U.S. Customs and Border Protection

PROPOSED MODIFICATION OF THREE RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF PROPAFENONE HYDROCHLORIDE

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

ACTION: Notice of proposed modification of three ruling letters, and proposed revocation of treatment relating to the tariff classification of propafenone hydrochloride.

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

DATE: Comments must be received on or before February 28, 2025.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Shannon L. Stillwell, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. CBP is also allowing commenters to submit electronic comments to the following email address: *1625Comments@cbp.dhs.gov*. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Arrangements to inspect submitted comments should be made in advance by calling Ms. Shannon L. Stillwell at (202) 325–0739 or via email at shannon.l.stillwell@cbp.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Thomas Dougherty, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–1988.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to modify three ruling letters pertaining to the tariff classification of propafenone hydrochloride. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") J81823 (Attachment A), NY 891019 (Attachment B), and NY 810507 (Attachment C), this notice also covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the three identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY J81823, NY 891019, and NY 810507, CBP classified propafenone hydrochloride in heading 2922, HTSUS, specifically in

subheading 2922.50.14, HTSUS, which provides for "Oxygen-function amino-compounds: Amino-alcohol-phenols, amino-acid-phenols and other amino-compounds with oxygen function: Aromatic: Other: Cardiovascular drugs." CBP has reviewed NY J81823, NY 891019, and NY 810507 and has determined the ruling letters to be in error solely with respect to tariff classification of propafenone hydrochloride. It is now CBP's position that propafenone hydrochloride is properly classified, in heading 2922, HTSUS, specifically in subheading 2922.19.09, HTSUS, which provides for "Oxygen-function amino-compounds: Amino-alcohols, other than those containing more than one kind of oxygen function, their ethers and esters: salts thereof: Other: Aromatic: Drugs."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY J81823, NY 891019, and NY 810507 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H306891, set forth as Attachment D to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

NY J81823

March 12, 2003

CLA-2–29:RR:NC:2:238 J81823

CATEGORY: Classification

TARIFF NO.: 2934.99.3000; 2933.99.5590; 2928.00.2500; 2922.50.1400

MS. JANET LAMBERTUCCI
REN-PHARM INTERNATIONAL, LTD.
350 JERICHO TURNPIKE, SUITE 204
JERICHO, NY 11753–1317

RE: The tariff classification of Paroxetine Hydrochloride hemihydrate (CAS-110429–35–1), Pentazocine Hydrochloride (CAS-64024–15–3), Phenelzine Sulfate (CAS-156–51–4) and Propafenone Hydrochloride (CAS-34183–22–7), imported in bulk form, from Spain and Italy

DEAR MS. LAMBERTUCCI:

In your letter dated February 18, 2003, you requested a tariff classification ruling.

The first product, Paroxetine Hydrochloride hemihydrate, is indicated for the treatment of depression, obsessive compulsive disorder, panic disorder, social anxiety disorder and generalized anxiety disorder.

The second product, Pentazocine Hydrochloride, is an analgesic drug.

The third product, Phenelzine Sulfate, is an antidepressant.

The fourth product, Propafenone Hydrochloride, is an antiarrhythmic drug.

The applicable subheading for Paroxetine Hydrochloride hemihydrate, imported in bulk form, will be 2934.99.3000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Nucleic acids and their salts, whether or not chemically defined; other heterocyclic compounds: Other: Other: Aromatic or modified aromatic: Other: Drugs." Pursuant to General Note 13, HTS, the rate of duty will be free.

The applicable subheading for Pentazocine Hydrochloride, imported in bulk form, will be 2933.99.5590, HTS, which provides for "Heterocyclic compounds with nitrogen hetero-atom(s) only: Other: Other: Aromatic or modified aromatic: Other: Drugs: Drugs primarily affecting the central nervous system: Analgesics, antipyretics and nonhormonal anti-inflammatory agents: Other." Pursuant to General Note 13, HTS, the rate of duty will be free.

The applicable subheading for Phenelzine Sulfate, imported in bulk form, will be 2928.00.2500, HTS, which provides for "Organic derivatives of hydrazine or of hydroxylamine: Other: Aromatic." Pursuant to General Note 13, HTS, the rate of duty will be free.

The applicable subheading for Propafenone Hydrochloride, imported in bulk form, will be 2922.50.1400, HTS, which provides for "Oxygen-function amino-compounds: Amino-alcohol-phenols, amino-acid-phenols and other amino-compounds with oxygen function: Aromatic: Other: Drugs: Other: Cardiovascular drugs." Pursuant to General Note 13, HTS, the rate of duty will be free.

With regard to the tariff classification of Pravastatin Sodium and Propranolol Hydrochloride, please be advised that a separate ruling (NY J81940) will be issued to you at a later date, after our laboratory has forwarded a report to us.

This merchandise may be subject to the requirements of the Federal Food, Drug, and Cosmetic Act, which is administered by the U.S. Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number 301–443–1544. In addition, Pentazocine Hydrocholride may be subject to the requirements of the Controlled Substances Act and/or the Controlled Substances Import and Export Act, which are administered by the Drug Enforcement Administration (DEA). You may contact them at 1405 I Street N.W., Washington, D.C. 20460, telephone number 202–307–1000.

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 Harvey Kuperstein at 646–733–3033.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

NY 891019
November 5, 1993
CLA-2–29:S:N:N7:238 891019
CATEGORY: Classification
TARIFF NO.: 2933.29.4500; 2922.50.1600;
2941.10.5000

MS. JOAN VON DOEHREN
INTERCHEM CORPORATION
120 RT. 17 NORTH, SUITE 115
PARAMUS, NJ 07652

RE: The tariff classification of Tinidazole (CAS 19387–91–8), Propafenone HCL (CAS 34183–22–7) and Piperacillin Sodium (CAS 59703–84–3), from Italy and Germany

DEAR MS. VON DOEHREN:

In your letter dated September 28, 1993, you requested a tariff classification ruling.

Tinidazole is an antiprotozoal drug; Propafenone HCL is an antiarrhythmic drug; and Piperacillin Sodium is an antibacterial drug.

The applicable Harmonized Tariff Schedule of the United States (HTS) subheadings and duty rates will be as follows:

PRODUCT	HTS	DUTY RATE
Tinidazole	2933.29.4500	3.7 percent ad valorem
Propafenone HCL	2922.50.1600	8 percent ad valorem
Piperacillin Sodium	2941.10.5000	7.4 percent ad valorem

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, MD 20857, telephone number (202) 857–8400.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

NY 810507
May 26, 1995
CLA-2–29:S:N:N7:238 810507
CATEGORY: Classification
TARIFF NO.: 2934.90.3000; 2922.50.1400

MS. JOAN VON DOEHREN
INTERCHEM CORPORATION
120 ROUTE 17 NORTH
P.O. BOX 1579
PARAMUS, NJ 07653–1579

RE: The tariff classification of Piroxicam (CAS-36322–90–4), from Spain; Prazosin hydrochloride (CAS-19237–84–4), from Finland; and Propafenone hydrochloride (CAS-34183–22–7), from Finland, all in bulk form

DEAR MS. VON DOEHREN:

In your letter dated May 1, 1995, you requested a tariff classification ruling.

The first product, Piroxicam ("Piroxicam" is also "INN"), is an anti-inflammatory drug. The second product, Prazosin hydrochloride ("Prazosin" is "INN"), is an antihypertensive drug. The third product, Propafenone hydrochloride ("Propafenone" is "INN"), is a cardiac depressant (anti-arrhythmic) drug.

The applicable subheading for Piroxicam and Prazosin hydrochloride will be 2934.90.3000, Harmonized Tariff Schedule of the United States (HTS), which provides for: "Other heterocyclic compounds: Other: Aromatic or modified aromatic: Other: Drugs." Pursuant to General Note 13, HTSUSA, the rate of duty for each product will be free.

The applicable subheading for Propafenone hydrochloride will be 2922.50.1400, HTS, which provides for: "Amino-alcohol-phenols, amino-acid-phenols and other amino compounds with oxygen function: Aromatic: Other: Drugs: Other: Cardiovascular drugs." Pursuant to General Note 13, HTSUSA, the rate of duty will be free.

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (301) 443–6553.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

HQ H306891
OT:RR:CTF:CPMMA H306891 TJD
CATEGORY: Classification
TARIFF NO.: 2922.19.09

MS. JANET LAMBERTUCCI
REN-PHARM INTERNATIONAL, LTD
350 JERICHO TURNPIKE
SUITE 204
JERICHO, NY 11753

RE: Modification of NY J81823, NY 891019, and NY 810507; Tariff classification of Propafenone Hydrochloride

DEAR MS. LAMBERTUCCI:

This is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York Ruling Letters ("NY") J81823, dated March 12, 2003, and issued to Ren-Pharm International, Ltd.; NY 891019 dated November 5, 1993, and issued to Interchem Corporation; and NY 810507, dated May 26, 1995, and issued to Interchem Corporation, regarding the classification of propafenone hydrochloride under the Harmonized Tariff Schedule of the United States ("HTSUS"). In each case, CBP classified propafenone hydrochloride in subheading 2922.50.14, HTSUS, which provides for "Oxygen-function amino-compounds: Amino-alcohol-phenols, amino-acid-phenols and other amino-compounds with oxygen function: Aromatic: Other: Cardiovascular drugs." We have determined that the three CBP rulings are partly in error, and that the proper classification of propafenone hydrochloride is subheading 922.19.09, HTSUS, which provides for "Oxygen-function amino-compounds: Amino-alcohols, other than those containing more than one kind of oxygen function, their ethers and esters: salts thereof: Other: Aromatic: Drugs." Accordingly, for the reasons set forth below, we are modifying NY J81823, NY 891019, and NY 810507, solely with respect to the classification of propafenone hydrochloride.[1]

FACTS:

Propafenone hydrochloride is not described in NY J81823, NY 891019, and NY 810507 beyond its function as an anti-arrhythmic drug. Propafenone hydrochloride is an oral medication taken to treat certain types of irregular heartbeat; it is used to restore normal heart rhythm and maintain a regular, steady heartbeat.[2] Chemically, propafenone hydrochloride is 2'-[2-Hydroxy-3-(propylamino)- propoxy]-3-phenylpropiophenone hydrochloride, with a molecular weight of 377.92. The molecular formula is $C_{21}H_{27}NO_3 \bullet HCl$.[3] Propafenone hydrochloride occurs as colorless crystals or white crystalline powder with a very bitter taste. It is slightly soluble in water (20°C), chloroform, and ethanol. In CBP Laboratory report NY20190073, propafenone hydrochloride is described as a whole with following functional groups: aromatic, secondary amine, ether, phenol, hydroxyl, and ketone. Of these, the following are oxygen groups: ketone, ether, phenol, and hydroxyl. The lab

[1] Each ruling letter classified multiple types of drugs. This modification only concerns the classification of propafenone hydrochloride.

[2] https://www.webmd.com/drugs/2/drug-22258–4070/propafenone-hcl-oral/propafenone-oral/details

[3] https://www.rxlist.com/rythmol-drug.htm

report further states "[t]he only oxygen-containing functional group relevant to classification is the alcohol, being the only oxygen function present in that part of the molecule between the amine and the ether function." The Chemical Abstract Service ("CAS") registry number of propafenone hydrochloride is 34183–22–7. The CAS number of propafenone is 54063–53–5. Propafenone hydrochloride is an inorganic salt of the organic compound propafenone.

ISSUE:

Whether propafenone hydrochloride is classified under subheading 2922.50.14, HTSUS, which provides for "Oxygen-function amino-compounds: Amino-alcohol-phenols, amino-acid-phenols and other amino-compounds with oxygen function: Aromatic: Other: Cardiovascular drugs" or subheading 2922.19.09, HTSUS, which provides for "Oxygen-function amino-compounds: Amino-alcohols, other than those containing more than one kind of oxygen function, their ethers and esters: salts thereof: Other: Aromatic: Drugs."

Whether the subject merchandise is eligible for duty free treatment pursuant to General Note 13, 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 2024 HTSUS provisions under consideration in this case are as follows:

2922	Oxygen-function amino-compounds: Amino-acids, other than those containing more than one kind of oxygen function, and their esters; salts thereof:	
2922.19		Other: Aromatic:
2922.19.09		Drugs
		* * *
2922	Oxygen-function amino-compounds:	
2922.50		Amino-alcohol-phenols, amino-acid-phenols and other amino-compounds with oxygen function: Aromatic:
2922.50.14		Other: Drugs
		* * *

General Note 13 to the HTSUS, states, in relevant part:

> *Pharmaceutical products*. Whenever a rate of duty of "Free" followed by the symbol "K" in parentheses appears in the "Special" subcolumn for a heading or subheading, any product (by whatever name known) classifiable in such provision which is the product of a country eligible for tariff treatment under column 1 shall be entered free of duty, *provided* that such product is included in the pharmaceutical appendix to the tariff schedule. Products in the pharmaceutical appendix include the salts,

esters and hydrates of the International Non-proprietary Names (INN) products enumerated in table 1 of the appendix that contain in their names any of the prefixes or suffixes listed in table 2 of the appendix, *provided* that any such salt, ester or hydrate is classifiable in the same 6-digit tariff provision as the relevant product enumerated in table 1.

Table 1 provides:

This table enumerates products described by International Non-proprietary Names INN which shall be entered free of duty under general note 13 to the tariff schedule. The Chemical Abstracts Service CAS registry numbers also set forth in this table are included to assist in the identification of the products concerned. For purposes of the tariff schedule, any references to a product enumerated in this table includes such product by such product by whatever name known.

Table 2 provides:

Sales, esters and hydrates of the products enumerated in table 1 above that contain in their names any of the prefixes or suffixes listed below shall also be entered free of duty under general note 13 to the tariff schedule, *provided* that any such salt, ester or hydrate is classifiable in the same 6-digit tariff provision as the relevant product enumerated in table 1. For purposes of the tariff schedule, any reference to a product covered by this table includes such product by whatever name known.

Chapter Note 1(a) to Chapter 29, HTSUS, states, in pertinent part, "Except where the context otherwise requires, the headings of this chapter apply only to: (a) Separately defined organic compounds, whether or not containing impurities."

Note 4 to Chapter 29, HTSUS states that for purposes of heading 2922, HTSUS, oxygen-function is restricted to the functions (the characteristic organic oxygen-containing groups) referred to in headings 2905 to 2920, HTSUS.

Chapter Note 5(c)(1) to Chapter 29 states that:

Subject to Note 1 to Section VI and Note 2 to Chapter 28

(1) Inorganic salts of organic compounds such as acid-, phenol- or encl-function compounds or organic bases, of sub-Chapters I to X or heading 29.42, are to be classified in the heading appropriate to the organic compound.

In interpreting the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") may be utilized. The ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

According to the ENs of heading 29.22:

The term "oxygen-function amino-compounds" means amino-compounds which contain, in addition to an amine function, one or more of the oxygen functions defined in Note 4 to Chapter 29 (alcohol, ether, phenol, acetal, aldehyde, ketone, etc., functions), as well as their organic and inorganic acid esters. This heading therefore covers amino-compounds which are substitution derivatives of amines containing oxygen functions of headings 29.05 to 29.20, and esters and salts thereof

For subheadings 2922.11 to 2922.50, the ENs further state:

> For subheading classification purposes, ether or organic or inorganic acid ester functions are regarded either as alcohol, phenol or acid functions, depending on the position of the oxygen function in relation to the amine group. In these cases, only those oxygen functions present in that part of the molecule situated between the amine function and the oxygen atom of either the ether or the ester function should be taken into consideration. A segment containing an amine function is referred to as a "parent" segment. For example, in the compound 3-(2-aminoethoxy)propionic acid, the parent segment is aminoethanol, and the carboxylic acid group is disregarded for classification purposes; as an ether of an amino-alcohol, this compound is classifiable in subheading 2922.19.

Additionally, the World Customs Organization ("WCO") INN DCI list[4] classifies propafenone in the six-digit heading 2922.19.

* * *

There is no dispute that propafenone hydrochloride is properly classified under heading 2922, HTSUS. Based on its chemical structure, propafenone hydrochloride is an oxygen-function amino compound. As described in CBP laboratory report NY20190073, propafenone hydrochloride is a whole with the several oxygen function groups: ketone, ether, phenol, and hydroxyl. Additionally, since propafenone hydrochloride is an inorganic salt of the organic compound propafenone, it satisfies the conditions of Chapter 29 Note 5(c)(1), and it is classified in the same six digit heading as propafenone, 2922.19, HTSUS. As stated in the lab report, propafenone hydrochloride is aromatic. Thus, it is properly classified in subheading 2922.19.09, HTSUS, which provides for "Oxygen-function amino-compounds: Amino-alcohols, other than those containing more than one kind of oxygen function, their ethers and esters: salts thereof: Other: Aromatic: Drugs."

Classification under heading 2922.50, HTSUS is inappropriate because propafenone hydrochloride is an inorganic salt of the organic compound propafenone. As noted, Note 5(c)(1) and the ENs to Chapter 29 dictate that inorganic salts are classified under the same six digit heading as their organic compound, precluding classification in subheading 2922.50.14, HTSUS.

