plastic outer housing that forms the body of the lock encircles and extends beyond the cable of model 8120D, thereby becoming a part of the lock's longest dimension. Following the definitions of *West Coast Cycle Supply* and subsequent CBP rulings, model 8120D's outer housing and the rotating numerical dials extend the length of the lock; its width should therefore be measured perpendicular to the length, as shown by dimension "C" in the above diagram. Thus, while we continue to agree with NY N113938's statement that the "shoulders" are not merely protective bumpers, and we continue to agree with NY N113938's assessment on how to measure the width of a cable lock, we find that the measurement undertaken in this case does not adhere to that statement. Measuring the width along dimension "C" in the above diagram, we now find the width to be 3.2 cm. As a result, model 8120D is classified in subheading 8301.10.20, HTSUS, which provides for "Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal: Padlocks: Not of cylinder or pin tumbler construction: Not over 3.8 cm in width."

In NY N077520, CBP determined that the width of Cable Lock 8119DPF was 4.7 cm, and classified it in subheading 8301.10.40, HTSUS, as a padlock whose width was over 3.8 cm but not over 6.4 cm. Here as well, you also argue that in order to have obtained a width of 4.7 cm, CBP would have had to measure the body of the lock along the same dimension as the cable, thereby actually measuring the length of the lock. In reexamining the sample at our office, we agree for the same reasons stated above. Thus, after having remeasured the width of Cable Lock 8119DPF, again along dimension "C" in the diagram above, we now find the width to be 2.9 cm. As such, Cable Lock 8119DPF is classified in subheading 8301.10.20, HTSUS, which provides for "Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal: Padlocks: Not of cylinder or pin tumbler construction: Not over 3.8 cm in width."

HOLDING:

Under the authority of GRI 1, model 8120D and Cable Lock 8119DPF are provided for in heading 8301, HTSUS. Specifically, they are classified in subheading 8301.10.20, HTSUS, which provides for “Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal: Padlocks: Not of cylinder or pin tumbler construction: Not over 3.8 cm in width.” The column one, general rate of duty is 2.3% *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 N113938, dated July 16, 2010, is MODIFIED with respect to the classification of Model 8120D. The analysis of how the lock is measured remains unchanged. NY N077520, dated October 6, 2009, is MODIFIED with respect to the classification Cable Lock 8119DPF. The classification of the other items described therein remains unchanged.

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

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division



**REVOCATION OF ONE RULING LETTER RELATING TO
THE TARIFF CLASSIFICATION OF A BALANCE BALL
CHAIR**

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

ACTION: Revocation of one ruling relating to the tariff classification of a balance ball chair.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this Notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter relating to the tariff classification of a balance ball chair packaged with exercise bands, an instructional digital video disc (DVD) and air pump under the Harmonized Tariff

Schedule of the United States (HTSUS). CBP also is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 23, on June 10, 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 October 13, 2015.

FOR FURTHER INFORMATION CONTACT: Peter Martin, Tariff Classification and Marking Branch: (202) 325-0048.

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, a notice was published in the *Customs Bulletin*, Vol. 49, No. 23, on June 10, 2015, proposing to revoke New York Ruling N009306, dated April 11, 2007, in which CBP determined that the subject merchandise was classified under subheading 9401.80.4045 HTSUS, which provides for “Other seats, Of rubber or plastics, Other, Other.”

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 N009306 to reflect the proper tariff classification of this merchandise under sub-heading 9506.91.0030 HTSUS, which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Other: Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof" by application of GRI 3(a), pursuant to the analysis set forth in HQ H193658, which is attached to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by it 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: July 20, 2015

GREG CONNOR

for

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division

Attachment

HQ H193658

July 20, 2015

OT:RR:CTF:TCM H193658 PTM

CATEGORY: CLASSIFICATION

TARIFF NO: 9506.91.0030

VICKI WHITE

IMPORT LOGISTICS MANAGER

GAIAM INTERNATIONAL

9107 MERIDIAN WAY

WEST CHESTER, OH 45069

DEAR Ms. WHITE,

We are writing in response to your request dated October 26, 2011, on behalf of Gaiam International (“Gaiam”), in which you request reconsideration of New York Ruling (NY) N144757 (Feb. 23, 2011) concerning the tariff classification of in the Harmonized Tariff Schedule of the United States (“HTSUS”), of a balance ball chair. You note that you received a prior CBP ruling, NY N009306 (Apr. 11, 2007) for a substantially similar balance ball chair packaged with an air pump, instructional digital video disc (“DVD”) and exercise bands. We have examined both rulings and find NY N009306 to be in error for the reasons set forth below.

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*, Volume 49, No. 23, on June 10, 2015, proposing to revoke N009306, and any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

In N144757, the merchandise was described as follows:

The product consists of an exercise balance ball and ergonomic desk chair frame. The frame portion includes these features: an adjustable narrow cushion back, adjustable legs and lockable castor wheels. The Polyvinyl Chloride (PVC) exercise ball fits securely into the metal frame, forming an ergonomic desk chair. The ball can be removed and used for exercise purposes, while the desk chair frame cannot function as a chair without the ball. The retail package will also include a plastic pump and an instructional DVD demonstrating six different exercise routines.

In NY N144757, U.S. Customs & Border Protection (“CBP”) classified the balance ball chair in 9506.91.0030, which provides for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof...other.”

In N009306, we classified the balance ball chair packaged with an air pump, exercise cords and instructional workout DVD under 9401.80.4045 HTSUS, which provides for “Other seats, Of rubber or plastics, Other, Other.” The marketing material for the balance ball chair in N009306 shows

the user of the chair performing exercises while seated on the chair. You state that the chair in N009306 was a slightly different model than the one evaluated in N144757. Further, you state that you discontinued the sale of the model evaluated in N144757 and now only sell the model evaluated in N009306.

The following are images of the balance ball chair and exercises or stretches that may be performed on the chair:



The ball can be removed from the chair to perform additional exercises:



The ball is designed to improve posture while sitting and improve core body strength. It can also be used for various exercises and stretches.

ISSUE:

What is the tariff classification of the balance ball chair?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any

relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The HTSUS provisions at issue are as follows:

- | | |
|------|---|
| 9401 | Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:
* * * |
| 9506 | Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof. |

Both rulings at issue cover “retail sets,” the components of which are the “balance ball chairs” and the instructional DVD (NY N144757) and the air pump and exercise bands and instructional DVD (NY N009306). In both cases the “balance ball chair” imparts the set with its essential character, so this matter turns on the classification of the “balance ball chair.”

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. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Explanatory Note 94.01 provides:

Subject to the exclusions mentioned below, this heading covers all seats (including those for vehicles, provided that they comply with the conditions prescribed in Note 2 to this Chapter), for example :

Lounge chairs, arm-chairs, folding chairs, deck chairs, infants’ high chairs and children’s seats designed to be hung on the back of other seats (including vehicle seats), grandfather chairs, benches, couches (including those with electrical heating), settees, sofas, ottomans and the like, stools (such as piano stools, draughtsmen’s stools, typists’ stools, and dual purpose stool-steps), seats which incorporate a sound system and are suitable for use with video game consoles and machines, television or satellite receivers, as well as with DVD, music CD, MP3 or video cassette players.

Thus, heading 9401 covers a wide variety of seats and chairs. The merchandise at issue, a balance ball chair, functions as either an ergonomic chair and as an exercise device. Because the exercise ball chair can serve as an ergonomic chair, it is *prima facie* classifiable under heading 9401.

Explanatory Note 95.06 provides:

This heading covers :

- (A) Articles and equipment for general physical exercise, gymnastics or athletics, e.g., :

Trapeze bars and rings; horizontal and parallel bars; balance beams, vaulting horses; pommel horses; spring boards; climbing ropes and ladders; wall bars; Indian clubs; dumb-bells and bar-bells; medicine balls; rowing, cycling and *other exercising apparatus*; chest expanders; hand grips; starting blocks; hurdles; jumping stands and standards; vaulting poles; landing pit pads; javelins, discuses, throwing hammers and putting

shots; punch balls (speed bags) and punch bags (punching bags); boxing or wrestling rings; assault course climbing walls. (emphasis added).

Thus, heading 9506 includes various exercising apparatus. Regarding the exercise ball itself, prior CBP rulings that have classified inflatable exercise balls in heading 9506 HTSUS. In NY 156765 (Apr. 19, 2011) we found that an exercise system consisting of an inflatable exercise ball, adjustable exercise resistance tube, ankle toning cuff, a pump to inflate the ball and exercise DVD was properly classified in heading 9506 HTSUS. Similarly, in NY G84170 (Nov. 20, 2000), we classified an inflatable plastic exercise ball and air pump to be properly classified in heading 9506 HTSUS.

Because the balance ball is integral to the function of the balance ball chair, and because the user can perform exercises while sitting on the chair, the balance ball chair in its entirety is suitable for general physical exercise. The balance ball chair is “other exercising apparatus,” within the meaning of EN 95.06 as it is designed to be used for stretching and exercise and for strengthening the core while sitting. The exercise ball sits in the base of the chair and may be used for exercise either in the chair or while removed from the base. The promotional literature shows the user performing stretches and exercises while seated in the chair, or with the ball removed from the chair. The fact that the product includes an instructional DVD that shows the user how to perform exercise on the chair and also includes exercise bands lends additional support the conclusion that the balance ball chair is an exercise apparatus. Thus, the balance ball chair is *prima facie* classifiable under heading 9506 HTSUS.

Because the balance ball chair is *prima facie* classifiable under two separate headings, it must be classified pursuant to GRI 3, which states:

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.

GRI 3(a) is known as the “rule of relative specificity.” See *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1441 (Fed. Cir. 1998) (*Orlando Food*). Where articles can be classified under two HTSUS headings, under GRI 3(a) the classification “turns on which of these two provisions are more specific.” *Orlando Food*, 140 F.3d at 1441. Courts undertaking the GRI 3(a) comparison “look to the provision with requirements that are more difficult to satisfy and that describe the article with the greatest degree of accuracy and certainty.” *Faus Group, Inc. v. United States*, 581 F.3d 1369 (Fed. Cir. 2009) (quoting *Orlando Food*, 140 F.3d at 1441). And the general rule of customs jurisprudence is that, “in the absence of legislative intent to the contrary, a product described by both a use provision and an *eo nomine* provision is generally

more specifically provided under the use provision.” *Orlando Food*, 140 F.3d at 1441.

However, that principle is not an ironclad rule of law, but merely “a convenient rule of thumb for resolving issues where the competing provisions are in balance.” See *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1380 (Fed. Cir. 1999) (citing *Sports Graphics, Inc. v. United States*, 24 F.3d 1390, 1394 (Fed. Cir. 1994)). The rule does not apply if the competing *eo nomine* provision is “obviously more specific than the ‘use’ provision.” See *United States v. Simon Saw & Steel Co.*, 51 CCPA 33, 40–32 (Cust. Ct. 1964).

In this case, heading 9401 HTSUS is an *eo nomine* provision because it describes a commodity, in this case seats, by a specific name that is common in commerce. See, *Nidec Corp. v. United States*, 68 F.3d 1333, 1336 (Fed. Cir. 1995). By contrast, heading 9506 is a use provision inasmuch as it covers goods “for general physical exercise.” Applying the “convenient rule of thumb” that use provisions are more specific than *eo nomine* provisions, and because the HTSUS heading for “seats” in 9401 is not obviously more specific than the HTSUS heading for “exercise equipment” in 9506 HTSUS, we find heading 9506 provides the most specific description of the balance ball chair. Therefore, by operation of GRI 3(a), the exercise ball chair is properly classified in heading 9506 HTSUS.

HOLDING:

By application of GRI 3(a), the balance ball chair is properly classified in heading 9506 HTSUS, specifically 9506.91.0030, which provides for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof. Other: Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof.”

The general column one rate of duty is 4.6% *ad valorem*. Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided online at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY N144757 (Feb. 23, 2011) is **AFFIRMED**.

NY N009306 (Apr. 11, 2007) is hereby **REVOKED**.

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

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division

**REVOCAION OF A RULING LETTER AND REVOCAION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF SAND TIMERS**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the classification of a sand timer.

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 HQ 957780, dated July 18, 1995, concerning the tariff classification of sand timers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was first published on April 8, 2015, in Volume 49, Number 14 of the *Customs Bulletin*. A corrected notice was published on May 13, 2015, in Volume 49, Number 19 of the *Customs Bulletin*, to clarify that the comment deadline was 30 days from the date of publication in the *Customs Bulletin* and not in the *Federal Register*, and that the comment due date would be 30 days from publication of the corrected notice. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 13, 2015.

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 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, the corrected notice proposing to revoke HQ 957780 was published on May 13, 2015, in Volume 49, Number 19 of the *Customs Bulletin*. No comments were received in response to this notice.

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, 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 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 this final decision.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking HQ 957780, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (HQ) H136475, which is attached to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 22, 2015

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

Attachments

HQ H136475

July 22, 2015

CLA-2 OT:RR:CTF:TCM H136475 CkG

CATEGORY: Classification

TARIFF NO: 7013.49.20

U.S. CUSTOMS AND BORDER PROTECTION

ROBERT PEREZ

DIRECTOR OF FIELD OPERATIONS

NEW YORK FIELD OFFICE

ONE PENN PLAZA

STE. 1100

NEW YORK, NY 10119

RE: Revocation of HQ 957780, dated July 18, 1995; classification of sandglass timers

DEAR DIRECTOR,

This is in reference to Headquarters Ruling Letter (HQ) 957780 issued by Customs and Border Protection (CBP) on July 18, 1995, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of sand timers. We have reconsidered this decision, and for the reasons set forth below, have determined that classification of the sand timers in heading 7020, HTSUS, as other articles of glass, was incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke HQ 957780 was originally published on April 8, 2015, in Volume 49, Number 14 of the *Customs Bulletin*. A corrected notice was published on May 13, 2015, in Volume 49, Number 19 of the *Customs Bulletin*, to clarify that the comment deadline was 30 days from the date of publication in the *Customs Bulletin* and not in the *Federal Register*, and that the comment due date would be 30 days from publication of the corrected notice. No comments were received in response to this notice.

FACTS:

The articles under consideration are 15 minute, 3 minute and 30 second glass timers. They are used in a home/kitchen to measure the passage of time for the preparation of eggs and other food items. The body of each consists of a glass vessel with obconical ends connected by a constricted neck (i.e., an hourglass shape) through which a quantity of sand runs in the specified time intervals. Model 309 (a 3 minute timer) and Model 706 (a 15 minute timer) are framed in wood. Model 209(b), a 30 second timer, has a plastic frame. The invoice values are as follows: Model 209(b) and 309 are valued at under \$3, and Model 706 is valued between \$3 and \$5.