Under General Note 13 to the HTSUS, products listed in the Pharmaceutical Appendix of the HTSUS may be subject to a special duty rate of "free" when the symbol "K" appears in the "Special Duty" column for the applicable subheading of the product. Table 1 of the Pharmaceutical Appendix lists out the INNs of drugs that are covered under the special duty rate when the letter "K" appears. Table 2 covers any salts, esters, and hydrates of products enumerated in Table 1, so long as the salt, ester, or hydrate is classifiable in the same six-digit tariff provision as the product enumerated in Table 1.

As noted, propafenone hydrochloride is a salt of the product propafenone. Propafenone is listed in Table 1 of the Pharmaceutical Appendix. The suffix hydrochloride is listed in Table 2 of the Appendix. Special duty rate symbol "K" appears with subheading 2922.19.09, HTSUS. Propafenone hydrochloride may be entered duty free under General Note 13 because its INN is listed in Table 1 of the Pharmaceutical Appendix, and its suffix is covered in Table 2 of the Appendix.

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[4] The WCO INN DCI list represents classifications of International Nonproprietary Names (INN) pharmaceutical substances adopted by the Harmonized System Committee.

HOLDING:

By application of GRI 1, propafenone hydrochloride is classified in subheading 2922.19.09, HTSUS, which provides for "Oxygen-function amino-compounds: Amino-alcohols, other than those containing more than one kind of oxygen function, their ethers and esters: salts thereof: Other: Aromatic: Drugs." The 2024 column one, duty rate is 6.5% ad valorem. However, propafenone hydrochloride is subject to the column two, special duty rate of "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 at *https://hts.usitc.gov/current*.

EFFECT ON OTHER RULINGS:

NY J81823, dated March 12, 2003, NY 891019, dated November 5, 1993, and NY 810507, dated May 26, 1995, are hereby MODIFIED.

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

cc: Ms. Joan von Doehren
Interchem Corporation
120 Rt. 17 North, Suite 115
Paramus, NJ 07652

PROPOSED MODIFICATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN EARRINGS WITH CUBIC ZIRCONIA

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

ACTION: Notice of proposed modification of one ruling letter and proposed revocation of treatment relating to the tariff classification of certain earrings with cubic zirconia.

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

DATE: Comments must be received on or before February 28, 2025.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Shannon L. Stillwell, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. CBP is also allowing commenters to submit electronic comments to the following email address: *1625Comments@cbp.dhs.gov*. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Arrangements to inspect submitted comments should be made in advance by calling Ms. Shannon L. Stillwell at (202) 325–0739 or via email at shannon.l.stillwell@cbp.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Michele A. Boyd, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0136.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of earrings with cubic zirconia. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N310000, dated March 10, 2020 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY N310000, CBP classified nine pairs of earrings with cubic zirconia in heading 7117, HTSUS. Pairs of earrings identified as "3," "7," and "8" were classified in subheading 7117.19.9000, HTSUSA (Annotated), which provides for "Imitation jewelry: Of base metal, whether or not plated with precious metal: Other: Other: Other." The pairs of earrings identified as "1," "2," and "6" were classified in

subheading 7117.90.9000, HTSUSA, which provides for "Imitation jewelry: Other: Other: Other: Other;" and the pairs of earrings identified as "4," "5," and "9," in subheading 7117.90.7500, HTSUSA, which provides for "Imitation Jewelry: Other: Other: Valued over 20 cents per dozen pieces or parts: Other: Of plastics." CBP has reviewed NY N310000 and has determined the ruling letter to be in error. It is now CBP's position the pair of earrings identified as "9" are properly classified, in heading 7116, HTSUS, specifically in subheading 7116.20.0500, HTSUSA, which provides for "Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Articles of jewelry: Valued not over $40 per piece: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N310000 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H328582, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

N310000
March 10, 2020
CLA-2–71:OT:RR:NC:N4:462
CATEGORY: Classification
TARIFF NO.: 7117.19.9000; 7117.90.7500;
7117.90.9000; 9903.88.15

VANESSA BRACERO
THE JEWELRY GROUP, INC.
1411 BROADWAY
NEW YORK, NEW YORK 10018

RE: The tariff classification of a multiple earring pack from China.

DEAR MS. BRACERO:

In your letter dated February, 2020, on behalf of The Jewelry Group, you requested a tariff classification ruling. A sample and description were provided. The sample will be returned in accordance with your request.

The item, identified as style number "A2010GLD - PE SET9 PRS STD, FH, HP – IGLD/CRYS/JET," is a multiple earring pack. The earring pack consists of nine pairs of earrings.

Three pairs of earrings are made of base metal. Of these, one pair are hoops, identified as "8," the second pair, identified as "7," are shaped like an icicle, and the third, identified as "3," are cone-shaped.

Three pairs of earrings are made of base metal with glass stones. Of these, one pair, identified as "1," are comprised of one glass stone (each), the second pair, identified as "6," are heart-shaped with small glass stones, and the third pair, identified as "2," are circular with small glass stones.

Three pairs of earrings are base metal with plastic. Of these, one pair, identified as "4," are yellow and black and are heart-shaped, the second pair, identified as "9," are red and are heart-shaped with a small cubic zirconia (CZ) on the back of the earrings, the third pair of earrings, identified as "5," are black and round.

You state in your letter that you believe that the earring set should be classified at 7116.20.0500 Harmonized Tariff Schedule of the United States (HTSUS) with a duty rate of 3.3% ad valorem. We do not agree with your suggested classification as the subject merchandise is considered "imitation jewelry." Heading 7116, HTSUS provides for articles of precious or semi-precious stones. While one of the nine pairs of earrings, identified as "9," contains a small cubic zirconia (CZ), a semi-precious stone, on the back of each earring, the CZ does not adorn the wearer, and thus it is not considered in the classification analysis. Therefore, the earrings are prima facie classifiable under heading 7117.

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 Explanatory Notes (ENs) to the HTSUS constitute the official interpretation of the tariff at the international level. EN VIII to GRI 3(b) provides: "the factor which determines essential character will vary as between differ-

ent kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods." When the essential character of a composite good can be determined, the whole product is classified as if it consisted only of the material or component that imparts the essential character to the composite good.

The applicable subheading for the base metal earrings, identified as "3," "7," and "8," will be 7117.19.9000, HTSUS, which provides for "Imitation jewelry: Of base metal, whether or not plated with precious metal: Other: Other: Other." The rate of duty will be 11% ad valorem.

The earrings, identified as "1," "2," and "6," are composite goods of base metal and glass. In this instance, the glass clearly provides the primary visual appeal. Accordingly, it is our opinion that the glass imparts the essential character. The applicable subheading for these items will be 7117.90.9000, HTSUS, which provides for "Imitation Jewelry: Other: Other: Other: Other." The rate of duty will be 11% ad valorem.

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheadings, 7117.19.9000 and 7117.90.9000, HTSUS, unless specifically excluded, are subject to an additional 7.5 percent ad valorem rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.15, in addition to subheadings 7117.19.9000 and 7117.90.9000, HTSUS listed above.

The earrings, identified as "4," "5," and "9," are composite goods of base metal and plastic. In this instance, the plastic stones clearly provide the primary visual appeal. Therefore, it is our opinion that the plastic stones impart the essential character. The applicable subheading for these items will be 7117.90.7500, HTSUS, which provides for "Imitation jewelry: Other: Other: Valued over 20 cents per dozen pieces or parts: Other: Of plastics." 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 the World Wide Web at https://hts.usitc.gov/current.

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, please contact National Import Specialist Sandra Sary at sandra.sary@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

HQ H328582
OT:RR:CTF:CPMMA H328582 MAB
CATEGORY: Classification
TARIFF NO.: 7116.20.05

MS. VANESSA BRACERO
THE JEWELRY GROUP, INC.
1411 BROADWAY
NEW YORK, NEW YORK 10018

RE: Modification of NY N310000; classification of earrings with cubic zirconia from China

DEAR MS. BRACERO:

This letter is in reference to New York Ruling Letter ("NY") N310000, dated March 10, 2020, in which the U.S. Customs and Border Protection ("CBP") classified a multiple earring pack consisting of nine pairs of earrings, one pair of which has a small cubic zirconium on the back of each earring, in various subheadings under heading 7117, Harmonized Tariff Schedule of the United States (HTSUS)(2020), which provides for "imitation jewelry."

After reviewing this ruling, we believe that it is partly erroneous. For the reasons set forth below, we hereby modify NY N310000.

FACTS:

In NY N310000, CBP described the nine pairs of earrings in the multiple earring pack as follows:

> The item, identified as style number "A201GLD – PE SET9 PRS STD, FH, HP – IGLD/CRYS/JET," is a multiple earring pack. The earring pack consists of nine pairs of earrings.
>
> Three pairs of earrings are made of base metal. Of these, one pair are hoops, identified as "8," the second pair, identified as "7," are shaped like an icicle, and the third, identified as "3," are cone-shaped.
>
> Three pairs of earrings are made of base metal with glass stones. Of these, one pair, identified as "1," are comprised of one glass stone (each), the second pair, identified as "6," are heart-shaped with small glass stones, and the third pair, identified as "2," are circular with small glass stones.
>
> Three pairs of earrings are base metal with plastic. Of these, one pair, identified as "4," are yellow and black and are heart-shaped, the second pair, identified as "9," are red and are heart-shaped with a small cubic zirconia (CZ) on the back of the earrings, the third pair of earrings, identified as "5," are black and round.

CBP classified all nine pairs of earrings in heading 7117, HTSUS, as imitation jewelry. Specifically, CBP classified the pairs of earrings identified as "3," "7," and "8," in subheading 7117.19.9000, HTSUSA ("Annotated"), which provides for Imitation jewelry: Of base metal, whether or not plated with precious metal: Other: Other: Other;" the pairs of earrings identified as "1," "2," and "6," in subheading 7117.90.9000, HTSUSA, which provides for "Imitation jewelry: Other: Other: Other: Other;" and the pairs of earrings identified as "4," "5," and "9," in subheading 7117.90.7500, HTSUSA, which provides for "Imitation Jewelry: Other: Other: Valued over 20 cents per dozen pieces or parts: Other: Of plastics."

ISSUE:

Whether the pair of earrings with cubic zirconia (identified as "9") is properly classified in heading 7116, HTSUS, as articles of semi-precious stones or in heading 7117, HTSUS, as imitation jewelry.

LAW AND ANALYSIS:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides, in pertinent part, that "for legal purposes, classification shall be determined according to terms of the headings and any relative section or chapter notes [.]" If 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 in order.

The 2024 HTSUS provisions under consideration are as follows:

7116	Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed):
7116.20	Of precious or semiprecious stones (natural, synthetic or reconstructed):
	Articles of jewelry:
7116.20.05	Valued not over $40 per piece
7117	Imitation jewelry:
7117.90	Other:
	Other:
	Valued over 20 cents per dozen pieces or parts:
	Other:
7117.90.75	Of plastics

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

EN 71.16 states, in relevant part, as follows:

> This heading covers all articles (**other than** those **excluded** by Notes 2 (B) and 3 to this Chapter), wholly of natural or cultured pearls, precious or semi-precious stones, or consisting partly of natural or cultured pearls or precious or semi-precious stones, but **not** containing precious metals or metals clad with precious metal (**except** as minor constituents) (see Note 2 (B) to this Chapter).
>
> It thus includes:
>
> (A) **Articles of personal adornment and other decorated articles** (e.g., clasps and frames for handbags, etc.; combs, brushes; ear-rings; cuff-links, dress-studs and the like) containing natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed), set or mounted on base metal (whether or not plated with precious metal), ivory, wood, plastics, etc.

With respect to the tariff term "semi-precious stone," EN 71.04 states as follows:

> These stones are used for the same purposes as the natural precious or semi-precious stones of the two preceding headings.
>
> (A) **Synthetic precious and semi-precious stones**. This expression covers a range of chemically produced stones which either:
>
> - have essentially the same chemical composition and crystal structure as a particular natural stone (e.g., ruby, sapphire, emerald, industrial diamond, piezo-electric quartz); or
> - because of their colour, brilliance, resistance to deterioration, and hardness are used by jewellers, goldsmiths and silversmiths in place of natural precious or semi-precious stones, even if they do not have the same chemical composition and crystal structure as the stones which they resemble, e.g., yttrium aluminium garnet and synthetic cubic zirconia, both of which are used to imitate diamond.

In NY N310000, six of the pairs of earrings under consideration were composite goods, consisting of at least two different materials, including the pair of earrings identified as "9" (consisting of base metal, plastic, and cubic zirconia). According to GRI 3(b), most composite goods are classified "as if they consisted of the material or component which gives them their essential character..." The term 'essential character,' refers to "the attribute which strongly marks or serve to distinguish what an article is; that which is indispensable to the structure, core or condition of the article." *See* Headquarters Ruling Letter ("HQ") 956538, dated Nov. 29, 1994. In NY N310000, CBP determined that the essential character of the pair of earrings made of base metal and plastic with a small cubic zirconium on the back of each earring (identified as "9"), was imparted by the plastic stones as they provided the primary visual appeal.[1] Pursuant to GRI 3(b), this pair of earrings was classified under heading 7117, HTSUS, as "imitation jewelry."[2]

We now find that the application of GRI 3 to the pair of earrings identified as "9" was in error. While most composite goods are classified according to GRI 3, its application here is unnecessary. Pursuant to the relevant heading terms and corresponding ENs, this merchandise is classified by application of GRI 1.

Thus, we now consider whether the pair of earrings (identified as "9") with a small cubic zirconium on the back of each earring is *prima facie* classifiable in heading 7116, HTSUS, which provides, *inter alia*, for articles of semi-precious stones. Note 2(b) to chapter 71 states as follows:

> Heading 7116 does not cover articles containing precious metal or metal clad with precious metal (other than as minor constituents).

According to the plain language of heading 7116, HTSUS, and the above-cited excerpt from EN 71.16, heading 7116, HTSUS, applies to articles of

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[1] We note that in NY N310000, CBP stated the following: "While one of the nine pairs of earrings, identified as "9," contains a small cubic zirconia (CZ), a semi-precious stone, on the back of each earring, the CZ does not adorn the wearer, and thus it is not considered in the classification analysis. Therefore, the earrings are prima facie classifiable under heading 7117."

[2] In particular, the pair of earrings identified as "9" was classified in subheading 7117.90.7500, HTSUSA, which provides for "Imitation jewelry: Other: Other: Valued over 20 cents per dozen pieces or parts: Other: Of plastics."

personal adornment that contain precious or semi-precious stones. The tariff term "semi-precious stone" is not defined in the HTSUS, but EN 71.04 identifies cubic zirconia as an example of such. It is CBP's position, consistent both with EN 71.04 and with lexicographic sources, that cubic zirconia qualifies as a semi-precious stone for tariff classification purposes.[3] *See* HQ H007655, dated September 28, 2007 (citing EN 71.04 and Merriam Webster Dictionary in deeming cubic zirconia a semi-precious stone); HQ H063616, dated July 27, 2016; HQ 950769, dated December 31, 1991; NY N270890, dated December 3, 2015; and NY N270428, dated November 12, 2015. An article of personal adornment to which at least one cubic zirconia is affixed can therefore be described as a product of heading 7116, HTSUS. *See also* HQ H007655; HQ 063616; NY N270890; NY N270428; and NY N264240, dated May 11, 2015 (all of which classify articles containing single cubic zirconia stones in heading 7116).

Here, as stated in NY N310000, the pair of earrings identified as "9," has a small cubic zirconium on the back of each earring.[4] Moreover, it is undisputed that the pair of earrings, while made primarily of base metal, does not contain any precious metal. Therefore, in accordance with note 2(b) to chapter 71, the above-cited ENs, and CBP precedent, the pair of earrings identified as "9," with a small cubic zirconium on the back of each earring, can be described as an article of semi-precious stones within the meaning of heading 7116, HTSUS, and is *prima facie* classifiable there. We note that the remaining eight pairs of earrings, which do not contain cubic zirconia or any other type of precious or semi-precious stone, are not classifiable in heading 7116, HTSUS.

We next consider whether the subject pair of earrings with a small cubic zirconium on the back of each earring may be classifiable in heading 7117, HTSUS, which provides for imitation jewelry. Note 11 to chapter 71 states as follows:

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

EN 71.17 states, in pertinent part, as follows:

> For the purposes of this heading, the expression **imitation jewelry** , as defined in Note 11 to this Chapter, is restricted to small objects of personal adornment...**provided** they do not incorporate precious metal or metal clad with precious metal (except as plating or as minor constituents as defined in Note 2 (A) to this Chapter, e.g., monograms, ferrules and

[3] It is well-established that when a tariff term is not defined by the HTSUS or its legislative history, its correct meaning is its common or commercial meaning, which can be ascertained through reference to "dictionaries, scientific authorities, and other reliable information sources and 'lexicographic and other materials." *See Rocknell Fastener, Inc. v. United States*, 267 F.3d 1354 (Fed. Cir. 2001).

[4] NY N310000, states the following: "... one of the nine pairs of earrings, identified as "9," contains a small cubic zirconia (CZ), a semi-precious stone, on the back of each earring..." *See* page 1.

rims) nor natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed).