ISSUE:

Whether the instant sand timers are classified in heading 7013, HTSUS, as glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes, or heading 7020, HTSUS, as other articles of glass.

LAW AND ANALYSIS:

Merchandise is classifiable under the 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 relevant section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6.

The 2011 HTSUS provisions under consideration are as follows:

6815:	Articles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included:
	Other articles:
6815.99:	Other:
6815.99.40:	Other . . .
	* * * * *
7013:	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):
	Glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass ceramics
7013.49:	Other:
	Other:
7013.49.20:	Valued not over \$3 each...
	Valued over \$3 each:
	Other:
7013.49.50:	Valued over \$3 but not over \$5 each . . .
	* * * * *
7020:	Other articles of glass:
7020.00.60:	Other . . .
	* * * * *

The Explanatory Notes (ENs) 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. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 70.13 provides, in pertinent part, as follows:

Articles of glass combined with other materials (base metal, wood, etc.), are classified in this heading **only** if the glass gives the whole the character of glass articles. Precious metal or metal clad with precious metal may be present, **as minor trimmings only** ; articles in which such metals constitute more than mere trimmings are excluded (**heading 71.14**).

EN 70.20 provides as follows:

This heading covers glass articles (including glass parts of articles) **not covered** by other headings of this Chapter or of other Chapters of the Nomenclature.

These articles remain here even if combined with materials other than glass, **provided** they retain the essential character of glass articles.

* * * * *

There is no *eo nomine* provision for hourglass timers in the HTSUS. Classification of this article thus cannot be determined according to the terms of GRI 1. GRI 2(b) states that “[a]ny reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances [and] any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.”

GRI 3 states as follows:

When by application of [GRI] 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 . . . , 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.

(b) Mixtures, composite goods consisting of different materials or made up of different components . . . 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.

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

GRI 3(a) provides, in relevant part, that when goods are *prima facie* classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. EN (IV) to GRI 3(a) explains that: “in general it may be said that: (a) A description by name is more specific than a description by class” and “(b) If the goods answer to a description which more clearly identifies them, that description is more specific than one where identification is less complete.” Our courts have interpreted this so-called “rule of relative specificity” to mean that “we look to the provision with requirements that are more difficult to satisfy and that describe the article with the greatest degree of accuracy and certainty.” *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1441 (Fed. Cir. 1998).

The instant timers are composite goods of wood or plastic, sand and glass, and are thus *prima facie* classifiable under more than one heading. The wood frames of models 309 and 706, imported alone, would be classified in

Chapter 44, HTDUD, as an article of wood, and the glass body in Chapter 70, HTSUS, as an article of glass. The plastic frame of model 209(b) would be classified in Chapter 39, HTSUS, as an article of plastic. The sand would be classified in Chapter 68, HTSUS, as an article of stone or other mineral substance. The HTSUS provisions covering the articles refer only to part of their component materials. However, of the three headings at issue, heading 7013 still provides the more specific description of the goods; as between *eo nomine* and use provisions, the latter is generally regarded as being the more specific provision because it is the hardest to satisfy. *See e.g.*, HQ 087708, dated September 28, 1990.

Heading 7013, HTSUS, is a “principal use” provision (*Group Italglass, U.S.A., Inc. v. United States*, 17 CIT 1177, 839 F. Supp. 866 (1993)), governed by Additional U.S. Rule of Interpretation 1(a), HTSUS, which provides that:

In the absence of special language or context which otherwise requires--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 Court in *Group Italglass* stressed “that it is the principal use of the class or kind of good to which the imports belong and not the principal use of the specific imports that is controlling under the Rules of Interpretation.” *Group Italglass*, 839 F. Supp. at 867. Principal use’ is defined as the use “which exceeds any other single use”. *Automatic Plastic Molding, Inc., v. United States*, 26 CIT 1201, 1205 (2002).

The Courts have provided factors, which are indicative but not conclusive, to apply when determining whether merchandise is classifiable under a particular “principal use” tariff provision. These include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. *See United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), cert. denied, 429 U.S. 979 (1976).

The products at issue are 15 minute, 3 minute and 30 second timers. Their physical characteristics are consistent with principal use in a kitchen or office; they must be placed on a flat, stable surface in order for the sand to run through them in the correct manner and time interval. The specified time intervals are also convenient for the preparation of foods. They are marketed for use in a home or kitchen, to tell time for the preparation of eggs and other food items. Glass timers in general are similarly marketed as office or home supplies, and sold in the same channels of trade—e.g., home and garden or kitchen departments of retailers such as amazon.com—as other home and kitchen appliances.¹ Based on the above factors, we find that the instant

¹ *See e.g.*, Amazon.com, http://www.amazon.com/s/ref=nb_sb_ss_c_1_15?url=search-alias%3Dgarden&field-keywords=hourglass+timer&srefix=hourglass+timer4; http://www.amazon.com/s/ref=nb_ss?url=searchalias%3Daps&field-keywords=egg+timer&x=11&y=19; and Nextag.com, <http://www.nextag.com/hourglass-timer/search.html>.

timers are glassware of a kind used for table or kitchen purposes. As such, they are classified in heading 7013, HTSUS.

This finding is consistent with prior CBP rulings classifying similar timers as glassware for home or office use in heading 7013, HTSUS. See NY E86805, dated September 20, 1999 and NY I82591, dated June 12, 2002.

HOLDING:

By application of GRI 3(a), the hourglass timers are classified in heading 7013, HTSUS. Model 309 and 209(b) are classified under subheading 7013.49.20, HTSUS, which provides for “Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): Glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics: Other: Other: Valued not over \$3 each.” The 2011 column one, general rate of duty is 22.5% *ad valorem*.

Model 709 is classified in subheading 7013.49.50, HTSUS, which provides for “Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): Glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics: Other: Other: Valued over \$3 each: Other: Valued over \$3 but not over \$5 each.” The 2011 column one, general rate of duty is 15% *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/>.

EFFECT ON OTHER RULINGS:

HQ 957780, dated July 18, 1995, is hereby revoked.

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

Sincerely,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF ONE RULING LETTER AND
PROPOSED MODIFICATION OF TWO RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
ELECTRIC FLATIRON FOR HAIR**

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

ACTION: Notice of proposed revocation of one ruling letter, and proposed modification of two ruling letters and treatment relating to tariff classification of electric flatiron for hair.

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 one ruling letter, and proposes to modify two ruling letters relating to the tariff classification of electric flatiron, 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 September 11, 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, 90 K Street NE, 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: George Aduhene, Tariff Classification and Marking Branch: (202) 325-0184

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.

Tile 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)), this notice advises interested parties that CBP intends to revoke one ruling letter, and to modify two ruling letters relating to the tariff classification of electric flatiron. Although in this notice, CBP is specifically referring to the revocation of NY N060719, dated June 5, 2009, modifications of NY N025515, dated April 23, 2008, NY N060721, dated June 5, 2009, (Attachments A, B, C), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP intends 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 N025515, the merchandise was described as a cosmetic hair gel cartridge, imported together with a flatiron.

In NY N060719, the merchandise was described as a “Convertible, HAI-2, Nustik, Twig and Nano XT” hair irons, which are used to flatten/straighten hair. The irons were electrically heated and operated on 110 volts of alternating current.