Pursuant to note 11 to chapter 71, as explained in EN 71.17, articles to which one or more precious or semi-precious stones are affixed cannot be described as imitation jewelry within the meaning of heading 7117, HTSUS. It is therefore CBP's position that such articles, including those incorporating cubic zirconia stones, are not classifiable in heading 7117. *See* HQ H007655, *supra* (ruling that necklaces and bracelets containing cubic zirconia stones are excluded from heading 7117 by application of note 11 to chapter 71); *see also* HQ 959831, dated April 1, 1997 ("The wax castings with diamonds or precious stones are excluded from classification in heading 7117 by virtue of chapter note 11, since they contain precious stones."); and NY N125019, dated October 14, 2010 ("By application of Legal Note 11 to Chapter 71, HTSUS, the subject merchandise containing a semi-precious "synthetic gemstone of CZ" is excluded from heading 7117, HTSUS.").

Here, as discussed above, the pair of earrings identified as "9" in the multiple earring pack at issue contains cubic zirconia, which is a semi-precious stone. It cannot be described as imitation jewelry within the meaning of heading 7117, HTSUS, and accordingly cannot be classified in this heading. We note that the remaining eight pairs of earrings in the multiple earring pack which do not contain any precious or semi-precious stones, are properly classified in heading 7117, HTSUS.

HOLDING:

By application of GRI 1, the pair of earrings identified as "9" in the multiple earring pack is properly classified in heading 7116, HTSUS, specifically in subheading 7116.20.0500, HTSUSA, which provides for: "Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Articles of jewelry: Valued not over $40 per piece: Other." The 2024 column one general rate of duty is 3.3% *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 https://hts.usitc.gov/.

EFFECT ON OTHER RULINGS:

New York Ruling Letter N310000, dated March 10, 2020, is hereby MODIFIED as set forth above with respect to classification of the pair of earrings in the multiple earring pack identified as "9," but the classification of the remaining earrings in the multiple earring pack (i.e., "1," "2," "3," "4," "5," "6," "7," and "8") remains in effect.

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

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

DATES AND DRAFT AGENDA OF THE SEVENTY-FIFTH SESSION OF THE HARMONIZED SYSTEM COMMITTEE OF THE WORLD CUSTOMS ORGANIZATION

AGENCIES: 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 75th 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.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, (claudia.k.garver@cbp.dhs.gov), Attorney-Advisor, Tom Beris (tom.p.beris@cbp.dhs.gov), Attorney-Advisor, Nataline Viray-Fung, (nataline.viray-fung@cbp.dhs.gov), Attorney-Advisor, Office of Trade, Regulations and Rulings, U.S. Customs and Border Protection, or Daniel Shepherdson (daniel.shepherdson@usitc.gov), Senior Attorney-Advisor, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission.

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") is an international nomenclature system that forms the core of the U.S. tariff, the Harmonized Tariff Schedule of the United States.

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 taking classification decisions on the interpretation of the Harmonized System. Those decisions may be memorialized in 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 at the World Customs Organization in Brussels, Belgium. The 75th session of the HSC will take place Monday, March 10 2025, through Friday, March 21, 2025.

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 ("USITC"), jointly represent the U.S. U.S. Customs and Border Protection serves as the head of the delegation to 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 U.S. Customs and Border Protection or the USITC. Comments on agenda items may be directed to the above-listed individuals.

ELIZABETH JENIOR,
Acting Chief,
Electronics, Machinery, Automotive,
and International Nomenclature 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
-
75th Session
-

NC3287Ea

Brussels, 10 January 2025.

DRAFT AGENDA FOR THE 75TH SESSION OF THE HARMONIZED SYSTEM COMMITTEE

The HSC meeting will be conducted in-person from 10 March to 21 March 2025, with virtual report reading on 28 March 2025

From Wednesday 5 March 2025 (9.30 a.m.) to Friday 7 March 2025 Presessional Working Party (to examine the questions under Agenda Item VI).

Monday 10 March 2025 (10.00 a.m.) Adoption of the Report of the 65th Session of the HS Review Sub-Committee.

I.	**ADOPTION OF THE AGENDA**	
	1. Draft Agenda	NC3287Ea
	2. Draft Timetable	NC3288Ba
II.	**REPORT BY THE SECRETARIAT**	
	1. Position regarding Contracting Parties to the HS Convention, HS Recommendations and related matters	NC3289Ea
	2. Report on the last meeting of the Policy Commission (91st Session)), including a report on progress on the HS Study follow-up work project	NC3290Ea
	3. Approval of decisions taken by the Harmonized System Committee at its 74th Session	NC3286Ea
	4. Capacity building activities of the Nomenclature and Classification Sub-Directorate	NC3291Ea
	5. Co-operation with other international organizations	NC3292Ea
	6. New information provided on the WCO Web site	NC3293Ea
	7. Progress report on the use of working languages for HS-related matters	NC3294Ea
	8. Other	

For reasons of economy, documents are printed in limited number. Delegates are kindly asked to bring their copies to meetings and not to request additional copies.

III.	**GENERAL QUESTIONS**	
	1. Confidentiality requirements for the working documents	NC3295Ea
	2. Possible establishment of rules for the management of late submissions of requests or information to a meeting session	NC3296Ea
IV.	**REPORT OF THE SIENTIFIC SUB-COMMITTEE**	
	1. Report of the 40th Session of the Scientific Sub-Committee	
	2. Matters for decision	NC3297Ea
V.	**REPORT OF THE HS REVIEW SUB-COMMITTEE**	
	1. Report of the 65th Session of the HS Review Sub-Committee	NR1795Ec NR1795EAB1c
	2. Matters for decision	NC3298Ea
	3. Possible amendment of the Nomenclature in respect of certain categories of equipment used in the illicit manufacture of drugs (proposal by UN International Narcotics Control Board)	NC3299Ea
	4. Possible amendment to heading 21.06 in respect of meat and cheese substitutes (Proposal by the FAO)	NC3300Ea
	5. Possible amendment to the Nomenclature in respect of cell-cultured food products (Referred from HS Study inputs)	NC3301Ea
	6. Possible HS amendments to improve transparency in the trade flow of plastic products (Request by the WTO Dialogue on Plastic Pollution and Environmentally Sustainable Plastics Trade (DPP))	NC3302Ea
	7. Possible amendment to the Nomenclature and the Explanatory Notes in relation to immature soya beans (edamame) (Proposal by Japan)	NC3303Ea
	8. Possible amendment to HS 2028 concerning headings 40.03 and 40.04 (tyre recycling) (Proposal by the European Union)	NC3304Ea
	9. Possible amendment to Note 12 (b) (iii) to Chapter 85 in respect of MCPs (proposal by the EU)	NC3305Ea
	10. Possible amendment to heading 23.09 to specify preparations containing antimicrobial agents for non-veterinary medical use	NC3306Ea
VI.	**REPORT OF THE PRESESSIONAL WORKING PARTY**	
	1. Possible amendments to the Compendium of Classification Opinions consequential to the decisions taken by the Committee at its 74th Session	NC3307Ea

	Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify a product called "Powdered Cooked Chicken" in heading 02.10 (subheading 0210.99)	PRESENTATION_ Annex_A
	Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify a product called " " (sugar confectionary) in heading 17.01 (subheading 1701 .99)	PRESENTATION_ Annex_B
	Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify a product called "Roasted shelled mung beans" in heading 20.05 (subheading 2005.51)	PRESENTATION_ Annex_C
	Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify a snack product, made with chickpeas, peas and beans, called " — Bean Salt Snack" in heading 20.05 (subheading 2005.99)	PRESENTATION_ Annex_D
	Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify a product called " DESENSITIZING SPRAY FOR MEN" in heading 38.24 (subheading 3824.99)	PRESENTATION_ Annex_E
	Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify a marker for mineral oils called " " in heading 38.24 (subheading 3824.99)	PRESENTATION_ Annex_F
	Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify air coolers in heading 84.15 (subheading 8415.90)	PRESENTATION_ Annex_G
	Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify a CPU cooling device ( ) in heading 84.73 (subheading 8473.30)	PRESENTATION_ Annex_H
	Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify an "asphalt material transfer vehicle" in heading 84.79 (subheading 8479.10)	PRESENTATION_ Annex_IJ
	Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify a product (" ") used for personal light therapy in heading 85.43 (subheading 8543.70)	PRESENTATION_ Annex_K
	Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify a product called "self-propelled concrete mixer with self-loading function - Model " in heading 87.05 (subheading 8705.40)	PRESENTATION_ Annex_L
	Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify products referred to as Air Spring models (reversible sleeve style) and (convoluted style) in heading 87.16 (subheading 8716.90)	PRESENTATION_ Annex_M

	Possible amendment to the Compendium of Classification Opinions to reflect the decision to classify a blood pressure monitor for home use in heading 90.18 (subheading 9018.19)	PRESENTATION_ Annex_N
VII.	**REQUESTS FOR RE-EXAMINATION (RESERVATIONS)**	
	1. Re-examination of the classification of a product called "6-outlet grounded power strip" (Requests by the Russian Federation and the United States)	NC3308Ea
	2. Re-examination of the classification of hard capsule filling machines (Request by the Russian Federation)	NC3309Ea
	3. Re-examination of the possible amendment to the Explanatory Notes to heading 22.02 (Request by Japan)	NC3310Ea
VIII.	**FURTHER STUDIES**	
	1. Possible amendment to the Explanatory Note to heading 56.03 with respect to the classification of some plastic products combined with textiles	NC3311Ea
	2. Classification of cell-cultured and precision fermented food products	NC3312Ea
	3. Possible amendment to the Explanatory Notes to heading 44.07 to clarify the classification of the name "White Lauan"	NC3313Ea
	4. Possible amendments to the Explanatory Notes to distinguish the products of headings 31.02 and 36.02	NC3314Ea
	5. Classification of displays (Request by Switzerland)	NC3315Ea
	6. Possible amendment to the Explanatory Note to heading 23.09 (Proposal by the EU)	NC3316Ea
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	8. Classification of two products called respectively "[redacted]" and "[redacted]citron and gingembre" (Request by Tunisia)	NC3318Ea
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19 CFR PARTS 113 AND 123

RIN 1651–AB52

AUTOMATED COMMERCIAL ENVIRONMENT (ACE) ELECTRONIC EXPORT MANIFEST FOR RAIL CARGO

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes a new regulation pursuant to the Trade Act of 2002 requiring the submission of export manifest data electronically to U.S. Customs and Border Protection (CBP) in the Automated Commercial Environment (ACE) for cargo transported by rail for any train departing the United States. The proposed regulation would mandate the electronic transmission of rail export manifest information, identify the parties eligible to transmit information, and describe the time frames prior to departure of the train in which the information is due. This rule would enable CBP to address important cargo security concerns while providing efficiencies to the trade.

DATES: Comments must be received by March 14, 2025.

ADDRESSES: Please submit comments, identified by docket number, by the following method:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments via docket number USCBP–2024–0030.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read the plain language summary, background documents or comments received, go to *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the notice of proposed rulemaking. U.S. Customs and Border Protection (CBP) also invites comments that relate to any economic, environmental or federalism effects that might result from this proposal.

Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

II. Executive Summary

A. Purpose of the Automated Commercial Environment (ACE) Electronic Export Manifest for Rail Cargo

1. Need for the Regulatory Action

Current regulations are insufficient to adequately capture cargo data for rail shipments leaving the United States. CBP is proposing this rule to reduce the data gaps existing under current regulations, and to address important cargo security concerns resulting from incomplete data. This proposed rule will apply to all rail cargo exports and provide efficiencies to the trade. CBP does not presently require the pre-departure electronic submission of data for all exported cargo as it does for imported cargo. This can result in a threat to cargo and broader U.S. national security because CBP has no regulation prescribing any method or means of review for cargo being exported by rail. The electronically transmitted cargo data that is submitted prior to departing the United States by rail is limited significantly in its scope. Currently, 19 CFR 192.14 requires a U.S. Principal Party in Interest (USPPI), the USPPI's agent, or the authorized filing agent of a Foreign Principal Party in Interest (FPPI) to transmit Electronic Export Information (EEI) to CBP through the Automated Commercial Environment (ACE). While this pre-departure data is helpful, EEI is generally only required by the Bureau of Census regulations on shipments that exceed $2,500 per Schedule B number and is not generally required for shipments to Canada, unless certain controlled items are involved or the shipment is being transshipped to another destination. 15 CFR parts 30 and 758. Because of these limitations, there is a significant lack of electronic manifest data which inhibits the enforcement efforts by CBP for such exports because of the gaps

in information. The proposed regulation would create an integrated pre-departure electronic export manifest which includes receiving advance information for risk assessment purposes from the source most likely to have correct information about the cargo. This proposed regulation closes the gap which currently exists and requires all information to be manifested which enhances the security of the rail cargo and aligns the security of exported rail cargo with the regulations that are required of rail cargo imported into the United States.

2. Statement of Legal Authority

CBP is authorized to promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-authorized electronic data interchange (EDI) system before the cargo arrives or departs the United States by any mode of commercial transportation (sea, air, rail, or truck). Section 343(a) of the Trade Act of 2002, as amended (Trade Act) (19 U.S.C. 1415). The required cargo information is reasonably necessary to enable CBP to identify high-risk shipments for purposes of ensuring cargo safety and security, including compliance with export controls; preventing smuggling; and commercial risk assessment targeting, pursuant to the laws enforced and administered by CBP. 19 U.S.C. 1415(a)(3)(F). CBP needs to obtain timely and sufficient data prior to cargo arriving or departing the United States via any mode of commercial transportation in order to review and conduct risk assessment to identify high-risk shipments and inspect cargo effectively.

B. Summary of the Major Provisions of ACE EEM for Rail Cargo

This proposed rule would mandate the transmission of EEM data in addition to the EEI data required under 15 CFR part 30 for all cargo prior to departing the United States for Canada and Mexico in the rail environment in lieu of paper submissions. The new regulation that CBP is seeking to promulgate is proposed 19 CFR 123.93 which would mandate the electronic transmission of rail export manifest information, identify the parties eligible to transmit information, describe the time frames prior to departure of the train in which the information is due, and identify an initial filing that must occur 24 hours prior to departure from the port of export while requiring the remaining data to be transmitted at least two hours prior to such departure. The proposed regulation designates information as transportation data, cargo data, or empty container data, and lists the data elements to be transmitted while calling them out as mandatory, conditional, or optional. The data elements that are identified as mandatory must be submitted, while elements identified as condi-

tional shall be submitted if available, and optional elements may be provided at the discretion of the filers. These elements allow for CBP to inspect cargo effectively, ensure compliance with U.S. export control laws and regulations and identify high-risk shipments for purposes of ensuring cargo safety and security.

CBP proposes adding 19 CFR 123.93(c) which identifies the parties that can file the cargo and conveyance data. The outbound carrier is responsible for transmitting the export manifest transportation data and empty container data. If no other party elects to transmit the initial filing data and the export manifest cargo data, then the outbound carrier must transmit this data. If another eligible party elects to transmit either the initial filing data or export manifest cargo data, the outbound carrier may also choose to, but is not required to transmit such data. Other eligible parties include USPPI and FPPI, as defined by the provisions of section 30.1 of the FTR of the Department of Commerce, Bureau of the Census (15 CFR 30.1), or its authorized agent. Other eligible filers also include any other party with direct knowledge of the export information, such as a customs broker, Automated Broker Interface (ABI) filer, NVOCC as defined by 19 CFR 4.7(b)(3)(ii), or a freight forwarder as defined in 19 CFR 112.1. If another party does not transmit advance export information, the party that arranges for and/or delivers the cargo to the outbound carrier must fully disclose and present to the outbound carrier the data elements for the initial filing.

Proposed 19 CFR 123.93(d) requires a mandatory initial filing of seven data elements identified below to be submitted 24 hours prior to departure to a foreign port, by either the carrier, USPPI, or other qualified parties or their authorized agents. The results of the test have shown that some rail carriers would have the export manifest data available days in advance prior to departure and therefore would have all the necessary information to submit the initial filing data to CBP and all other export manifest data well in advance of the 24-hour prior to departure deadlines. Except for the initial data elements, CBP would require electronic export manifest information in sections 123.93(e), and (f) to be transmitted two hours prior to train departure to a foreign port from the final U.S. port.

Proposed 19 CFR 123.93(g) provides for two types of referrals that may be issued by CBP after a risk assessment of an outbound export manifest data transmission. Should any rail cargo be identified by CBP as requiring review, the cargo will be held until required additional information related to the shipment is submitted or some other appropriate action is taken, as specified by CBP. Once the cargo is cleared for loading, a release message will be generated and trans-

mitted to the filer. In addition to holds, 19 CFR 123.93(h) would provide for procedures for when a CBP officer determines during the review that cargo or a rail car may contain a potential threat to the train and its vicinity, so that a Do-Not-Load (DNL) instruction can be issued, which prohibits the rail carrier from transporting that cargo or rail car so that further examination can be conducted. These examinations allow for CBP to secure the cargo, conduct risk assessment, and inspect cargo effectively.