In NY N060721, CBP described the merchandise as the “Tong, DraStik, and Digistik” hair irons, which are used to flatten/straighten hair. The “DraStik” and “Digistik” have flat heating plates, while the “Tong” had crescent-shaped plates that allowed for creating semi-circular shapes in hair. The irons were electrically heated and operate on 110 volts of alternating current.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY N060719, to modify N025515 and N060721, and to revoke or to modify any other ruling not specifically identified, in order to reflect the proper classification of electric flatirons for hair in subheading 8516.32.0040, HTSUS, according to the analysis contained in proposed HQ H157778, set forth as Attachment D to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 23, 2015

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

Attachments

[ATTACHMENT A]

N060719

June 5, 2009

CLA-2-85:OT:RR:E:NC:N1:102

CATEGORY: Classification

TARIFF NO.: 8516.40.4000

MR. RUSSELL BRUCE THORNBURG
RUSSELL BRUCE THORNBURG, CHB
11256 CANDLEBERRY COURT
SAN DIEGO, CA 92128

RE: The tariff classification of hair irons from China

DEAR MR. THORNBURG:

In your letter dated May 12, 2009 you requested a tariff classification ruling. Descriptive information was submitted.

The articles in question are described as the “Convertible, HAI-2, Nustik, Twig and Nano XT” hair irons, which used to flatten/ straighten hair. The flat irons are electrically heated and operate on 110 volts of alternating current.

The applicable subheading for the hair irons will be 8516.40.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other electric flat irons. The rate of duty will be 2.8 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 Kenneth T. Brock at (646) 733-3009.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

N025515

April 23, 2008

CLA-2-85:OT:RR:NC:1:102

CATEGORY: Classification

TARIFF NO.: 8516.31.0000; 8516.40.4000;
3305.90.0000

MR. STEVE NOWIK
PANALPINA, INC.
800 E. DEVON AVENUE
ELK GROVE VILLAGE, IL 60007

RE: The tariff classification of Hairdryers, Flatirons and Gel Conditioning Replacement Cartridges from China

DEAR MR. NOWIK:

In your letter dated March 27, 2008 you requested a tariff classification ruling on behalf of your client Wahl Clipper. Samples were submitted and are being returned as requested.

The item in question is a gel conditioning replacement cartridge, part numbers 90130 through 90133. The cartridges will be imported separately and packaged together with electric hairdryers and electric flatirons for hair.

The applicable subheading for the gel cartridge when imported with the hairdryer will be 8516.31.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for hairdryers. The rate of duty will be 3.9 percent ad valorem.

The applicable subheading for the gel cartridge when imported with the flatiron will be 8516.40.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for electric flatirons. The rate of duty will be 2.8 percent ad valorem.

The applicable subheading for the gel conditioning replacement cartridge when imported separately will be 3305.90.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for preparations for use on the hair: other. The rate of duty will be free.

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

Perfumery, cosmetic and toiletry products are subject to the requirements of the Food, Drug and Cosmetic Act, which are administered by the U.S. Food and Drug Administration. Questions regarding FDA requirements may be addressed to the U.S. Food and Drug Administration, Office of Cosmetics and Colors, 5100 Paint Branch Parkway, College Park, MD 20740-3835, telephone number (301) 436-1130.

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 Kenneth T. Brock at 646-733-3009.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT C]

N060721

June 5, 2009

CLA-2-85:OT:RR:E:NC:N1:102

CATEGORY: Classification

TARIFF NO.: 8516.32.0040, 8516.40.4000

MR. RUSSELL BRUCE THORNBURG
RUSSELL BRUCE THORNBURG, CHB
11256 CANDLEBERRY COURT
SAN DIEGO, CA 92128

RE: The tariff classification of hair irons from China

DEAR MR. THORNBURG:

In your letter dated May 12, 2009 you requested a tariff classification ruling. Descriptive information was submitted.

The articles in question are described as the “Tong, DraStik, and Digistik” hair irons, which are used to flatten/ straighten hair. The “DraStik” and “Digistik” have flat heating plates, while the “Tong” has crescent-shaped plates that allow for creating semi-circular shapes in hair. The flat irons are electrically heated and operate on 110 volts of alternating current.

The applicable subheading for the “Tong” hair iron will be 8516.32.0040, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other electrothermic hairdressing apparatus. The rate of duty will be 3.9 percent ad valorem.

The applicable subheading for the “DraStik” and “Digistik” hair irons will be 8516.40.4000, HTSUS, which provides for other electric flat irons. The rate of duty will be 2.8 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 Kenneth T. Brock at (646) 733-3009.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT D]

HQ H157778
CLA-2 OT:RR:CTF:TCM H157778 GA
CATEGORY: Classification
TARIFF NO.: 8516.32.0040 HTSUS

MR. STEVE NOWIK
PANALPINA, INC.
800 E. DEVON AVENUE
ELK GROVE VILLAGE IL 60007
MR. RUSSELL BRUCE THORNBURG
RUSSELL BRUCE THORNBURG, CHB
11256 CANDLEBERRY COURT
SAN DIEGO, CA 92128

RE: Modification of NY N025515, NY N060721 and Revocation of NY N060719: Classification of electric iron for hair

DEAR MR. NOWIK:

This letter concerns New York Ruling Letter (NY) N025515, dated April 23, 2008, issued to you on behalf of your client Wahl Clipper. That ruling involved the tariff classification of a gel conditioning replacement cartridge when imported separately, and when imported packaged together with an electric iron for hair. In that ruling, U.S. Customs and Border Protection (CBP) classified the gel and iron packaged together in subheading 8516.40.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for, "Electric flatirons: Other." We have reviewed NY N025515 and find the portion of that that relates to the classification of the gel imported together with the iron to be in error. In addition, in NY N060721 and NY N060719 similar electric iron products for hair were classified in subheading 8516.40.4000, HTSUS. For the reasons set forth below, we hereby modify NY N025515 and N060721, and revoke N060719.

FACTS:

In NY N025515, the merchandise was described as a cosmetic hair gel cartridge, imported together with a flatiron.

In NY N060719, the merchandise was described as a "Convertible, HAI-2, Nustik, Twig and Nano XT" hair irons, which are used to flatten/straighten hair. The irons were electrically heated and operated on 110 volts of alternating current.

In NY N060721, CBP described the merchandise as the "Tong, DraStik, and Digistik" hair irons, which are used to flatten/straighten hair. The "DraStik" and "Digistik" have flat heating plates, while the "Tong" had crescent-shaped plates that allowed for creating semi-circular shapes in hair. The irons were electrically heated and operate on 110 volts of alternating current.

ISSUE:

Whether electric irons used for hairdressing are flatirons within the meaning of subheading 8516.40, HTSUS?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. 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 HTSUS provisions under considerations are as follows:

8516	Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electro-thermic hair dressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric smoothing irons; other electro-thermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof:
8516.32.00	Other hairdressing apparatus
8516.40	Electric flatirons
8516.40.20	Travel type
8516.40.40	Other

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, the ENs provide a commentary on the scope of each heading of the HS and are thus useful in ascertaining the proper classification of merchandise. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Explanatory Note 85.16 provides, in relevant part, as follows:

(C) ELECTRO-THERMIC HAIR-DRESSING APPARATUS AND HAND DRYERS

These include:

- (1) Hair dryers, including drying hoods and those with a pistol grip and built-in fan
- (2) Hair curlers and electrical permanent waving apparatus
- (3) Curling tong heaters
- (4) Hand dryers

(D) ELECTRIC SMOOTHING IRONS

This group covers smoothing irons of all kinds, whether for domestic use or for tailors, dressmakers, etc., including cordless irons. These cordless irons consist of an iron incorporating heating element and a stand which can be connected to the mains. The iron makes contact with the current only when placed in this stand. This group also includes electric steam smoothing irons whether they incorporate a water container or are designated to be connected to a steam pipe.