As an enforcement tool, CBP is also proposing changes to the relevant bond provisions in 19 CFR 113.62 (basic importation and entry bond), 19 CFR 113.63 (basic custodial bond), and 19 CFR 113.64 (International carrier bond) to provide CBP with authority to impose liquidated damages on parties that do not provide the mandatory EEM data in the manner and in the time frame required. Specifically, CBP proposes to amend 19 CFR 113.62 to add new paragraph (k)(3), amend 19 CFR 113.63 and 19 CFR 113.64, in order to address electronically provided outbound information in the time frame required as they currently address electronic transmissions for merchandise or cargo which is inbound. With each of these regulations, CBP may assess liquidated damages if a violation occurs. CBP's primary goal is compliance and CBP seeks to work alongside rail carriers and other parties to ensure that the proper data is provided in a timely manner, for CBP to properly review the data, conduct risk assessment of high-risk shipments, and enforce U.S. export laws and regulations on U.S. rail exports.

For CBP, the proposed requirement to submit an electronic export manifest will enhance cargo security in that it would allow for improvements in risk assessment capabilities by allowing CBP to use its Automated Targeting System (ATS) to screen all of the data submitted. Port operations will enjoy considerable efficiencies through the elimination of paper manifests. Storage space currently reserved for manifest documents will be freed. Coordination and information exchange among CBP, the Department of Commerce, and other Government agencies with export jurisdiction will improve. Carriers, USPPIs, non-vessel operating common carriers (NVOCC), and other interested parties who transmit information will receive better and more rapid examination decisions from CBP and improved communication between CBP and trade members. The trade will benefit further through the ease of making information corrections and additions electronically in contradiction to the process that is required with paper submissions which is more time consuming to manually complete, distribute, edit and transmit in addition to the storage required for paper submissions. These benefits, including targeting

which is necessary for security purposes, outweigh the flexibility of allowing parties to file submissions either by paper or electronically.

C. Costs and Benefits

CBP anticipates that during the time period of analysis including the test period and the regulatory period (2016–2030), this proposed rule would result in costs, cost savings and benefits to CBP and trade members engaging in exporting merchandise out of the United States in the rail environment.[1] CBP estimates present value total costs to CBP and trade members would be around $9.3 million using a two percent discount rate, or $0.7 million annualized. CBP identified some other potential costs from this proposed rule, but CBP was unable to monetize these costs, including time burdens to CBP officers if the proposed rule results in additional cargo examinations and trade members participating in the rail EEM would also need to adjust business practices, be required to hold or obtain a qualifying bond, be required to have staff available 24 hours a day 7 days a week to respond to CBP questions and pay liquidated damages for any violations. Present value total cost savings to CBP and trade members are expected to be around $59.1 million using a two percent discount rate, or $4.6 million annualized. CBP expects that there would be additional cost savings to trade members that CBP was unable to monetize such as reduced paper, printing and storage costs related to paper forms, and reducing or eliminating instances where trains need to be deconstructed in order for CBP to examine cargo would typically results in a delay of up to 2 hours and results in around $3,000 in freight movement costs. CBP anticipates that benefits from this proposed rule would include improving CBP's security efforts by using ATS to conduct risk assessment on all rail exports, improving communication between Federal Agencies with export jurisdiction and improving efficiencies to participating trade members from transitioning from a paper to an electronic process. However, CBP was unable to monetize the expected benefits from this proposed rule. Present value total net costs from the implementation of this final rule would be around $49.8 million using a two percent discount rate, or approximately $3.9 million annualized.[2] Table 1 displays CBP's estimates for future annualized costs, costs savings, benefits,

[1] In the Regulatory Impact Analysis for this NPRM, CBP also discusses and provides estimates for the costs, cost savings and benefits compared to the baseline (prior to the introduction of the rail EEM test) during both the rail EEM test pilot period (2016–2025) and for the regulatory period (2026–2030).

[2] In the economic analysis for this proposed rule, CBP used a 2% discount rate for estimated future quantified and monetized costs, costs savings and benefits based on guidance from OMB Circular A–4 (*https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf*).

and net costs from this proposed rule using a two percent discount rate over the period of analysis (2016–2030).

Table 1. Estimated Annualized Cost, Cost Savings, Benefits using 2% Discount Rate (2016–2030) (thousands U.S. dollars)

Costs	
Annualized monetized costs	$726,156
Annualized quantified, but non-monetized costs	None
Qualitative (non-quantified) costs	If additional cargo examinations occur estimated cost to CBP would be around $101.44 per additional exam.
	Rail carriers and voluntary participants may have to adjust business practices when moving from a paper to electronic process.[3]
	Bond required to participate.
	Rail carriers and voluntary participants must have someone available 24 hours a day 7 days a week to respond to CBP questions about data transmitted.
	Liquidated damages, $5,000 for each violation up to max of $100,000 per departure.
Cost Savings	
Annualized monetized cost savings	$4,601,091
Annualize quantified, but non-monetized cost savings	None
Qualitative (non-quantified) cost savings	Reduce paper, printing and storage costs related to paper forms.
	Rail carriers may avoid instances where trains need to be deconstructed in order for CBP to examine cargo, resulting in delays (1–2 hours) and freight movement costs ($3,000 per occurrence).
Benefits	
Annualized monetized benefits	None
Annualized quantified, but non-monetized benefits	None
Qualitative (non-quantified) benefits	Improve CBP's security efforts on rail exports, electronic data transmissions will allow CBP to use its ATS system to conduct risk assessment on all rail exports.[4]
	Gained efficiencies from trade by switching from paper to electronic data transmission.
	Improved communication among Federal Agencies with export iurisdiction.

[3] These costs to participants are discussed in further detail in the Regulatory Period Costs section in the Regulatory Impact Analysis below.

[4] Details on how CBP conducts targeting and risk assessment prior to this proposed rule using paper forms is discussed in the 'Baseline' section of the regulatory impact analysis for this proposed rule.

Net Costs	
	$3,874,935

III. Statutory Authority

Section 343(a) of the Trade Act of 2002, as amended (Trade Act) (19 U.S.C. 1415), authorizes CBP to promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-authorized electronic data interchange (EDI) system before the cargo is brought into or departs the United States by any mode of commercial transportation (sea, air, rail, or truck). The required cargo information is reasonably necessary to enable CBP to identify high-risk shipments for purposes of ensuring cargo safety and security, preventing smuggling, and commercial risk assessment targeting, pursuant to the laws enforced and administered by CBP. 19 U.S.C. 1415(a)(3)(F).

CBP consulted with carriers throughout the process of developing the proposed regulation and during the course of the ACE Export Manifest for Rail Cargo Test (*see* Section IV.B below) that has been administered since 2015. 19 U.S.C. 1415(a)(3)(A). As the statute requires, the proposed regulation imposes requirements on the party most likely to have direct knowledge of information to be provided. When requiring information from the party with direct knowledge of that information is not practicable, the regulations take into account how, under ordinary commercial practices, information is acquired by the party on which the requirement is imposed, and whether and how such party is able to verify the information. Where information is not reasonably verifiable by the party on which a requirement is imposed, the regulations shall permit that party to transmit information on the basis of what it reasonably believes to be true. 19 U.S.C. 1415(a)(3)(B). The proposed regulation that CBP is seeking to promulgate would require the submission of the export manifest data electronically in ACE for cargo transported by rail, pursuant to section 343(a), of the Trade Act of 2002, as amended. 19 U.S.C. 1415(a)(3)(E). The proposed regulation specifically avoids imposing requirements that are redundant with one another or that are redundant with requirements in other provisions of law, as seen below in Section VII.C. 19 U.S.C. 1415(a)(3)(I).

IV. Background

A. Current Regulations

Under the existing regulations, rail carriers are not required to submit a paper or electronic manifest for cargo exported from the United States by rail. CBP does have regulations which support the transmission of electronic export information (EEI) required by the Bureau of the Census Foreign Trade Regulations (FTR) or the Bureau of Industry and Security's Export Administration Regulations (EAR). Section 192.14 of title 19 of the Code of Federal Regulations (19 CFR 192.14) implements the requirements of the Trade Act regarding cargo departing the United States. Under 19 CFR 192.14, the U.S. Principal Party in Interest (USPPI) or its authorized agent or the authorized filing agent of the Foreign Principal Party in Interest (FPPI) is required to submit certain advance information to CBP for export cargo leaving the United States by rail.[5]

Under 19 CFR 192.14, the USPPI or its authorized agent must transmit and verify system acceptance of this EEI, generally no later than two hours prior to the arrival of the train at the border. *See* 19 CFR 192.14(b)(1)(iv). A rail carrier may not load cargo without first receiving from the USPPI or its authorized agent either the related EEI filing citation, covering all cargo for which the EEI is required, or exemption legends, covering cargo for which EEI need not be filed. *See* 19 CFR 192.14(c)(4)(i). While the rail carrier is not required to submit a rail cargo export manifest to CBP, the outbound rail carrier must annotate the carrier's outward manifest, waybill, or other export documentation with the applicable Automated Export System (AES) proof of filing, post departure, downtime, exclusion, or exemption citations, conforming to the approved data formats found in the Bureau of the Census FTR. *See* 15 CFR part 30.

The current regulations found in 19 CFR 192.14 also require the USPPI, the USPPI's authorized agent, or the authorized filing agent of the FPPI to electronically transmit to CBP through AES certain EEI. This information supports statistical gathering; however, it falls short of addressing important cargo security considerations to include almost all shipments with a value less than $2,500.00 per Schedule B number and shipments directed to Canada, other than those containing certain items controlled under the EAR or intended for transshipment through Canada, creating a gap in security which

[5] The USPPI is defined in the Bureau of the Census FTR as the person or legal entity in the United States that receives the primary benefit, monetary or otherwise, from the export transaction. Generally, that person or entity is the U.S. seller, manufacturer, or order party, or the foreign entity while in the United States when purchasing or obtaining the goods for export. 15 CFR 30.1.

the proposed regulation seeks to resolve by requiring information on all exports for rail cargo. CBP seeks to require the submission of manifest information providing CBP the opportunity to review and examine cargo such that high risk shipments such as narcotics, weapons or ammunition, including any that may not be subject to EEI filing requirements under the FTR or EAR, have a means of being discovered and withheld thereby enhancing the security of the United States. This proposed regulation will close that security gap by requiring compliance with the regulation in order to export the cargo as parties will have to provide electronic manifest information which CBP can screen and inspect for the safety of the United States and its neighboring countries. This proposed regulation also aligns with the regulation for rail cargo imported into the United States.

The transmission of EEI is a Bureau of the Census filing regulated by 15 CFR part 30 and, with few exceptions, only submitted when the value of merchandise is above $2,500.00 per Schedule B number. The requirement also does not apply to rail shipments bound for Canada unless such shipments contain certain export-controlled items or are destined for transshipment to third countries. This regulatory gap leaves many shipments outside of CBP security review. The lack of pre-departure information, which includes commodity information submitted by rail carriers into CBP targeting systems, hinders CBP's ability to conduct risk assessment and inspect cargo effectively to ensure compliance with U.S. export control laws and regulations. The proposed regulation would create an integrated pre-departure electronic export manifest which includes receiving advance information for risk assessment purposes from the source most likely to have correct information about the cargo.

Currently, for exporting purposes, each carrier submits a train consist in a format it develops and with the data elements that it believes should be reported. The train consist identifies what is on the train, the order of the train, and what the train is consisted of as it prepares to depart the country. These data elements provide export information similar to that required by the provisions of 19 CFR 123.91, which describes electronic information for rail cargo required in advance of arrival, and 19 CFR 123.6, which includes a train sheet for arriving railroad trains.

B. The ACE Export Manifest for Rail Cargo Test

On September 9, 2015, CBP published a general notice in the **Federal Register** (80 FR 54305) announcing the National Customs Automation Program (NCAP) Test for the transmission through ACE of Electronic Export Manifest (EEM) information for rail shipments,

the Automated Commercial Environment (ACE) Export Manifest for Rail Cargo Test ("Test"), which was limited to nine rail carriers.

1. The National Customs Automation Program

The NCAP was established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057, 2188 (1993) (Customs Modernization Act) (19 U.S.C. 1411–14). Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of ACE, the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions. CBP's modernization efforts are accomplished through phased releases of ACE component functionality.

In part, the Test has been used in furtherance of International Trade Data System (ITDS) key initiatives, set forth in section 405 of the Security and Accountability for Every Port Act of 2006, Public Law 109–347, 120 Stat. 1884, 1929–1931 (SAFE Port Act) (19 U.S.C. 1411(d)) and Executive Order 13659, Streamlining the Export/Import Process for America's Businesses, 79 FR 10655 (February 25, 2014). The purpose of ITDS, as stated in section 405, § 411(d)(1)(B) of the SAFE Port Act (19 U.S.C. 1411(d)(1)(B)), is to eliminate redundant information requirements, efficiently regulate the flow of commerce, and effectively enforce laws and regulations relating to international trade, by establishing a single portal system operated by CBP for the collection and distribution of standard electronic import and export data required by all participating Federal agencies. ACE was developed by CBP as the "single window" for the trade community to comply with the ITDS requirement established by the SAFE Port Act. *See* sec. 405, § 411(d)(1)(B) (19 U.S.C. 1411(d)(1)(B)).

2. Data Elements in the Test

The data elements as set forth in the original Test have been mandatory unless otherwise indicated below. The Test has required that five conditional data elements must be transmitted to CBP only if the particular information pertains to the shipment or cargo. The

data elements are required to be submitted at the lowest bill level. The data elements in the Test for all shipments, including empty rail cars, consist of:

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

If the empty indicator is no, then the following data elements must also be provided, as applicable:

(20) Bill of Lading Numbers (Master and House)
(21) Bill of Lading Type (Master, House, Simple or Sub)
(22) Number of House Bills of Lading
(23) Notify Party name and address (conditional)
(24) AES Internal Transaction Number or AES Exemption Statement (per shipment)
(25) Cargo Description
(26) Weight of Cargo (may be expressed in either pounds or kilograms)

(27) Quantity of Cargo and Unit of Measure
(28) Seal Number
(29) Split Shipment Indicator (Yes/No)
(30) Portion of split shipment (*e.g.,* 1 of 10, 4 of 10, 5 of 10—Final, etc.) (conditional)
(31) In-bond Number (conditional)
(32) Mexican Pedimento Number (only for shipments for export to Mexico) (conditional)

3. Test Expansion, Extension, Modification and Second Extension

On August 14, 2017, CBP extended the Test for an additional two-year period (82 FR 37893). At the same time, the Test began accepting additional applications for all parties that met the eligibility requirements of the original nine stakeholders composed of rail carriers. CBP consulted with the Commercial Customs Operations Advisory Committee (COAC) to address issues concerning the quality, accessibility, and timeliness of export manifest data received during the Test. One issue of concern was the availability of certain data elements required under the Test two hours prior to loading of the cargo on the train in preparation for departure from the United States. COAC urged CBP to change the filing condition of those data elements.

After evaluating the initial phase of the Test and considering COAC's comments, CBP determined that, to better test the functionality and feasibility of submitting the specified export data two hours prior to loading of the cargo on the train, the filing condition for nine of the data elements should be changed. The modified filing conditions enabled CBP to better determine the appropriate reporting requirements for each data element. Data elements which are "mandatory" must be provided to CBP for every shipment. Data elements which are "conditional" must be provided to CBP only if the particular information pertains to the cargo. Data elements which are "optional" may be provided to CBP but are not required.

CBP modified the Test to change the following eight mandatory or conditional data elements to optional:

- Mode of Transportation (containerized rail cargo or non-containerized rail cargo) (Data Element #1)
- Place where the carrier took possession (Data Element #14)
- Country of Ultimate Destination (Data Element #16)
- Equipment Type Code (Data Element #17)
- Number of House Bills of Lading (Data Element #22)

- Split Shipment Indicator (Data Element #29)
- Portion of Split Shipment (Data Element #30)
- Mexican Pedimento Number (Data Element #32)

CBP also modified the Test to change Data Element #10, Marks and Numbers, from mandatory to conditional.

The remaining data elements under the extended Test continued to be mandatory, conditional, or optional as provided in the September 9, 2015, notice, and as detailed in Section IV.B.2. above.

CBP identified in the expansion and modification of the Test that it would reevaluate the filing conditions for each data element to determine the feasibility of requiring that data element to be filed electronically in ACE within a specified time before the cargo is loaded on the train should CBP decide to conduct rulemaking. Accordingly, as discussed in more detail below, the proposed regulation changes the timing of presentation of most electronic export manifest data from two hours prior to loading on the train to two hours prior to departure of the train to a foreign port.

On April 27, 2022, CBP extended the Test for an additional two years. (87 FR 25037.)

V. Results of the Test, Modification, Expansion and Extensions

Since its inception, the Test has assessed the feasibility of requiring rail carriers to file export manifest data for which CBP did not have regulations established for specific data elements and obtained train consists in the format and manner in which the rail carriers chose to provide such elements. In addition, the Test has assessed the functionality regarding the filing of export manifest data for rail cargo electronically to ACE in furtherance of the ITDS initiatives described above. CBP also re-engineered AES to move it to the ACE platform. The re-engineering and incorporation of AES into ACE resulted in the creation of a single automated export processing platform for certain export manifest, commodity, licensing, export control, and export targeting transactions. This reduces costs for CBP, partner government agencies, and the trade community, and improves facilitation of export shipments through the supply chain.

Additionally, the Test has examined the feasibility of requiring the rail carrier to submit manifest information electronically in ACE generally within a specified time before the cargo has been loaded on the train. Test participants were and are required to submit export manifest data electronically to ACE at least two hours prior to loading of the cargo or, for empty rail cars, upon assembly of the train. This time frame has enabled CBP to link the EEI submitted by the USPPI

with the export manifest information. Much of that success has resulted from the fact that a high percentage of information is being transmitted well before the two-hour prior to departure deadline. Upon a random review of data identifying compliance with time frame submission, CBP found that nearly 94% of data transmissions occurred more than 24 hours prior to conveyance departure.

The success of the Test has allowed CBP to determine that the electronic submission of manifests provides improvements in capabilities at the departure level. As a result of these improvements, CBP is now seeking to end the Test and codify this program by proposing new regulations in this document.

VI. Purpose and Need of the Rule

CBP proposes a new regulatory requirement because it does not currently have regulations in place requiring the submission of an electronic export manifest for cargo transported by rail to assess cargo security. The proposed regulatory changes are the culmination of CBP's efforts with the Test described above.

The proposed regulation will leverage the data elements and train consist requirements in advance of departure to Mexico and Canada. The data elements are already included in the current Test, which has been operational since September 9, 2015. 80 FR 54305. The proposed regulation identifies the mandatory, conditional, and optional data elements and who would be required to submit the data. The proposed regulation also would add an initial filing for seven data elements to be presented 24 hours prior to departure of the train.

For CBP, the proposed requirement to submit an electronic export manifest will enhance cargo security in that it would allow for improvements in risk assessment capabilities at the port level. Port operations will enjoy considerable efficiencies through the elimination of paper manifests. Storage space currently reserved for manifest documents will be freed. Coordination and information exchange among CBP, the Department of Commerce, and other Government agencies with export jurisdiction will improve. Carriers, USPPIs, non-vessel operating common carriers (NVOCC), and other interested parties who transmit information will receive better and more rapid examination decisions from CBP. The trade will benefit through the ease of making information corrections and additions electronically, a process that requires cumbersome manifest discrepancy reporting in a paper world.

The ACE Export Manifest data submission is used to conduct risk assessment to identify high-risk rail cargo includes but is not limited to weapons, ammunition, currency or narcotics. High risk shipments

are based on the totality of the review which includes party name, country of destination, cargo description, and/or a combination of data elements. Data supports a conclusion that Test participants have access to the manifest data early in the planning stages of an export rail cargo transaction and will be able to comply with these time frames. As stated, CBP anticipates that these timeframes will provide adequate time to perform proper risk assessment and identification of shipments to be inspected early enough in the supply chain to enhance security while minimizing disruption to the flow of goods. At present, regulations do not provide for any method to screen or secure rail cargo exports which this proposed regulation seeks to address. ACE Export Manifest data submission allows CBP to use its Automated Targeting System (ATS) to screen all of the data submitted which allows CBP to make better examination decisions while also reducing the time required to make such decisions. Although CBP will aim to identify shipments for inspection prior to loading, inspections could potentially happen at any time before the train departs the United States.

Any rail cargo identified by CBP as requiring review will be held until required additional information related to the shipment is submitted to clarify non-descriptive, inaccurate, or insufficient information, a physical inspection is performed, or some other appropriate action is taken, as specified by CBP. Once the cargo is cleared for loading, a release message will be generated and transmitted to the filer.

VII. Proposed Requirements

CBP is seeking to promulgate a new regulation, proposed 19 CFR 123.93, requiring the submission of export manifest data electronically in ACE for cargo transported by rail, pursuant to section 343(a), of the Trade Act of 2002, as amended. The proposed regulation would mandate the electronic transmission of rail export manifest information, identify the parties eligible to transmit information, describe the time frames prior to departure of the train in which the information is due, and identify an initial filing that must occur 24 hours prior to departure from the port of export while requiring the remaining data to be transmitted at least two hours prior to such departure.

Further, to comply with Section 343 of the Trade Act of 2002, as amended (19 U.S.C. 1415), new 19 CFR 123.93 would require parties with the most direct knowledge to provide certain information to CBP. In furtherance of that goal, the proposed regulatory language sets forth differences between transportation data (always required of

the carrier and carrier only) and cargo data, which can be provided by the party with direct knowledge of that information.

Consistent with the provisions of 19 U.S.C. 1415(a)(3)(B), when requiring information from the party with direct knowledge of the information is not practicable, the proposed regulation would take into account how, under ordinary commercial practices, information is acquired by the party on which the requirement is imposed and whether and how such party is able to verify the information. Where information is not reasonably verifiable by the party, the proposed regulation would permit the party to transmit information on the basis of what it reasonably believes to be true.

The proposed regulation designates information as transportation data, cargo data, or empty container data, and lists the data elements to be transmitted while calling them out as mandatory, conditional, or optional. The data elements that are identified as mandatory must be submitted. These elements are necessary for CBP to inspect cargo effectively, ensure compliance with U.S. export control laws and regulations and identify high-risk shipments for purposes of ensuring cargo safety and security. Data elements that are identified as conditional must be provided if available. Data elements identified as optional provide additional information for purposes of clarity and may facilitate the clearance process but are not required to be submitted.

The proposed regulation provides for direction regarding enforcement referrals, Do-Not-Load messages, and Hold messages. Any rail cargo identified by CBP as requiring review would be held until required additional information related to the shipment is submitted to clarify non-descriptive, inaccurate, or insufficient information, a physical inspection is performed, or some other appropriate action is taken, as specified by CBP. If the cargo is cleared for loading, a release message would be generated and transmitted to the filer. If a potential high-risk cargo is identified, then a CBP officer would conduct an examination. The rail carriers would be notified of these holds through the integrated system and if a mandatory examination of the cargo and/or freight car is required or if CBP needs to conduct further review of the data transmitted. In addition to holds, if a CBP officer determines during review that cargo or a rail car may contain a potential threat to the train and its vicinity, a Do-Not-Load (DNL) instruction would be issued, which prohibits the rail carrier from transporting that cargo or railcar. The rail carrier should not transport any cargo or rail car with a DNL. The advance transmission of EEM data would help CBP review and issue holds before cargo is

loaded or before a train reaches the U.S. port of export, thus facilitating a more efficient export process.

Specifically, CBP is proposing to require seven data elements, characterized as an initial filing, to be transmitted no less than 24 hours prior to train departure. The seven data elements chosen for mandatory transmission 24 hours prior to departure would be those data elements that would provide CBP with the cargo information it needs to perform the appropriate security analysis, including: Bill of Lading Number, Total Quantity, Total Weight, Cargo Description, Shipper's Name and Address, Consignee Name and Address, and Automated Export System (AES) Exemption Statement, as applicable. The proposed rule provides for the submission of transportation, conveyance, and empty container information two hours prior to departure of the train rather than two hours prior to loading (or on assembly of the train in the case of information pertinent to empty rail cars). This change in transmission timing for all other data elements would combine with the initial transmission to afford CBP the ability to better assess risk and effectively target and inspect shipments prior to the cargo departing the United States to ensure compliance with all U.S. export laws.

A. Initial Data Elements

Different from the Test's time periods for data presentation, proposed 19 CFR 123.93 requires a mandatory initial filing of seven data elements identified below to be submitted 24 hours prior to departure to a foreign port, by either the carrier, USPPI, or other qualified parties or their authorized agents. In proposed 19 CFR 123.93(b)(1), CBP has determined that requiring this initial filing in a time frame even earlier than prescribed in the Test is necessary to allow for complete vetting of cargo and transportation information for security purposes. The high percentage of data available for transmission 24 hours prior to departure supports the feasibility of requiring this initial filing. In further support of this proposal, some validations would be relaxed until the carrier links the master bill and house bill to allow for the submission of advance data. Upon receipt of the initial filing submission, CBP would validate and notify the filer of the master bill and house bill data, if any data is required, or if the house bill has been placed on hold pending the updating of the bill. Under the proposed regulation, the carrier would have the ultimate responsibility to load, hold, or not load the cargo. The carrier, USPPIs and other parties qualified to transmit data (or their authorized agent) would be eligible to submit the initial data filing as discussed below.

CBP proposes adding 19 CFR 123.93(c) which identifies the parties that can file the cargo and conveyance data. The outbound carrier is responsible for transmitting export manifest transportation data and empty container data. The outbound carrier must also transmit the initial filing data and the export manifest cargo data if no other eligible party elects to do so. If another eligible party elects to transmit either the initial filing data or export manifest cargo data, the outbound carrier may also choose to, but is not required to, transmit such data. Other eligible parties include USPPI and FPPI, as defined by the provisions of section 30.1 of the FTR of the Department of Commerce, Bureau of the Census (15 CFR 30.1), or its authorized agent. Other eligible filers also include any other party with direct knowledge of the export information, such as a customs broker, Automated Broker Interface (ABI) filer, NVOCC as defined by 19 CFR 4.7(b)(3)(ii), or a freight forwarder as defined in 19 CFR 112.1. If another party does not transmit advance export information, the party that arranges for and/or delivers the cargo to the outbound carrier must fully disclose and present to the outbound carrier the data elements for the initial filing. Any party transmitting any of the data described in this subsection must be in possession of either a CBP Basic Importation and Entry Bond containing the provisions found in 19 CFR 113.62, a Basic Custodial Bond containing the provisions found in 19 CFR 113.63, or an International Carrier Bond containing the provisions found in 19 CFR 113.64.

CBP also proposes adding 19 CFR 123.93(d) which identifies the seven data elements from the Test that are required in the mandatory initial filing. Descriptions of those data elements have been revised in the proposed rule to clarify the kind and character of data that is required. The revised data elements in the proposed rule for the initial filing and the Test data elements to which they correspond are as follows:

(1) Bill of lading number, which is necessary to link the transmission to the cargo throughout the entire electronic manifest process;

(2) The numbers and quantities of the cargo laden aboard the train as contained in the carrier's bill of lading, either master or house, as applicable (this means the quantity of the lowest external packaging unit; numbers or quantities of containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons) [Test data element of Quantity of Cargo and Unit of Measure];

(3) Total weight of cargo expressed in pounds or kilograms [Test data element of Weight of Cargo (may be expressed in either pounds or kilograms)];

(4) A precise cargo description (or the Harmonized Tariff Schedule (HTSUS) number(s) to the 6-digit level under which the cargo is classified if that information is received from the shipper and weight of the cargo; or for a sealed container, the shipper's declared description and weight of the cargo (generic descriptions, specifically those such as "FAK" ("freight of all kinds"), "general cargo", and "STC" ("said to contain") are not acceptable) [Test data element of Cargo Description];

(5) The shipper's complete name and address, or identification number, from the bills of lading (for each house bill in a consolidated shipment) [Test data element of Shipper name and address];

(6) The consignee's complete name and address, or identification number, from the bill(s) of lading. (The consignee is the party to whom the cargo will be delivered to in a foreign country. However, in the case of cargo shipped "to order of [a named party]," the "to order" party must be named as the consignee; and if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact information including address in the "Notify party" field.) [Test data element of Consignee name and address]; and

(7) The Automated Export System (AES) Exemption Statement, as applicable [Test data element of AES Exemption Statement (per shipment)].

Except for these seven data elements re-described or re-formatted above, CBP would require electronic export manifest information in sections 123.93(e), and (f) to be transmitted two hours prior to train departure to a foreign port. That data comprises all additional data elements to be described as export manifest transportation data, cargo data, and empty container data. While 32 data elements are described in the Test, experience has shown that some are no longer necessary for inclusion in the proposed rule.

B. Transportation Data Elements

Proposed 19 CFR 123.93(e)(1) establishes the obligation on the carrier or its agent to supply transportation data. The transportation data elements carried forward from the Test to the proposed rule include the following:

(1) Port of Departure from the United States (mandatory);

(2) Date of Departure (mandatory);

(3) Mode of Transportation (containerized rail cargo or non-containerized rail cargo) (optional);

(4) Equipment Type Code (optional);

(5) Place where the rail carrier takes possession of the cargo shipment or empty rail car (optional);

(6) Carrier-assigned conveyance name, equipment number and trip number (mandatory);

(7) 6-character Hazmat Code. If the Hazmat Code is provided, then UN (for United Nations Number) or NA (North American Number) and the corresponding 4-digit identification number assigned to the hazardous material must be provided.) (conditional);

(8) Marks and Numbers (conditional);

(9) SCAC (Standard Carrier Alpha Code) for the exporting carrier (mandatory);

(10) Container or Equipment Numbers (for containerized shipments) or Rail Car Numbers (for all other shipments) (mandatory);

A transportation data element carried over from the Test to the proposed 19 CFR 123.3(e) with an expanded definition is as follows:

Seal Number (conditional, only required if container was sealed). The seal numbers for all seals affixed to containers and/or rail cars to the extent that CBP's data system can accept this information (for example, if a container has more than two seals, and only two seal numbers can be accepted through the system per container, electronic presentation of two of these seal numbers for the container would be considered as constituting full compliance with this data element).

In proposed 19 CFR 123.3(e), CBP is adding the transportation data element of "Estimated Time of Departure" (mandatory) to be supplied by the carrier or its agent that was not required in the Test but provides important information to CBP.

Proposed 19 CFR 123.3(e) also adds the transportation data element of "Train Consist" (mandatory) to be supplied by the carrier or its agent. The Train Consist provides CBP with what is on the train from the engine through the last car and how the cargo is lined up for departure from the United States. The Train Consist is composed of the following data elements that were required in the Test:

(1) Manifest Number

(2) Train Number

(3) Rail car order

(4) Empty containers.

C. Cargo Data Elements

Proposed 19 CFR 123.93(f) establishes the obligation on the party with knowledge of the facts or its agent to supply manifest cargo data. The cargo data elements carried forward from the Test to the proposed rule in addition to the seven data elements forming the Initial Data Filing include the 17 data elements listed below. CBP recognizes

that some cargo data elements would already be requested in the initial data elements; those data elements would not need to be transmitted again unless there are updates or changes made. The proposed cargo data elements are as follows:

(1) Shipper name and address (for empty rail cars, the shipper may be the railroad from whom the rail carrier received the empty rail car to transport) (mandatory);

(2) Consignee name and address (for empty rail cars, the consignee may be the railroad to whom the rail carrier is transporting the empty rail car) (mandatory);

(3) Port of Lading (mandatory);

(4) Port of Unlading (mandatory);

(5) Bill of Lading Type (Master, House, Simple or Sub) (mandatory);

(6) Bill of Lading Numbers (Master, House, Simple or Sub) (mandatory);

(7) AES Internal Transaction Number or In-bond Number (per shipment) (mandatory);

(8) Cargo description (mandatory);

(9) Weight of cargo (may be expressed in either pounds or kilograms) (mandatory);

(10) Quantity of cargo and unit of measure (mandatory);

(11) In-bond type (conditional);

(12) Notify party name and address (conditional);

(13) Secondary notify party name and address (conditional);

(14) Mexican Pedimento Number (only for shipments for export to Mexico) (optional);

(15) Secondary notify party SCAC (optional);

(16) Country of ultimate destination (optional); and

(17) Number of house bills of lading (optional).

CBP has determined that the collection of the following data elements required in the Test were found to be problematic or superfluous or are addressed by other regulations and will not be carried forward in the proposed rule:

(1) Car Locator Message;

(2) Empty Indicator (yes/no);

(3) Hazmat Indicator;

(4) Split Shipment Indicator (Yes/ No)[6] ; and

(5) Portion of split shipment (*e.g.,* 1 of 10, 4 of 10, 5 of 10—Final, etc.)

[6] Although split shipment and portion of split shipment were data elements identified in the Test, CBP decided it was unnecessary to carry them into the proposed rule because they are elements required, to the extent necessary, by 15 CFR 30.28.

D. Examination Referrals

Proposed 19 CFR 123.93(g) provides for two types of referrals that may be issued by CBP after a risk assessment of an outbound export manifest data transmission. A referral for information will be delivered to the rail carrier or its agent if the information provided fails to appropriately describe the cargo or if the information provided is inaccurate or insufficient. The data transmitter must then add or correct the information prior to the departure of the train from the United States. A referral for screening will be issued if the potential risk of the cargo is deemed high enough to warrant enhanced screening. In this instance, the rail carrier is notified of these holds and the notification lets the rail carrier know that a mandatory examination of the cargo and or freight car is required or if CBP needs to conduct further review of the data transmitted.

E. Do-Not-Load (DNL)/Hold Instructions

CBP is also proposing to add 19 CFR 123.93(h) to provide for procedures for when a CBP officer determines during the review that cargo or a rail car may contain a potential threat to the train and its vicinity, so that a Do-Not-Load (DNL) instruction can be issued, which prohibits the rail carrier from transporting that cargo or rail car. The rail carrier should not transport any cargo or rail car with a DNL. A Hold instruction will be issued, even after loading, if further examination is required. In order to address such issues, data transmitters must provide a telephone number and email address that is monitored 24 hours a day/seven days a week. Data transmitters must respond and fully cooperate when such an instruction or hold is issued.

F. Other Technical Amendments to Part 123

By adding new subpart J, CBP is revising the scope provision (19 CFR 123.0) to reflect that customs procedures at the Canadian and Mexican borders would include electronic information for cargo in advance of departure which is not presently addressed in the regulation.