The above explanatory note's reference to tailors and dressmakers in connection with irons indicates that the flatirons of subheading 8416.40 are irons

used for pressing cloth. By contrast, the instant merchandise is in the nature of hair dressing apparatus, of the kind described in subheading 8516.32 and Explanatory Note C to heading 8516. Therefore, the subject product is properly classified under subheading 8516.32.00, HTSUS, rather than subheading 8516.40, HTSUS.

HOLDING:

By application of GRI 1, we find the subject flatirons are classified in subheading 8516.32.00, HTSUS, which provides for “Other hairdressing apparatus.” The column one, general rate of duty is 3.9 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N025515, dated April 23, 2008, and NY N060721, dated June 5, 2009 are MODIFIED and NY N060719, dated June 5, 2009 is hereby REVOKED.

Sincerely,

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division

**RENEWAL OF THE GENERALIZED SYSTEM OF
PREFERENCES AND RETROACTIVE APPLICATION FOR
CERTAIN LIQUIDATIONS AND RELIQUIDATIONS UNDER
THE GSP**

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

ACTION: General notice.

SUMMARY: The Generalized System of Preferences (GSP) is a renewable preferential trade program that allows the eligible products of designated beneficiary developing countries to directly enter the United States free of duty. The GSP program expired on July 31, 2013, but has been renewed through December 31, 2017, effective July 29, 2015, with retroactive effect between August 1, 2013 to July 28, 2015, by a provision in the Trade Preferences Extension Act of 2015. This document provides notice to importers that U.S. Customs and Border Protection (CBP) will again accept claims for GSP duty-free treatment for merchandise entered, or withdrawn from warehouse, for consumption and that CBP will process refunds on duties paid, without interest, on GSP-eligible merchandise that was entered during the period that the GSP program was lapsed. Formal and informal entries that were filed electronically via the Automated Broker Interface (ABI) using Special Program Indicator (SPI) Code

“A” as a prefix to the tariff number will be automatically processed by CBP and no further action by the filer is required to initiate the refund process. Non-ABI filers, and ABI filers that did not include SPI Code “A” on the entry, must timely submit a duty refund request to CBP. CBP will continue conducting verifications to ensure that GSP benefits are available to eligible entries only.

DATES: Effective July 29, 2015, the filing of GSP-eligible entry summaries may be resumed without the payment of estimated duties, and CBP will initiate the automatic liquidation or reliquidation of formal and informal entries of GSP-eligible merchandise that was entered on or after August 1, 2013 through July 28, 2015 and filed via ABI with SPI Code “A” notated on the entry. Requests for refunds of GSP duties paid on eligible non-ABI entries, or eligible ABI entries filed without SPI Code “A,” must be filed with CBP no later than December 28, 2015.

ADDRESSES: Instructions for submitting a request to CBP to liquidate or reliquidate entries of GSP-eligible merchandise that was entered on or after August 1, 2013 through July 28, 2015 are located at <http://www.cbp.gov/trade/priority-issues/trade-agreements/special-trade-legislation/generalized-system-preferences>.

FOR FURTHER INFORMATION CONTACT: General questions concerning this notice should be directed to Maggie Gray, Office of International Trade, Trade Agreements Branch, 202–863– 6621. For operational questions regarding: Formal/Informal Entries and Baggage Declarations: Celestine Harrell, 202–863–6937; Mail Entries: Katherine Changes, 202–344–1767 or Robert Woods, 202–344–1236; Non-ABI Informal Entries: contact the port of entry where goods were entered. Questions from filers regarding ABI transmissions should be directed to their assigned ABI client representative.

SUPPLEMENTARY INFORMATION:

Background

Section 501 of the Trade Act of 1974, as amended (19 U.S.C. 2461), authorizes the President to establish a Generalized System of Preferences (GSP) to provide duty-free treatment for eligible articles imported directly from designated beneficiary countries for specific time periods. Pursuant to 19 U.S.C. 2465, as amended by section 1011(a) of Public Law 105–277, 112 Stat. 2681, duty-free treatment under the GSP program expired on July 31, 2013. On June 29, 2015,

the President signed the Trade Preferences Extension Act of 2015 (Publ. L. 114–27). Section 201 of Public Law 114–27 pertains to the extension of duty-free treatment and the retroactive application for certain liquidations and reliquidations under the GSP. Section 201(b)(1) provides that GSP duty-free treatment will be applied to eligible articles from designated beneficiary countries that are entered, or withdrawn from warehouse, for consumption on or after July 29, 2015 through December 31, 2017. Section 201(b)(2) provides that for entries made on or after August 1, 2013 through July 28, 2015, to which duty-free treatment would have applied if GSP had been in effect during that time period (“covered entries”), any duty paid with respect to such entry will be refunded provided that a request for liquidation or reliquidation of that entry, containing sufficient information to enable U.S. Customs and Border Protection (CBP) to locate the entry or to reconstruct the entry if it cannot be located, is filed with CBP by December 28, 2015 (180 days after enactment of Pub. L. 114–27). Section 201(b)(2)(C) provides that any amounts owed by the United States pursuant to section 2(b)(2)(A) will be paid *without* interest.

Field locations will not issue GSP refunds except as instructed to do so by CBP Headquarters. The processing of retroactive GSP duty refunds will be administered by CBP according to the terms set forth below.

Duty-Free Entry Summaries

Effective July 29, 2015, filers may resume filing GSP-eligible entry summaries without the payment of estimated duties.

GSP Duty Refunds

Formal / Informal Entries

CBP will automatically liquidate or reliquidate formal and informal entries of GSP-eligible merchandise that were entered on or after August 1, 2013 through July 28, 2015 and filed electronically via the Automated Broker Interface (ABI) using Special Program Indicator (SPI) Code “A” as a prefix to the listed tariff number. Such entry filings will be treated as a conforming request for a liquidation or reliquidation pursuant to section 201(b)(2)(B) of Public Law 114–27, and no further action by the filer will be required to initiate a retroactive GSP duty refund. CBP expects to begin processing automatic refunds for these entries shortly after July 29, 2015.

CBP will not automatically process GSP duty refunds for formal covered entries that were not filed electronically via ABI, nor for formal and informal covered entries that were filed electronically via

ABI with payment of estimated duties, but without inclusion of the SPI Code “A” as a prefix to the listed tariff number. In both situations, requests for liquidation or reliquidation of covered entries must be made by December 28, 2015 pursuant to the procedures set forth in <http://www.cbp.gov/trade/priority-issues/trade-agreements/special-trade-legislation/generalized-system-preferences>.

Mail Entries

For merchandise that was imported via the mail, addressees must request liquidation or reliquidation of covered entries by December 28, 2015 pursuant to the procedures set forth in <http://www.cbp.gov/trade/priority-issues/trade-agreements/special-trade-legislation/generalized-system-preferences>.

Baggage Declarations and Non-ABI Informals

Travelers/importers must request liquidation or reliquidation of covered entries by December 28, 2015 pursuant to the procedures set forth in <http://www.cbp.gov/trade/priority-issues/trade-agreements/special-trade-legislation/generalized-system-preferences>.