G. Proposed Amendments to CBP Bond Conditions

As an enforcement tool, CBP is also proposing changes to the relevant bond provisions in 19 CFR 113.62 (basic importation and entry bond), in 19 CFR 113.63 (basic custodial bond), and 19 CFR 113.64 (International carrier bond) to provide CBP with authority to impose liquidated damages on parties that do not provide the mandatory EEM data in the manner and in the time frame required.

Specifically, CBP proposes to amend 19 CFR 113.62 to add new paragraph (k)(3) to address electronically provided outbound information. Section 113.62(k) currently addresses electronic transmissions for merchandise or cargo which is inbound. CBP also proposes to amend 19 CFR 113.63 to include advance outbound information provided to CBP electronically and in the manner and in the time period required under 19 CFR 123.93. CBP is also seeking to amend 19 CFR 113.64 to include outbound information provided electronically by international carriers in the manner and time period required under 19 CFR 123.93. With each of these regulations, CBP may assess liquidated damages if a violation occurs. Any party that violates the bond conditions for outbound data transmission as described above in this proposed rule agrees to pay liquidated damages of $5,000 for each violation and up to a maximum of $100,000 per departure. Compliance is CBP's goal and CBP aspires to work alongside rail carriers and other parties to ensure that trade members provide the proper data in a timely manner, so that CBP can properly review the data, conduct risk assessment of high-risk shipments, and enforce U.S. export laws and regulations on U.S. rail exports.

VIII. Regulatory Analyses

A. Executive Orders 12866 and 13563 (Regulatory Planning and Review)

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget (OMB) has designated this rule a "significant regulatory action" as defined under section 3(f) of E.O. 12866, as amended by Executive Order 14094. Accordingly, OMB has reviewed this rule.

In summary, CBP expects that this proposed rule would result in a present value total combined net cost savings of $49.8 million using a two percent discount rate, or approximately $3.8 million annualized (2023 U.S. dollars) to CBP, outbound rail carriers and other related parties during the period of analysis (2016 to 2030). CBP anticipates that this proposed rule would also provide added benefits from en-

hanced cargo security measures by improving compliance and the enforcement of U.S. export laws and regulations on U.S. rail exports, while also improving the facilitation of the export process. The following is the economic analysis of the potential impacts from this proposed rule.

Purpose and Background

CBP's mission includes ensuring cargo security and preventing smuggling, while enforcing U.S. trade laws and regulations. CBP needs to obtain timely and sufficient data prior to cargo arriving or departing the United States via any mode of commercial transportation in order to review and conduct risk assessment to identify high-risk shipments and inspect cargo effectively. According to Section 343(a) of the Trade Act of 2002, as amended (Trade Act) (19 U.S.C. 1415), CBP is authorized to establish regulations that provide for the mandatory electronic transmission of data by way of a CBP-approved electronic data interchange before cargo arrives or departs the United States in all environments (sea, air, rail, and truck). Transmitting export manifest data electronically, instead of on paper or via email, allows CBP to use its Automated Targeting System (ATS) to screen all of the data submitted. This allows CBP to make better examination decisions while also reducing the time required to make such decisions. Trade members also experience efficiencies through quicker CBP examination decisions and improved communication between CBP and trade members. The requirement to submit manifest data through an electronic data interchange (ACE) which is the same system through which data is incorporated from AES is also important to help facilitate a more efficient trade process for all federal agencies and trade members involved. Submitting electronic manifest data (specifically pre-arrival or pre-departure) significantly increases CBP's ability to conduct risk assessment and identify high-risk cargo to ensure cargo security and to prevent smuggling. The electronic environment would improve and expedite communications between CBP and trade members in resolving examinations where additional or corrected information of the transmission is required.

Baseline

In the rail environment, CBP currently requires the advance electronic submission of data for all cargo being brought into the United States, but CBP does not require the pre-departure electronic submission of data for all exported cargo. CBP requires some electronically transmitted cargo data prior to departing the United States by

rail but this data is significantly limited in scope. Current regulations[7] require the U.S. Principal Party in Interest (USPPI), the USPPI's agent, or the authorized filing agent of the Foreign Principal Party in Interest (FPPI) to transmit Electronic Export Information (EEI) to CBP through the Automated Commercial Environment (ACE), no later than two hours prior to the arrival of the train at the border. Although this pre-departure data is helpful, the information provided by EEI falls short of what CBP requires for proper enforcement.

The required transmission of EEI is subject to certain exemptions, as established by the Bureau of the Census regulations,[8] which generally only require EEI transmission on shipments greater than $2,500 and do not require the transmission of EEI for shipments destined for Canada, unless the shipment contains certain controlled items or is being transshipped to another destination.[9] Therefore, numerous low dollar value shipments and/or Canadian-bound shipments of merchandise departing the United States by rail do not have EEI transmitted for CBP to review. The lack of detailed electronic manifest data for some shipments and the unavailability of electronic cargo data on lower value merchandise shipments impedes CBP's enforcement efforts on rail exports.

Although CBP receives limited pre-departure electronic data for rail exports, CBP usually receives additional pre-departure data from rail carriers or their agents. This information, however, is submitted via attachments to an email, which is not the most efficient or effective method to obtain such data and perform risk assessment.[10] During the export cargo process, the rail carrier may not load cargo without first receiving from the USPPI or its authorized agent either the related EEI filing citation, covering all cargo for which the EEI is required, or exemption legends, covering cargo for which EEI need not be filed. While the rail carrier is not required to submit a rail cargo export manifest to CBP, the outbound rail carrier must annotate the carrier's outward manifest, waybill, or other export documentation with the applicable Automated Export System (AES) proof of filing, post departure, downtime, exclusion, or exemption citations, conforming to the approved data formats found in the Bureau of the Census Foreign Trade Regulations.[11]

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[7] *See* 19 CFR 192.14.

[8] *See* 15 CFR part 30.

[9] *See* 15 CFR 30.36.

[10] This information is submitted by rail carriers for trains transporting cargo out of the United States and is provided regardless of whether an EEI submission is required.

[11] *See* 15 CFR part 30.

In the baseline rail carriers or their agents submit finalized train consists to CBP in a format of the rail carrier's choosing before a train is granted permission to depart from the U.S. port of export.[12] [13] Rail carriers or their agents can provide this data via email prior to a train's arrival at the U.S. port of export (pre-departure) or present this data to a CBP officer at departure when the train arrives at the U.S. port of export (at departure). The submission of such data pre-departure via email is not mandatory, nor is there a required time frame for submitting such information. However, rail carriers have the incentive to provide this information pre-departure so that CBP has time to review the information before the train reaches the U.S. port of export, expediting the export process and usually rail carriers send this information to CBP at least two hours prior to a train's arrival at the United States border.[14] If rail carriers or agents choose not to provide this data pre-departure, they must present the finalized train consists to CBP upon arrival at the U.S. port of export at which point CBP officers must complete the review of the train consists while the train is at the U.S. port of export, resulting in a delay in the train's departure.

Once this information is received by CBP (either via email or in person at the port of export) CBP officers will then conduct a review of the export information, which includes manually reviewing the finalized train consist (paper version or emailed) and address any issues. CBP officers must then also compare this data with any EEI information electronically submitted for that train along with any other documents. To ensure proper cargo security, during this review CBP officers must also conduct their targeting, risk assessment measures and determine if any cargo needs to be examined before a train departs the United States. In the baseline scenario, CBP is not able to automatically use ATS for risk assessment on the export information contained on the train consists provided by rail carriers to CBP.[15] Although CBP officers can manually query ATS with information provided on the finalized train consists, CBP notes this is a cumbersome and time-consuming process and is not a frequent occurrence. If

[12] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on February 25, 2022.

[13] A train consist is document that generally refers to the contents of a train including the position of the locomotives and cars, as well as both non-hazardous and hazardous freight within those cars.

[14] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 21, 2022.

[15] In the baseline scenario CBP is not able use ATS for risk assessment on export data submitted on paper forms (or via email) and paper forms cannot be automatically uploaded or submitted to ATS for risk assessment. A primary benefit of this proposed rule would be allowing CBP to automatically use ATS for risk assessment on all rail EEM data provided.

during CBP's review of this information, prior to the train's arrival at the U.S. port of export, CBP officers find any discrepancies or missing data, CBP communicates via email to the rail carrier that submitted the data, requesting updates or corrections to the data provided. The CBP review process, including communications between CBP and rail carriers about discrepancies discovered while reviewing train consist information, can be unnecessarily cumbersome and time consuming because this data is provided via email attachments and the formats can be inconsistent across rail carriers. If CBP is not provided the pre-departure data or is not provided the data in a time frame that allows for CBP to properly review, request, and receive updates from rail carriers, and conduct proper risk assessment or manually examine high-risk cargo or shipment, then a CBP officer must resolve these issues at the U.S. port of export. This usually results in a delay to the train's departure.

CBP does not track how often rail carriers provide this pre-departure data nor to what extent CBP officers are able to conduct some or all of their manual review of the data prior to the train's arrival to the U.S. port of export. Sometimes CBP identifies a high-risk cargo or shipment during manual review at the U.S. port of export or while reviewing pre-departure data but does not have time to adjudicate the shipment prior to a train's arrival at the U.S. port of export. In this situation, the CBP officer holds the train until one or more freight car(s) can be removed from the already constructed train for examination, which can cause delays and can be costly to rail carriers.[16]

This proposed rule would establish a requirement for the electronic transmission of export manifest data pre-departure from the United States for all cargo in the rail environment. CBP defines the process described above as the regulatory baseline and the analysis of this proposed rule attempts to measure any incremental costs, cost savings or benefits compared to the baseline scenario.

The ACE Export Manifest for Rail Cargo Test

CBP has been working toward developing a new process to require the transmission of electronic export manifest (EEM) data for all cargo departing the United States by rail to enhance CBP's efforts to ensure cargo security while also preventing smuggling, and to be compliant with the Trade Act. CBP expects that the transmission of pre-departure EEM data would help CBP obtain all the necessary data to successfully review and conduct risk assessment measures

[16] Unfortunately, CBP does not track how often manual examinations occur on average each year as these examinations are not entered into a system of record.

before trains reach the U.S. port of export, thereby limiting the number of issues that CBP must address at the U.S. port of export and reducing potential delays. Rail carriers have also acknowledged that the baseline process of sending forms of rail export data by email is unnecessarily costly, time burdensome and inconsistent with the process for providing data on cargo entering the United States.[17] As such, rail carriers have been supportive of CBP's efforts to provide a more efficient process by allowing for the transmission of rail EEM data.

In September of 2015, CBP introduced a two-year pilot test program, referred to in this analysis as the ACE Export Manifest for Rail Cargo Test (the Test), to determine the feasibility for rail carriers or their agents to provide pre-departure EEM data for rail exports to CBP via ACE within a specified time before cargo departs the United States. To test the functionality of this new process, CBP initially limited participation in the Test to nine rail carriers. During this initial phase of the Test, CBP worked with rail carriers who agreed to participate and submit EEM data to CBP via ACE in addition to providing paper forms. The participants were large rail companies, similar in most respects to those that did not participate. As such, CBP believes their experience with the test is informative for analyzing the effects of the rule. CBP requests comment on any meaningful differences between the participants and the non-participants that would affect the analysis. CBP requested that participants continue to submit data in paper forms as they did before the Test so that CBP could capture any inconsistencies or issues with the electronic transmission of rail export manifest data to CBP. In the Test, CBP requested that participants provide rail EEM data to CBP at least two hours prior to loading the cargo onto the train, or in the case of empty rail cars upon assembly of the train.[18] Because the ACE system would conduct a majority of the risk assessment and review of electronically transmitted data, CBP anticipated that this two-hour window would provide enough time for CBP to review pre-departure EEM data prior to the cargo being loaded onto trains and before the trains have been assembled. The two-hour time frame also provided CBP the opportunity to notify rail carriers or agents to revise and correct export

[17] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on June 21, 2022.

[18] CBP notes that although the Test requested export manifest data to be provided within certain deadlines, participants were not required to provide data within these time frames. Participants were given flexibility to provide the data to CBP electronically and were not penalized if export manifest data was not submitted within the time frames of the Test. However, CBP experienced high levels of compliance with submitting EEM data transmissions with 94 percent of all data transmissions were submitted greater than 24 hours prior to the departure time.

manifest data where necessary before the cargo is loaded. This increased the chance that CBP could conduct cargo inspections before cargo is loaded and trains are assembled, avoiding costly time burdens if issues were to be addressed after the train has been constructed. The required deadline for EEM data also provided CBP an opportunity to compare any EEI submitted by the USPPI with the export manifest data to properly conduct safety and security screening for cargo departing the United States on rail.

One major improvement of the Test is that rail carriers can provide and revise export manifest data electronically on a flow basis when the export data becomes available during the export process. Typically, rail carriers provide export manifest data in documents known as bills of lading (bills), which act as a receipt and contract of transporting cargo and goods. These bills can come from a number of sources depending on which party is privy to the information and the timing of when the information is provided. A house bill contains cargo details and is issued directly by a party such as a Non-Vessel Operating Common Carrier (NVOCC) or freight forwarder. This bill acts as the receipt of exported goods and provides export manifest data at its lowest level. Carriers issue a master bill which includes all other export manifest information such as transportation details for the transporting train covering any number of house bills that are included on that train. Additionally, in the case where a NVOCC or freight forwarder is not involved in the shipment transaction and the carrier has the specific cargo data available, the carrier can issue a "simple bill," which is similar to a house bill and contains cargo details at the lowest bill level of export manifest data. In the rail environment, house bills and master bills are not typically issued because rail carriers usually issue simple bills for all cargo and then submit finalized train consists to CBP. These consists include the simple bills associated with all the cargo on the train and any other transportation data for the train prior to departure from the U.S. port of export. The Test allows participants to transmit these simple bills on a flow basis when the information becomes available. This differs from the baseline scenario where rail carriers typically waited for simple bills to be finalized before sending the export manifest data in the finalized train consist in a paper format to CBP for review. The transmission of EEM data, via ACE, allows for the integrated system to conduct a large portion of the review process using data validations, checks and risk assessment measures prior to the rail carriers loading cargo onto freight cars or constructing the train. Additionally,

upon transmission of the pre-departure EEM data, CBP can review data on a flow basis while rail carriers provide updated data throughout the export process.

The integrated system will generate two types of holds when rail carriers transmit bills: 2H Documentation holds, which notifies the rail carriers or their agents in the integrated system of outstanding issues with the data provided, and 1H Enforcement holds, which result from risk assessment. In the instance of a 2H Documentation hold, the rail carrier or agent must add or revise the missing or incorrect reference data in order to release the hold on the cargo prior to departure from the United States. The 2H Documentation holds automatically generated by ACE do not require any action or response from CBP or CBP officers and only affect rail carriers or their agents. The integrated system assists CBP in its risk assessment efforts and the identification of high-risk cargo. If during the integrated systems risk assessment, a potential high-risk cargo is identified, then a 1H Enforcement hold is generated which requires a CBP officer to conduct a review of the export manifest data submitted.[19] The rail carriers are notified of these holds through the integrated system which lets them know if a mandatory examination of the cargo and or freight car is required or if CBP needs to conduct further review of the data transmitted. These holds can be issued and addressed even after rail carriers load the cargo. If a 1H Enforcement hold is issued to a rail carrier after loading the cargo and CBP requests to inspect the cargo, the rail carrier must provide CBP with a location where CBP can conduct a proper examination. In addition to holds, if a CBP officer determines during review that cargo or a rail car may contain a potential threat to the train and its vicinity, a Do-Not-Load (DNL) instruction is issued, which prohibits the rail carrier from transporting that cargo or rail car. The rail carrier should not transport any cargo or rail car with a DNL. The transmission of EEM data in advance would help CBP review and issue holds before cargo is loaded or before a train reaches the U.S. port of export. This transmission facilitates a more efficient export process by reducing the likelihood of a freight car or cargo being removed from a constructed train and the resulting delays when departing the U.S. port of export.

Rail carriers participating in the Test provide a number of mandatory and conditional data elements electronically to CBP via ACE. CBP determined that the selected data elements (listed below) would provide the information necessary to conduct proper cargo security

[19] CBP officers can also issue 1H Enforcement holds during manual review of electronic export manifest data transmitted.

enforcement. Rail carriers were already providing these data elements by the time of departure from the U.S. port of export to CBP prior to the Test but in paper form within the finalized train consists. The Test also required participating rail carriers to submit these data elements at the lowest bill level possible. The necessary data elements CBP selected during this initial phase of the Test, including empty rail cars, consisted of the following:

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

Additionally, if the rail carrier identified that the rail car is not empty (empty indicator is no), then CBP also required information for the following data elements for non-empty rail cars, as applicable:

(20) Bill of Lading Numbers (Master and House)
(21) Bill of Lading Type (Master, House, Simple or Sub)
(22) Number of house bills of lading
(23) Notify Party name and address (conditional)

(24) AES Internal Transaction Number or AES Exemption Statement (per shipment)
(25) Cargo Description
(26) Weight of Cargo (may be expressed in either pounds or kilograms)
(27) Quantity of Cargo and Unit of Measure
(28) Seal Number
(29) Split Shipment Indicator (Yes/No)
(30) Portion of split shipment (*e.g.,* 1 of 10, 4 of 10, 5 of 10—Final, etc.) (conditional)
(31) In-bond Number (conditional)
(32) Mexican Pedimento Number (only for shipments for export to Mexico) (conditional)

After the initial two-year period, CBP determined that the initial phase of the Test had been feasible and functional for participating rail carriers to provide EEM data and therefore CBP extended the test in 2017. At that time, CBP expanded the Test and made it available to all rail carriers and other trade members (beyond the initial nine rail carrier limit) which met the eligibility criteria.[20] After the first two years of the Test, CBP received feedback from rail carriers from the Commercial Customs Operations Advisory Committee (COAC), which stressed that rail carriers may not have access to certain export manifest data elements requested by CBP two hours prior to loading of cargo. Therefore, CBP determined to change the filing condition for nine of the pre-departure export manifest data elements for the Test moving forward. As part of the Test extension, CBP separated EEM data elements into three categories, mandatory, conditional, and optional data, and requested this information for all cargo and empty rail cars, at least two hours prior to loading of the cargo. CBP changed the following pre-departure EEM data elements (which were originally mandatory) to optional for the Test extension.

- Mode of Transportation (containerized rail cargo or non-containerized rail cargo) (Original Data Element #1)

[20] Limited to those parties able to electronically transmit manifest data in the identified acceptable format. Prospective ACE Export Manifest for Rail Cargo Test participants must have the technical capability to electronically submit data to CBP and receive response message sets via Cargo-ANSI X12 (also known as "Rail X12") or Unified XML and must successfully complete certification testing with their client representative. Once parties have applied to participate, they must complete a test phase to determine if the data transmission is in the required readable format. Applicants will be notified once they have successfully completed testing and are permitted to participate fully in the test. In selecting participants, CBP takes into consideration the order in which the applications are received.

- Place where the carrier took possession (Original Data Element #14)
- Country of Ultimate Destination (Original Data Element #16)
- Equipment Type Code (Original Data Element #17)
- Number of house bills of lading (Original Data Element #22)
- Split Shipment Indicator (Original Data Element #29)
- Portion of split shipment (Original Data Element #30)
- Mexican Pedimento Number (Original Data Element #32)

CBP also modified the Test by changing the following data element from mandatory to conditional:

Marks and Numbers (Data Element #10)

CBP has continuously extended or renewed the Test to gauge the functionality and feasibility of implementing the requirement of providing EEM data to CBP prior to a train's departure. CBP believes that the Test has been successful and CBP is proposing to make the transmission of pre-departure EEM data mandatory for all cargo departing the United States in the rail environment.

The ACE Export Manifest for Rail Cargo Program

This proposed rule would mandate the transmission of EEM data for all cargo prior to departing the United States in the rail environment in lieu of paper submissions, see Section VII 'Proposed Requirements' above for discussion on the regulatory requirements of this proposed rule. CBP anticipates that providing this requirement for the transmission of pre-departure EEM data would significantly improve CBP's ability to conduct proper cargo security, prevent smuggling, and aid in facilitating a more effective and efficient trade process. Under this proposed rule, the parties most likely to have the correct data on rail export cargo would be able to provide it to CBP through ACE. The experience and knowledge CBP gained during the Test influenced CBP to change some of the requirements for providing EEM data in this proposed rule.

CBP evaluated the time frames for electronic manifest data transmission during the Test, the most important data elements needed for risk assessment and screening cargo, and the unavailability to rail carriers of certain data elements at given time frames and decided to group the rail EEM data elements based on the deadlines for submission of data and on which party likely has the correct information to provide the export manifest data. The proposed rule would allow rail carriers, carrier's agents, NVOCCs, freight forwarders, custom-

house brokers (CHB), or anyone with direct knowledge of the export manifest data to provide specific pre-departure export manifest data to CBP, using CBP's ACE as a data transmission portal. The proposed rule mandates that a party transmitting any specific EEM data must have a bond on file with CBP. Additionally, the party that transmits any EEM data electronically to CBP is also the responsible party for addressing any questions, issues, instructions or holds resulting from CBP's review of that specific data. Therefore, CBP would require that any party transmitting EEM data to CBP provide a telephone number and email address that the party monitors 24 hours per day and seven days a week to quickly address any instructions or holds that CBP issues.

To improve CBP's risk assessment and screening efforts using pre-departure EEM data, this proposed rule would require an initial filing of seven mandatory data elements, which must be transmitted to CBP by any eligible party at least 24 hours prior to the departure from the U.S. port of export. The rail carrier is responsible for providing the initial filing data elements to CBP if no other eligible party elects to transmit the data. Eligible parties should transmit all other pre-departure EEM data elements to CBP no later than two hours prior to departure from the U.S. port of export, except for data on empty containers which would be required upon assembly of the train. From CBP's experience during the Test, CBP does not anticipate that changing the time frames for data transmission in this proposed rule would cause any data transmission issues for parties submitting the information.[21] Depending on the party providing the EEM data, the required export data may be available at different points in time during the export rail transaction process. Some rail carriers would have the export manifest data available days in advance prior to departure and therefore would have all the necessary information to submit the initial filing data to CBP and all other export manifest data well in advance of the 24-hour and 2-hour prior to departure deadlines.[22] CBP anticipates that all rail carriers would likely obtain the necessary export data elements to provide the required transportation and cargo EEM data within the two-hour prior to departure deadline.[23] However, for some rail carriers acquiring the

[21] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on June 21, 2022.

[22] CBP obtained feedback and information from Trade members on when in the export transaction process, the export manifest data is typically available for them to submit to CBP. Information obtained in February 2023.

[23] CBP obtained feedback and information from Trade members on when in the export transaction process, the export manifest data is typically available for them to submit to CBP. Information obtained in February 2023.

necessary data for the initial filing 24 hours prior to departure may require a change in business practices and additional coordination with other trade members or parties that have the required export manifest data. CBP does not believe that in such instances the export manifest data does not exist rather, the other trade members have not yet provided this information to the rail carrier.[24] CBP expects that in such instances the costs to rail carriers to obtain this information from other trade members a few hours earlier would be minimal. Additionally, if other trade members are reluctant to provide this information to rail carriers within the 24-hour prior to departure deadlines, the other trade members would be able to provide this data to CBP directly as participant in the rail EEM process.

CBP notes that during the Test, participants were already providing most of the data required in the initial filing well in advance of departure and within the 24 hours prior to departure time frame.[25] CBP expects that rail carriers and other trade members would have access to most export manifest data early in the planning stages of an export rail cargo transaction and would be able to comply with these time frames. Additionally, participating parties would be able to transmit EEM data to CBP on a flow basis whenever it becomes available to help facilitate CBP's review of the export data and the overall export process. CBP anticipates that these time frames would provide CBP adequate time to perform proper risk assessment and identify any cargo CBP should examine, early enough in the supply chain to enhance security while minimizing disruption to the flow of goods. Upon submission of the initial filing, CBP would validate or notify the responsible party of any holds or DNLs. The party that transmits the data is responsible for providing answers and updates on the data to CBP but the ultimate responsibility to load, hold, or not load cargo falls on the rail carrier.

The seven data elements CBP selected for the initial filing were mandatory data elements in the Test; however, CBP revised the descriptions of these elements in this proposed rule to provide additional clarity on the data required. The initial filing data elements required in this proposed rule include the following, listed as well are the data elements' corresponding descriptions during the Test:

(1) Bill of lading number,

(2) The numbers and quantities of the cargo laden aboard the train as contained in the carrier's bill of lading, either master or house, as

[24] Information provided during discussion with some Trade members in regard to the timeline for when export manifest data is available to provide to CBP and challenges to providing pre-departure data well in advance. Data obtained in February 2023.

[25] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on August 2, 2022.

applicable (this means the quantity of the lowest external packaging unit; the numbers or quantities of containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons [Test data element of Quantity of Cargo and Unit of Measure],

(3) Total weight of cargo expressed in pounds or kilograms [Test data element of Weight of Cargo (may be expressed in either pounds or kilograms)],

(4) A precise cargo description (or the Harmonized Tariff Schedule (HTSUS) number(s) to the 6-digit level under which the cargo is classified if that information is received from the shipper and weight of the cargo); or for a sealed container, the shipper's declared description and weight of the cargo (generic descriptions, specifically those such as "FAK" ["freight of all kinds"], "general cargo", and "STC" ["said to contain"] are not acceptable) [Test data element of Cargo Description],

(5) The shipper's complete name and address, or identification number, from the bills of lading (for each house bill in a consolidated shipment) [Test data element of Shipper name and address],

(6) The consignee's complete name and address, or identification number, from the bill(s) of lading (The consignee is the party to whom the cargo will be delivered in a foreign country. However, in the case of cargo shipped "to order of [a named party]," the "to order" party must be named as the consignee; and if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact information including address in the "Notify party" field.) [Test data element of Consignee name and address], and

(7) AES Exemption Statement, as applicable [Test data element AES Exemption Statement (per shipment)].

In this proposed rule, CBP groups the remaining rail EEM data elements based on CBP's understanding of which parties may have the best knowledge of the export manifest data elements. CBP categorizes these remaining data elements as export manifest transportation data, export manifest cargo data, and empty container data. According to this proposed rule, the rail carrier or its agent is responsible for transmitting to CBP the EEM data on any empty container rail cars.[26] This data must be submitted electronically no later than the time of assembly of the train. For EEM transportation data, the rail carrier or its agent must also transmit this data at least two

[26] If applicable, empty container rail car data would be included in the Train Consist data element of the mandatory data elements for transportation data. Empty containers are listed in the train consist and do not require any additional data to be provided as per this proposed rule.

hours prior to departure from the U.S. port of export. The rail carrier or its agent is responsible for providing the following EEM transportation data elements to CBP in this proposed rule:

Mandatory Elements

(1) Port of departure from the United States
(2) Date of departure
(3) Estimated time of departure
(4) Carrier-assigned conveyance name, equipment number and trip number
(5) Train Consist, which includes: (A) manifest number, (B) train number, (C) rail car order, and (D) empty containers (if applicable)
(6) The rail carrier identification SCAC code (the unique Standard Carrier Alpha Code assigned for each carrier by the National Motor Freight Traffic Association; *see* § 4.7a(c)(2)(iii) of this chapter)
(7) Container or equipment numbers (for containerized shipments) or Rail Car Numbers (for all other shipments)

Conditional Elements

(1) 6-character Hazmat Code. (If the Hazmat indicator is yes, then UN (for United Nations Number) or NA (North American Number) and the corresponding 4-digit identification number assigned to the hazardous material must be provided)
(2) Marks and numbers
(3) Seal number (only required if container was sealed.)[27]

Optional Elements

(1) Mode of transportation (containerized rail cargo or non-containerized rail cargo)
(2) Equipment type code
(3) Place where the rail carrier takes possession of the cargo shipment or empty rail car

CBP provides additional flexibility in this proposed rule by allowing any eligible party with the most direct information to provide EEM cargo data to CBP two hours prior to departure from the U.S. port of export. However, the rail carrier or its agent may also elect to transmit the mandatory EEM cargo data and in the case that no other

[27] The seal numbers for all seals affixed to containers and/or rail cars to the extent that CBP's data system can accept this information (for example, if a container has more than two seals, and only two seal numbers can be accepted through the system per container, electronic presentation of two of these seal numbers for the container would be considered as constituting full compliance with this data element).

party elects to provide the required EEM cargo data, it is the rail carrier's responsibility to provide this EEM cargo data to CBP.[28] The following data elements comprise the CBP-requested EEM cargo data for rail EEM in this proposed rule. CBP notes that if the data was provided during the initial filing it does not need to be transmitted again unless there were updates or changes made to the data.

Mandatory Elements

(1) Shipper name and address (For empty rail cars, the shipper may be the railroad from whom the rail carrier received the empty rail car to transport.)
(2) Consignee name and address (For empty rail cars, the consignee may be the railroad to whom the rail carrier is transporting the empty rail car.)
(3) Port of lading
(4) Port of unlading
(5) Bill of lading type (Master, House, Simple or Sub)
(6) Bill of lading numbers (Master, House, Simple or Sub)
(7) AES Internal Transaction Number or In-bond number (per shipment)
(8) Cargo description
(9) Weight of cargo (may be expressed in either pounds or kilo grams)
(10) Quantity of cargo and unit of measure

Conditional Elements

(1) In-bond type
(2) Notify party name and address
(3) Secondary notify party name and address

Optional Elements

(1) Mexican Pedimento Number (only for shipments for export to Mexico)
(2) Secondary notify party SCAC
(3) Country of ultimate destination
(4) Number of house bills of lading

After participants transmit the EEM cargo and transportation data to CBP via ACE, CBP would validate or notify the responsible party of any holds. Additionally, a CBP officer would review the finalized train consist prior to the train's departure from the U.S. port of export. CBP anticipates that obtaining this data through the inte-

[28] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on June 21, 2022.

grated system would help CBP work with rail carriers and other parties to address almost all issues identified during the CBP review before the train reaches the U.S. port of export and possibly some before loading of the cargo. This would significantly reduce any delays at the U.S. port of exports from instances where CBP officers conduct review and address issues while the train is at the U.S. port of export. CBP anticipates that through the obtaining of pre-departure rail EEM data, CBP officers would be able to conduct the appropriate risk assessment and screening and complete their review of all export manifest data prior to a train's arrival at the U.S. port of export.[29]

In the initial Test, CBP requested that 32 data elements be submitted two hours prior to the cargo loading. The experience gained during the Test has allowed CBP to revise which data elements should be mandatory, conditional, optional, and unnecessary. Of the original 32 data elements put forth in the initial Test, five data elements were determined by CBP to be unnecessary and CBP no longer requests these EEM data elements in this proposed rule. CBP lists these below.

(1) Car Locator Message
(2) Empty Indicator (yes/no)
(3) Hazmat Indicator
(4) Split Shipment Indicator (Yes/No)
(5) Portion of split shipment (*e.g.,* 1 of 10, 4 of 10, 5 of 10—Final, etc.)

As an enforcement tool, this proposed rule provides CBP with authority to impose liquidated damages on parties that do not provide the mandatory EEM data in the manner and in the time frame required. CBP retains the enforcement discretion to assess liquidated damages when a violation occurs. Any party that violates the requirements for data transmission as described above in this proposed rule is subject to pay liquidated damages of $5,000 for each violation and up to a maximum of $100,000 per departure. Although there is the possibility for liquidated damages, compliance is CBP's goal and CBP aspires to work alongside rail carriers and other parties to ensure that trade members provide the proper data in a timely manner, so that CBP can properly review the data, conduct risk assessment of high-risk shipments, and enforce U.S. export laws and regulations on U.S. rail exports.[30]

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[29] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on November 8, 2022.

[30] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on June 21, 2022.

Time Periods of Analysis

This analysis primarily focuses on the potential impacts of this proposed rule after it would be in effect, but it also includes a discussion of the impacts during the Test that is in place before the proposed rule is finalized. The costs, cost savings and benefits of the Test are sunk (already incurred and cannot be recovered) for the purposes of deciding whether to proceed with the proposed rule, but they are important for understanding the full costs and benefits of implementing the rail EEM as a whole. To give the reader a full view of the effects of CBP's requiring rail EEM data through the entire span of time, CBP analyzes the effects of implementing rail EEM collection over two time periods comparing each time period to the baseline scenario that existed prior to the rail EEM test. First, CBP analyzes the effects from Test used for the collection of pre-departure manifest data on rail exports during the pilot period, fiscal years 2016–2025.[31] Second, CBP analyzes the effects of the proposed rule when CBP assumes it would be implemented as a final rule which would mandate the transmission of EEM data in the rail environment during the five-year regulatory period, beginning in fiscal year 2026 and ending in fiscal year 2030 For the regulatory period, CBP estimates, to the extent data is available, the additional total projected costs, cost savings and benefits to the Federal Government, rail carriers and other trade members as a result of requiring the transmission of EEM data for trains departing the United States, compared to the baseline scenario. In the analysis for this proposed rule, CBP defines the pilot period as fiscal years 2016–2025 and the regulatory period as fiscal years 2026–2030. At the conclusion of the analysis, CBP includes tables showing the effects of the proposed rule across both periods—effectively showing the full results of the pilot and the proposed rule against the baseline (the world without the rail EEM test). While CBP provides information about the two time periods separately for full transparency and to make clear which costs are sunk and which are incremental to this proposed rule, CBP also sums the two time periods for a full accounting of the effects of the rail EEM program as a whole. Additionally, all references to years are for fiscal years unless otherwise noted.

[31] CBP anticipates that the Test would still be active until fiscal year 2026 when the proposed rule would be finalized; however, at the time this analysis was written CBP only had actual data up through fiscal year 2023. Therefore, CBP provides estimates, not actual data, for the fiscal years 2024 and 2025 in this analysis. CBP compares the costs, cost savings and benefits during the Test to the baseline scenario, CBP assumes these effects to be sunk and are not incremental to this rule.