Countries Eligible for Retroactive Benefits

The Trade Preferences Extension Act of 2015 reauthorization of GSP provides retroactive benefits only to goods from a country that is a beneficiary of the GSP program as of July 29, 2015. As such, this excludes countries such as Bangladesh¹ and Russia² that lost eligibility between July 31, 2013 and July 29, 2015.

Dated: July 23, 2015.

BRENDA SMITH,
*Assistant Commissioner,
Office of International Trade.*

[Published in the Federal Register, July 28, 2015 (80 FR 44986)]

TEST TO COLLECT BIOMETRIC INFORMATION AT UP TO TEN U.S. AIRPORTS (“BE-MOBILE AIR TEST”)

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

ACTION: General notice.

¹ See 78 FR 39949 (July 2, 2013).

² See 79 FR 60945 (October 8, 2014).

SUMMARY: U.S. Customs and Border Protection (CBP) intends to conduct a test to collect biometric and biographic information from certain aliens who are departing the United States on selected flights from up to ten identified U.S. airports. This notice describes the test, its purpose, how it will be implemented, the individuals covered, the duration of the test, where the test will take place, and the privacy considerations. This test will not apply to U.S. citizens.

DATES: The test will begin no earlier than July 6, 2015, and will run for approximately one year. The test will be rolled out over this one-year period at up to ten of the following airports: Los Angeles International Airport, Los Angeles, California; San Francisco International Airport, San Francisco, California; Miami International Airport, Miami, Florida; Hartsfield-Jackson Atlanta International Airport, Atlanta, Georgia; Chicago O'Hare International Airport, Chicago, Illinois; Newark Liberty International Airport, Newark, New Jersey; John F. Kennedy International Airport, Jamaica, New York; Dallas Fort Worth International Airport, Dallas, Texas; George Bush Intercontinental Airport, Houston, Texas; and Washington Dulles International Airport, Sterling, Virginia.

FOR FURTHER INFORMATION CONTACT: Edward Fluhr, Assistant Director, Entry/ Exit Transformation Office, U.S. Customs and Border Protection, by phone at (202) 344-2377 or by email at edward.fluhr@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The US-VISIT Program

The Department of Homeland Security (DHS) established the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program in accordance with several federal statutory mandates requiring DHS to create an integrated, automated entry and exit system that records the arrival and departure of aliens, verifies the aliens' identities, and authenticates aliens' travel documents through the comparison of biometric identifiers. Under these various federal statutory mandates, certain aliens may be required to provide biometrics (including digital fingerprint scans, photographs, facial and iris images, or other biometric identifiers¹) upon arrival in, or departure from, the United States.

¹ As used in this notice, a "biometric identifier" is a physical characteristic or other physical attribute unique to an individual that can be collected, stored, and used to verify the

On March 16, 2013, US-VISIT's entry and exit operations, including deployment of a biometric exit system, were transferred to U.S. Customs and Border Protection (CBP). *See* Consolidated and Further Continuing Appropriations Act, 2013, Public Law 113–6, 127 Stat. 198 (2013). The Act also transferred the US-VISIT Program's overstay analysis function to U.S. Immigration and Customs Enforcement (ICE) and its biometric identity management services to the Office of Biometric Management (OBIM), a newly-created office within the National Protection and Programs Directorate. CBP assumed responsibility for operating biometric entry and implementing biometric exit programs on April 1, 2013.

Since the transfer of US-VISIT's entry and exit operations to CBP, CBP has continued to consider ways to collect biometric information from departing aliens. This notice announces that CBP will be conducting the Biometric Exit Mobile (BE-Mobile) Air Test at up to ten of the identified U.S. airports. In this test, CBP officers will utilize wireless handheld devices to collect biographic and biometric information from certain aliens upon departure, biometrically record their departure, and screen their biometric data against a DHS biometric database² in real time. This notice describes the BE-Mobile Air Test, its purpose, how it will be implemented, the individuals covered, the duration of the test, where the test will take place, and the privacy considerations.

Legal Authority

The federal statutes that mandate DHS to create a biometric entry and exit system to record the arrival and departure of certain aliens include, but are not limited to:

- Section 2(a) of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA), Public Law 106–215, 114 Stat. 337 (2000);
- Section 205 of the Visa Waiver Permanent Program Act of 2000, Public Law 106–396, 114 Stat. 1637, 1641 (2000);

identity of a person who presents himself or herself to a CBP officer at the border. To verify a person's identity, a similar physical characteristic or attribute is collected and compared against the previously collected identifier.

² See the Privacy Impact Assessment at <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection> for more information about the databases where the biometric and biographic information will be maintained.

- Section 414 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107– 56, 115 Stat. 272, 353 (2001);
- Section 302 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act), Public Law 107–173, 116 Stat. 543, 552 (2002);
- Section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108–458, 118 Stat. 3638, 3817 (2004); and
- Section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–52, 121 Stat. 266 (2007).

Section 7208 of the IRTPA, as codified at 8 U.S.C. 1365b, specifically requires that DHS's entry and exit data system collect biometric exit data for all categories of individuals who are required to provide biometric entry data.

On January 5, 2004, DHS published an interim final rule (IFR) in the **Federal Register** (69 FR 468) implementing the first phase of US-VISIT at specified air and sea ports of entry. This IFR amended section 235.1 of title 8 of the Code of Federal Regulations (CFR) (8 CFR 235.1) to authorize the Secretary to require certain aliens seeking admission into the United States through nonimmigrant visas to provide fingerprints, photographs, or other biometric identifiers to CBP upon arrival in, or departure from, the United States at air or sea ports of entry.³ The specified air and sea ports of entry where such collection of biometric information was to occur were designated by notice in the **Federal Register**. 69 FR 482 (January 5, 2004). DHS also published two additional notices expanding the list of designated air and sea ports. *See* 69 FR 46556 (August 3, 2004) and 69 FR 51695 (August 20, 2004). Since then, aliens who are required under federal law to submit biometric information have been submitting fingerprints and photographs upon entry to the United States at designated air and sea ports of entry. The DHS biometric entry program is now operational at 15 sea ports and 115 airports including the identified airports selected for the BE-Mobile Air Test.

The second phase of US-VISIT was implemented on August 31, 2004 when DHS published an IFR in the **Federal Register** (69 FR 53318) expanding the program to the fifty most highly trafficked land

³ The IFR also authorized the Secretary to establish pilot programs at up to fifteen air or sea ports of entry, to be identified by notice in the **Federal Register**, through which DHS may require certain aliens who depart from a designated air or sea port of entry to provide specified biometric identifiers and other evidence at the time of departure.

border ports-of-entry in the United States as required by 8 U.S.C. 1365a(d)(2).⁴ The IFR also amended 8 CFR 215.8 to provide that the Secretary, or his designee, may establish pilot programs to collect biometric information from certain aliens departing the United States at land border ports of entry, and at up to fifteen air or sea ports of entry designated through notice in the **Federal Register**. Specifically, 8 CFR 215.8(a)(1) provides that the Secretary, or his designee, may establish pilot programs through which the Secretary or his delegate may require an alien who departs the United States from a designated port of entry to provide fingerprints, photographs or other specified biometric identifiers, documentation of his or her immigration status in the United States, and such other evidence as may be requested to determine the alien's identity and whether he or she has properly maintained his or her status while in the United States. The IFR also specified that nonimmigrants seeking to enter the United States without a visa under the Visa Waiver Program (VWP) are also required to provide biometric information to DHS.⁵

Previous Air Exit Pilots

Pursuant to the authority in 8 CFR 215.8, on June 3, 2009, DHS published a notice in the **Federal Register** (74 FR 26721) announcing the commencement of two air exit pilot programs.⁶ In one of the pilot programs, CBP collected biometric information from certain aliens at or near the departure gate at the Detroit/Metropolitan Wayne County Airport in cooperation with Northwest Airlines. CBP collected biometric information from aliens departing the United States for foreign destinations who were subject to the biometric screening requirements. The biometric collection consisted of one or more electronic fingerprints captured using a mobile or portable device. CBP also collected biographic information, including travel document information, such as name, date of birth, document issuance type, country and number from these aliens. CBP stored and forwarded the departure records collected to a DHS database daily.

In the second pilot program, Transportation Security Administration (TSA) collected biometric and biographic information from certain aliens at the security checkpoint at the Atlanta/Hartsfield International Airport. Aliens departing the United States for foreign destinations who were subject to biometric screening requirements

⁴ Section 1365a(d)(2) provides, in pertinent part, that “[n]ot later than December 31, 2004, the Attorney General [now the Secretary of Homeland Security] shall implement the integrated entry and exit data system . . . at the 50 land border ports of entry determined by the Attorney General to serve the highest numbers of arriving and departing aliens.”

⁵ On December 19, 2008, DHS published a final rule in the **Federal Register** (73 FR 77473) which finalized the IFR without change.

⁶ DHS also conducted air exit pilot programs at various ports of departure, in 2004, including Baltimore-Washington International Airport (BWI), pursuant to the authority in 8 CFR 215.8.

were directed to an area within the checkpoint where the biographic and biometric information was collected. The biometric collection consisted of one or more electronic fingerprints captured using a mobile or portable device. TSA also collected biographic information, including travel document information, such as name, date of birth, document issuance type, country and number from these aliens. TSA stored and forwarded the departure records collected to a DHS database daily.

These pilot programs concluded on July 2, 2009. Although the technology used in these pilot programs worked, DHS concluded that these collection mechanisms would be extremely resource intensive and very costly to implement long-term or at additional airports. Therefore, DHS did not expand or extend the pilots.

The Biometric Exit Mobile Air Test (“BE-Mobile Air Test”)

The BE-Mobile Air Test is designed to test both a new biometric exit concept of operations at selected airports with CBP officers using a wireless handheld device at the departure gate to collect biometric and biographic data and CBP’s outbound enforcement policies and workforce distribution procedures. This test will significantly differ from the 2009 pilot conducted by CBP in that the BE-Mobile Air Test will use improved technology, will enable CBP officers to receive real time information, will test a different concept of operations since law enforcement officers can perform checks in real time, and will be less resource intensive because CBP will conduct the test on fewer flights per week than during the 2009 pilot. Through the test, CBP will be able to conduct a statistically valid survey of the air outbound environment that will assist DHS in determining how to effectively implement an air biometric exit system. The BE-Mobile Air Test is one of CBP’s key steps in developing the capability to fulfill DHS’ mandate to collect biometric information from certain arriving and departing aliens.

Identified Airports

CBP will conduct the BE-Mobile Air Test at up to ten of the following airports:

- Los Angeles International Airport, Los Angeles, California;
- San Francisco International Airport, San Francisco, California;
- Miami International Airport, Miami, Florida;
- Hartsfield-Jackson Atlanta International Airport, Atlanta, Georgia;

- Chicago O’Hare International Airport, Chicago, Illinois;
- Newark Liberty International Airport, Newark, New Jersey;
- John F. Kennedy International Airport, Jamaica, New York;
- Dallas Fort Worth International Airport, Dallas, Texas;
- George Bush Intercontinental Airport, Houston, Texas;
- Washington Dulles International Airport, Sterling, Virginia.

The airports selected for the BE-Mobile Air Test will be identified on the CBP Web site, <http://www.cbp.gov>.

Description, Purpose and Implementation

Currently, certain aliens seeking admission into the United States may be required to provide fingerprint and photographic biometric data at ports of entry, including at the ten identified airports. This data is used by CBP to verify the aliens’ identities. (Certain aliens, including individuals traveling on A or G visas and others as specified in 8 CFR 235.1(f)(1)(iv), are exempt from this requirement).

The BE-Mobile Air Test will be conducted at the identified airports on pre-selected outbound international flights. Flights will be pre-selected on a random basis or chosen to correspond with existing outbound enforcement operations. For the selected flight, CBP officers will deploy to the departure gate and position themselves near the departing passenger loading bridge to collect certain data from certain departing travelers. Once travelers begin the departure process, CBP officers will review the traveler’s travel document (passport, visa, lawful permanent resident card, or other qualifying travel document) to determine if the traveler is an alien who is required to submit biometric information at the time of departure as described in the next section, entitled “Aliens Covered.” If so, the CBP officers will obtain biographic data from these select aliens by swiping or inputting the information from the alien’s travel document on a wireless handheld device.⁷ The biographic data collected during this test will be used to create a biographic-based departure record in a CBP biographic database. It will be paired with the biometric data collected to create a complete, biometrically-based departure record for that alien. The CBP officer will also capture two of the alien’s fingerprints and verify the fingerprints against the alien’s biometric identity record. Based on the results of the verification or additional law enforcement information, the officer may then perform additional

⁷ Air carriers will continue to report traveler information through the Advance Passenger Information System (APIS).

analysis or conduct a further interview to determine if additional action may be appropriate. When the departure inspection is complete, the results of the transaction will be recorded in a DHS biometric database and a CBP biographic database in real time.

The primary mission of any biometric exit program is to provide assurance of traveler identity on departure, giving CBP the opportunity to match the departure with a prior arrival record. This capability enhances the integrity of the immigration system and the ability to accurately detect travelers that have overstayed their lawful period of admission to the United States.

CBP will analyze and evaluate the test's performance based on a number of criteria, including the occurrence of watchlist matches based on biometric data, the occurrence of biometric-identified fraud, the occurrence of inaccurate APIS manifests, how overstay calculations are impacted, the transaction times for exit processing per traveler, the rate of successful transactions, the occurrence of law enforcement hits, including those requiring referral to secondary inspection, the observations from the CBP officers performing the test, and system performance. CBP will use the results of the BE-Mobile Air Test to determine strategic programmatic requirements for a comprehensive biometric exit solution.

Aliens Covered

For the duration of the test, aliens must provide the biometric information described above at the time of departure of the selected international flights at one of the selected airports, except for aliens exempt pursuant to 8 CFR 215.8(a)(2) provided that the alien is in exempted status on the date of departure.

Exempted aliens include:

- (1) Canadian citizens who under section 101(a)(15)(B) of the Immigration and Nationality Act are not otherwise required to present a visa or have been issued Form I-94 (see § 1.4) or Form I-95 upon arrival at the United States;
- (2) Aliens admitted on A-1, A-2, C-3 (except for attendants, servants, or personal employees of accredited officials), G-1, G-2, G-3, G-4, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 visas, and certain Taiwan officials who hold E-1 visas and members of their immediate families who hold E-1 visas who are maintaining such status at time of departure, unless the Secretary of State and the Secretary of Homeland Security jointly determine that a class of such aliens should be subject to this notice;

- (3) Children under the age of 14;
- (4) Persons over the age of 79;
- (5) Classes of aliens the Secretary of Homeland Security and the Secretary of State jointly determine shall be exempt; or
- (6) An individual alien whom the Secretary of Homeland Security, the Secretary of State, or the Director of Central Intelligence determines shall be exempt.

Duration of the Test

CBP will collect biographic information and fingerprint data from select non-exempt aliens departing on selected international flights from the identified airports for a period of approximately one year from the start of the test. The information collected will constitute a departure record for that alien and will be maintained in the CBP and DHS databases for recording entries and departures.

Privacy

CBP will ensure that all Privacy Act requirements and applicable policies are adhered to during the implementation of this test. Additionally, CBP will be issuing a Privacy Impact Assessment (PIA), which will outline how CBP will ensure compliance with Privacy Act protections. The PIA will examine the privacy impact of the BE-Mobile Air Test as it relates to DHS's Fair Information Practice Principles (FIPPs). The FIPPs account for the nature and purpose of the information being collected in relation to DHS's mission to preserve, protect and secure the United States. The PIA will address issues such as the security, integrity, and sharing of data, use limitation and transparency. Once issued, the PIA will be made publicly available at: <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>. CBP has also issued an update to the DHS/CBP-007 Border Crossing Information (BCI) System of Records, which fully encompasses all the data that is being collected at the selected airports. The system of records notice (SORN) was published in the **Federal Register** on May 11, 2015 (80 FR 26937).

Paperwork Reduction Act

CBP requires aliens subject to this notice to provide biometric and biographic data at the airports selected for the test in the circumstances described above. This requirement is considered an information collection requirement under the Paperwork Reduction Act (44

U.S.C. 3501, *et seq.*). The Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act, has previously approved this information collection for use. The OMB control number for this collection is 1651–0138.

Dated: July 22, 2015.

R. GIL KERLIKOWSKE,
Commissioner.

[Published in the Federal Register, July 28, 2015 (80 FR 44983)]



AGENCY INFORMATION COLLECTION ACTIVITIES:

Importer ID Input Record

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: Importer ID Input Record (CBP Form 5106). CBP is proposing that this information collection be revised with a change to the burden hours, a change of the form’s name to read, “Create/ Update Importer Identity Form,” and a change to the information collected on Form 5106. This is a proposed revision of an information collection that was previously approved. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before August 26, 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** (79 FR 61091) on October 9, 2014, allowing for a 60-day comment period. CBP received 27 comment letters in response to the 60-day notice. 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: Importer ID Input Record.

OMB Number: 1651-0064.

Form Number: CBP Form 5106.

Abstract: The collection of the information on the Importer ID Input Record (CBP Form 5106) is the basis for establishing bond coverage, release and entry of merchandise, liquidation, and the issuance of bills and refunds. Each person, business firm, government agency, or other organization that intends to file an import entry shall file CBP Form 5106 with the first formal entry or request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection. This form is also filed for the ultimate consignee for whom an entry is being made.

CBP proposes to revise the CBP Form 5106 by changing the name of this form to be clearer as to its intended purpose, and by gathering additional information about the company and its officers. This will enhance CBP's ability to make an informative assessment of risk prior to the initial importation, and will provide CBP with improved

awareness regarding the company and its officers who have chosen to conduct business with CBP. CBP is also requesting that the company officers whose information will be submitted on this form have importing and financial business knowledge of the company, and that they have the legal authority to make decisions on behalf of the company.

The revised form will capture more detailed company information which is in alignment with other U.S. Government data standards and business standards. In addition to collecting information about the business structure and its officers, this detailed information will provide CBP with a greater knowledge about the company and its previous business practices. The new data elements that CBP proposes to collect are:

If you are an importer, how many entries do you plan on filing in a year?

How will the identification number be utilized?

Program Code (Indicates membership in ISA or C-TPAT)

Type of address (for mailing address)

Type of address (for physical location)

Phone Number and extension

Fax number

Email address

Web site

A brief business description.

The 6-digit North American Industry Classification System (NAICS) code for this business.

The D-U-N-S Number for the Importer.

The filer code if submitting as a broker/self-filer. Year established

Primary Banking Institution Certificate or Articles of Incorporation—(Locator I.D.)

Certificate or Articles of Incorporation— (Reference Number)

Business Structure/Company Officers

Company Position Title

Name

Direct Phone Number and extension

Direct Email

Social Security Number

Passport Number

Passport Country of Issuance

Passport Expiration Date

Passport Type

Broker Name Broker

Telephone Number

CBP also proposes to rename this form “Create/Update Importer Identity Form” to make the form’s purpose clearer to respondents.

Based on public comments received on the 60-day **Federal Register** Notice (79 FR 61091) of October 9, 2014, CBP also made the following changes to the proposed, new version of Form 5106:

(1) The estimated average time to complete this form was increased from 30 minutes to 45 minutes.

(2) The Quick Response (QR) Code was placed in the upper left corner of the document to provide users with a quick link to the form on the Internet.

(3) In the Type of Action section of the form, the statement, “If a continuous bond is on file, a rider must accompany this change document” was removed because it is no longer necessary with e-Bonds.

(4) In section 1E of Form 5106 which involves CBP-Assigned numbers, the instructions were clarified to include the statement, “If you have elected to request a CBP-Assigned Number in lieu of your SSN, you must provide your SSN in Section 3J of this form.”

(5) In section 1I of Form 5106, which involves how the identification number will be utilized, a statement was added in the instructions to clarify that if the role of the party is not listed, respondents can select “Other” and then list the specific role for the party. (ex., Transportation carrier, Licensed Customs Brokerage Firm, Container Freight Station, Commercial Warehouse/Foreign Trade Zone Operator, Container Examination Station or Deliver to Party).

(6) In section 1J thru 1M (Program Codes) of Form 5106, a statement was added in the instructions to clarify that current, active participants in CBP Partnership Program(s) (C-TPAT, ISA, etc.) must provide the program code in Block 1J thru Block 1M, and the information that is contained in section 3 will not be required.

(7) In section 3, Company Information, the instructions were amended to clarify that the following fields are optional:

- In section 3C DUNS Number for the Importer;
- In section 3F Related Business Information- the IRS number is optional if this number is not available;
- In section 3J Business Structure/ Beneficial Owner/Company Officers, the following fields are optional:
 Social Security Number
 Passport Number
 Country Issuance
 Expiration Date
 Passport Types

Since the publication of the 60-day FRN, CBP also made the following revisions:

(1) Added an extension for all telephone numbers that are requested on the form.

(2) In section 3J, added “Beneficial Owner” to title of that section to make it now “Business Structure/Beneficial Owner/Company Officers” Also, the instructions for section 3J were amended to clarify what information is needed.

CBP Form 5106 is authorized by 19 U.S.C. 1484 and provided for by 19 CFR 24.5. The current version of this form is accessible at: <http://www.cbp.gov/sites/default/files/documents/CBP%20Form%205106%20%2805-13%29.pdf>. The proposed new version of this form, the public comments that were received, and a summary and response to these comments may be viewed at: http://www.cbp.gov/trade/trade_community/cbp-publishes-federal-register-notice-proposing-revisions-cbp-form-5106.

Current Actions: CBP proposes to revise the information being collected by adding data elements to CBP Form 5106. This revision will result in an increase in the estimated time to complete this form, from 15 minutes to 45 minutes, and will also increase the burden hours from 75,000 to 225,000. CBP also proposes to rename this form “Create/Update Importer Identity Form” and to make the changes described above in the “Abstract” section.

Type of Review: Revision.

Affected Public: Businesses and Individuals.

Estimated Number of Respondents: 300,000.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 225,000.

Dated: July 21, 2015.

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

[Published in the Federal Register, July 27, 2015 (80 FR 44361)]