Population Affected by Rule

CBP expects that this proposed rule would affect a number of different parties. During the regulatory period, as the transmitting of EEM data expands, CBP expects broader effects on rail carriers, other trade members (such as USPPIs, FPPIs, NVOCCs, freight forwarders, Customhouse Brokers (CHB), or other parties with knowledge of manifest data elements), CBP, and other government agencies that oversee U.S. exports. CBP expects that this proposed rule would affect all seven rail carrier companies currently exporting cargo from the United States by rail. Although CBP does not have the necessary data to provide an exact estimate for how many other trade members this proposed rule would affect, CBP acknowledges that this proposed rule could result in some minor effects to a large number of other trade members, specifically in case they elect to provide EEM cargo data directly to CBP via ACE. CBP expects that this proposed rule would also improve the facilitation of the export process at around 68 U.S. ports of export, currently conducting the exportation of goods from the United States in the rail environment.

Because the Test was limited in scope, the effects were largely experienced by a few rail carriers, possibly some other trade members and CBP during the pilot period. Although CBP only made the initial Test available to nine carriers, CBP then extended the test to all eligible parties; however, only two rail carriers actively participated in the Test. The two rail carriers participating in the rail EEM test have similar business characteristics to the remaining rail carriers that would be affected by this proposed rule. All are large carriers that operate internationally. Therefore, CBP anticipates that the effects on the rail carriers participating in the rail EEM Test accurately represents the effects that the remaining rail carriers would experience from this proposed rule. CBP requests comment on this matter.

Rail EEM Test Data and Export Rail Projections

CBP was able to identify the number of export manifest data transmissions and train consists transmitted electronically by participating rail carriers during the Test from 2016– 2023. Because CBP's pilot period includes future years, CBP does not have actual Test data available for 2024 and 2025. To address this issue CBP had to provide estimates the final two years of the pilot period. These estimates are based on actual data in previous years. From 2016–2023 rail EEM test participants provided a total of 1,563,694 export manifest data transmissions and 10,308 train consists electronically to CBP via

ACE.[32] To estimate the number of export manifest data transmissions that would occur during the final two years of the pilot period CBP used the average number of rail EEM data transmissions from 2017–2023 (211,225) and the average number of train consists submitted electronically to CBP from 2021–2023 (2,911).[33] According to CBP's projections for the final two years of the pilot period and the actual data obtained (2016–2023), CBP expects that during the entire pilot period rail EEM test participants would submit around 1,986,143 export manifest data transmissions and 16,129 electronic train consists. Total electronic data transmissions to CBP from participants in the rail EEM test would be 2,002,276 during the pilot period.[34] Table 2 below displays CBP's actual and estimated number of export manifest data transmissions and train consists submitted electronically to CBP during the pilot period.

Table 2. Rail EEM Test Data and Pilot Period Estimates

Pilot Period	EEM Data Transmissions	EEM Train Consists Submitted	Total Data Transmissions
2016	85,122	-	85,122
2017	218,235	308	218,543
2018	224,518	-	224,518
2019	219,413	159	219,572
2020	183,070	1,109	184,179
2021	200,963	2,601	203,564
2022	223,793	2,912	226,705
2023	208,580	3,219	211,799
2024*	211,225	2,911	214,137
2025*	211,225	2,911	214,137
Total	1,986,143	16,129	2,002,276

*Pilot period years with estimated not actual values.

Unfortunately, outside of the limited EEM data provided by Test participants, all other export rail data (excluding data for EEI requirements) submitted by rail carriers was on paper forms and therefore CBP was unable to obtain actual rail export volumes (by train or

[32] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022, and May 10, 2024. Data obtained from CBP's ACE.

[33] CBP excluded 2016 from the average for export manifest data transmissions due to lack of participation in that year. CBP used only three years of data 2021–2023 for the electronic train consists transmitted, because these were the only full years of data during the pilot period when all train consists were actually transmitted by participating rail carriers in the Test.

[34] This number represents the total number of electronic transmissions sent to CBP by rail EEM test participants (export manifest data transmissions + electronic train consists).

by train car). Therefore, CBP used train import volume data as a proxy for train export volume data to calculate the possible number of EEM data transmissions as a result from this proposed rule during the regulatory period. CBP anticipates that the number of train cars entering the United States with rail imports is likely comparable to the number of train cars exiting the United States for rail exports.[35] CBP used existing internal data on inbound train cars to project the volume of outbound train cars during the final two years of the pilot period and the regulatory period. Inbound train car volumes have been largely consistent from 2017–2023 and CBP anticipates that on average, rail volume should remain relatively constant in future years as compared to the volumes recorded over the past seven years.

CBP estimates that from 2016–2023 there were a total of around 35.6 million train cars departing the United States, or on average 4.4 million each year.[36] Because CBP anticipates that the outbound train volume will remain relatively constant during future years, CBP used the average number of estimated outbound train cars during 2017–2023 (4.19 million) for the number of expected outbound train cars for each future year.[37] Although CBP has data available on the number of train cars, CBP does not know how many actual trains would engage in exporting goods in the rail environment during the regulatory period. Therefore, CBP does not know exactly how many train consists rail carriers would submit requiring a CBP officer to review each year during the regulatory period. To provide an estimate for how many train departures would likely be involved in exporting goods in the rail environment during the regulatory period, CBP used 2021, 2022 and 2023 Test data on the number of simple bills transmitted compared to the number of train consists transmitted. Over the course of these three years a total of 633,336 simple bills and 8,732 train consists were electronically transmitted to CBP as part of the Test, or on average approximately 72.5 simple bills per train

[35] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 21, 2022. CBP used car volume instead of train volume because import volumes by train would be inaccurate since they tracked by rail car fee payments which are capped per year.

[36] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022, and May 9, 2024. Data obtained from CBP's Borderstat and OMR databases on inbound rail statistics from FY 2017–FY 2023.

[37] Inbound rail volume decreased significantly between 2016 to 2017 and volume remained relatively the same between 2017–2023. Therefore, CBP omitted the 2016 inbound rail volumes for the estimate for the regulatory period volume because CBP believes this would have skewed the annual volume upward.

consist.[38] CBP used this ratio of simple bills (train cars) to train consists (trains) and the expected outbound train cars to estimate the total number of trains that would transmit electronic train consists when exporting goods from the United States during future years.

CBP anticipates that each year during the regulatory period, approximately 4,191,807 train cars and 57,794 trains would depart the United States with export goods requiring the transmission of export manifest data. In total CBP expects that during the regulatory period, rail EEM participants would transmit approximately 21,248,006 data transmissions to CBP or around 4,249,601 annually. Table 3 below displays CBP's estimate for total outbound train cars and trains during 2016–2023 and projected outbound train cars and trains for the final two years of the pilot period and the regulatory period, and the estimated total EEM data transmissions during the regulatory period.

Table 3. Estimated Outbound Rail Volume and Regulatory Period Rail EEM Data Transmissions[39]

Year	Total Cars	Estimated Cars per Train	Estimated Train Departures	Regulatory Period Data Transmissions
Pilot Period				
2016	5,776,802	72.5	79,647	
2017	4,061,164	72.5	55,993	
2018	4,189,839	72.5	57,767	
2019	4,423,305	72.5	60,986	
2020	4,026,695	72.5	55,518	
2021	4,217,447	72.5	58,148	
2022	4,304,395	72.5	59,346	
2023	4,119,807	72.5	56,801	
2024*	4,191,807	72.5	57,794	

[38] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022, and May 10, 2024. Data obtained from CBP's ACE. CBP used only three years of data 2021–2023, because these were the only full years of data during the pilot period when all train consists were actually transmitted by participating rail carriers in the Test. Additionally, CBP notes that most of the time the ratio of a simple bill to train car is 1 to 1, however a simple bill could be submitted for multiple train cars or vice versa. Because CBP only knows the number of simple bills transmitted during the Test and not the number of train cars, CBP assumes in this analysis that the ratio of a simple bill to train car is 1 to 1, essentially the number of simple bills represents the number of train cars.

[39] To estimate the number of total outbound train cars in future years, CBP used the average volume of train cars during the seven year period (2017–2023) = 4,191,807 annually.

Year	Total Cars	Estimated Cars per Train	Estimated Train Departures	Regulatory Period Data Transmissions
2025*	4,191,807	72.5	57,794	
Total	43,503,069		599,793	
Regulatory Period				
2026	4,191,807	72.5	57,794	4,249,601
2027	4,191,807	72.5	57,794	4,249,601
2028	4,191,807	72.5	57,794	4,249,601
2029	4,191,807	72.5	57,794	4,249,601
2030	4,191,807	72.5	57,794	4,249,601
Total	20,959,037		288,969	21,248,006

*Pilot period years with estimated not actual values.

In addition to the number of export manifest data transmissions and train consists submitted electronically from 2016–2023, CBP also obtained information from the Test on the number of 2H Documentation and 1H Enforcement holds that were issued during these years. According to CBP internal data as part of the rail EEM test from 2016–2023 CBP issued a total of 31,202 2H Documentation holds and 795 1H Enforcement holds.[40] To determine the number of holds that would be issued by CBP in the final two years of the pilot period CBP used the percent of export manifest data transmissions submitted that resulted in a 2H Documentation or a 1H Enforcement hold. Based on the information obtained during the Test, on average a 2H Documentation hold was issued on approximately 3.78 percent of all export manifest data transmissions and on average a 1H Enforcement hold was issued on 0.05 percent of all export manifest data transmissions.[41]

To estimate the number of holds issued in 2024 and 2025 CBP multiplied the percentage of EEM data transmissions resulting in a 2H Documentation hold (3.78%) and 1H Enforcement hold (0.05%) by the expected total number of rail EEM data transmissions during 2024 and 2025 (see Table 2). CBP anticipates that during the pilot

[40] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022, and May 10, 2024. Data obtained from CBP's ACE.

[41] Based on data from CBP's ACE tracking the total number of holds issued during the rail EEM test. 2H holds were not initially issued as complete functionality of the Test was gradually implemented. CBP notes that 2H holds were only generated starting in 2020 and to calculate the average percent of data transmission that had a 2H hold issued CBP only used 2020–2023 data. 1H Enforcement holds were being issued during the entire Test and therefore CBP calculated the average percent of data transmissions that had a 1H hold issued using data from 2016–2023.

period CBP would issue around 47,375 2H Documentation holds and around 1,049 1H Enforcement holds.

CBP expects that these holds would be issued at a similar frequency during the regulatory period. Therefore, to estimate the number of CBP holds that would be issued during the regulatory period, CBP multiplied the percentage of data transmissions that were issued 2H Documentation holds (3.78%) and 1H Enforcement holds (0.05%) by the estimated number of total data transmissions (see Table 3), for each year of the regulatory period. According to CBP's estimates, CBP would issue a total of 802,400 2H Documentation holds or on average 160,480 annually and around 11,137 1H Enforcement holds or on average 2,227 annually during the regulatory period. Table 4 displays CBP's estimates for total holds that would be issued during the regulatory period.

Table 4. Actual and Estimated Holds Issued during 2016–2030

Year	Total EEM Data Transmissions	Percent of Data Transmissions with 2H Hold	Percent of Data Transmissions with lH Hold	2H Holds Issued	lH Holds Issued	Total Holds Issued
Pilot Period						
2016	85,122				30	30
2017	218,543				37	37
2018	224,518				34	34
2019	219,572				41	41
2020	184,179			691	353	1,044
2021	203,564			3,779	115	3,894
2022	226,705			9,281	113	9,394
2023	211,799			17,451	102	17,553
2024*	214,135	3.78%	0.05%	8,087	112	8,199
2025*	214,135	3.78%	0.05%	8,087	112	8,199
Total	2,002,272			47,375	1,049	48,424
Regulatory Period						
2026	4,249,601	3.78%	0.05%	160,480	2,227	162,707
2027	4,249,601	3.78%	0.05%	160,480	2,227	162,707
2028	4,249,601	3.78%	0.05%	160,480	2,227	162,707
2029	4,249,601	3.78%	0.05%	160,480	2,227	162,707
2030	4,249,601	3.78%	0.05%	160,480	2,227	162,707
Total	21,248,006			802,400	11,137	813,537

*Pilot period years with estimated not actual values.

CBP believes that it is possible that the total number of holds could be less than these estimates during the regulatory period as rail carriers and other trade members become more familiar and efficient at providing the pre-departure EEM data, potentially improving com-

pliance and limiting the number of holds CBP issues. CBP did not issue any DNL holds during the Test and does not expect a significant number of DNL holds to be issued during the regulatory period. If DNL holds are issued this would be an additional cost to rail carriers, who are ultimately responsible for loading and not loading cargo.

Pilot Period

Costs

CBP expects that CBP, participating rail carriers, other trade members incur some costs during the pilot period when compared to the baseline.[42] CBP's primary cost during the pilot period was from implementing the Test EEM data tool into ACE. ACE was already in place prior to the Test; therefore, CBP did not need to develop an entirely new system. However, there were some development and ongoing systems costs to CBP during the introduction and operation of the Test. Initially, CBP incurred systems costs of approximately $608,000 to develop and implement the Test EEM tool into ACE.[43] During the pilot period, CBP incurs ongoing operations and maintenance costs associated with the Test, which costs CBP on average approximately $101,350 each year. CBP estimates that total systems costs to CBP for developing and operating the Test would be approximately $1.6 million during the pilot period.

CBP also incurs some time burdens while conducting additional review of EEM data when compared to the baseline. As stated earlier, in the baseline scenario the rail carriers provided export rail data to CBP all at once in the finalized train consists at or prior to departure from the United States. Therefore, under the baseline scenario, CBP was unable to review export data until the finalized train consist was submitted. During the Test, participants provide EEM data on a flow basis, so CBP is able to review the data when participants transmitted the EEM data and does not have to wait for rail carriers to finalize all the data and submit it together in the train consist. When participants transmit the EEM data to CBP via ACE, the integrated system can identify potential high-risk cargo and issue a 1H Enforcement hold, which requires manual review from a CBP officer. As discussed earlier, 2H Documentation holds generated by ACE do not require any action or response from CBP officers, therefore CBP does

[42] Other trade members would include USPPIs, FPPIs, NVOCCs, freight forwarders, or other third parties with knowledge of manifest data elements.

[43] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on December 7, 2022. Rail EEM ACE cost estimates were provided by CBP's Office of Information and Technology and provided development and ongoing costs that increase at a fixed rate each year.

not anticipate any time burden to CBP when a 2H Documentation hold is issued. CBP estimates that this additional review of each 1H Enforcement hold imposes an average time burden of approximately 5 minutes (0.083 hours) to CBP officers.[44] In addition to reviewing the EEM data transmitted, CBP officers also incur time burdens when addressing and resolving 1H Enforcement holds. Depending on the complexity of the 1H Enforcement hold, the time burden to CBP officers to address and resolve these holds varies from a few minutes to a few hours if a hold requires a CBP officer to manually examine cargo or a train car.[45] CBP does not know how many issued 1H Enforcement holds result in cargo examinations during the pilot period or if the Test result in additional examinations when compared to the baseline scenario. However, CBP notes that the majority of these 1H Enforcement holds do not result in a cargo examination and CBP officers are able to address and resolve the majority of these holds in a few minutes.[46] CBP estimates that, on average, CBP officers incur an additional time burden of 10 minutes (0.167 hours) to address and resolve each 1H Enforcement hold.[47] In total, CBP expects on average a CBP officer incurs a time burden of approximately 15 minutes (0.25 hours) to review and resolve each 1H Enforcement hold.

During the pilot period, CBP estimates that rail carriers will transmit a total of 2,002,272 EEM data submissions as part of the Test, resulting in approximately 1,049 1H Enforcement holds issued which require additional review by a CBP officer.[48] CBP calculates the time burden to CBP officers during the pilot period by multiplying the estimated number of 1H Enforcement holds (1,049) by the expected average time burden to CBP officers to review, address and resolve the average 1H Enforcement hold (15 minutes, 0.25 hours). CBP expects that CBP officers incurs a time burden of approximately 262 hours (1,049 holds × 0.25 hours) during the pilot period. CBP estimates the costs to CBP officers by multiplying the total time burden

[44] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on August 2, 2022. 1H Enforcement holds can also be issued by CBP officers upon manual review of export manifest data.

[45] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on June 21, 2022.

[46] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on November 8, 2022.

[47] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on November 21, 2022. Data obtained from CBP's OMR database.

[48] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022 and May 10, 2024. Data obtained by CBP's ACE and based on CBP estimates for years 2024–2025.

(262 hours) by the average hourly loaded rate for a CBP officer ($101.44) = $26,608.[49] Table 5 shows CBP's estimate for the time and cost burden to CBP officers when reviewing and resolving 1H Enforcement holds during the pilot period.

Table 5. Estimated Time Burden and Costs to CBP from lH Enforcement Holds during Pilot Period 2016–2025 (time in hours, costs in undiscounted 2023 U.S. Dollars)

Year	1 H Enforcement Holds Issued	Average Time Burden	Total Time Burden	Wage Rate	Total Cost
2016	30	0.25	7.50	$101.44	$761
2017	37	0.25	9.25	$101.44	$938
2018	34	0.25	8.50	$101.44	$862
2019	41	0.25	10.25	$101.44	$1,039
2020	353	0.25	88.23	$101.44	$8,950
2021	115	0.25	28.74	$101.44	$2,916
2022	113	0.25	28.24	$101.44	$2,865
2023	102	0.25	25.49	$101.44	$2,586
2024*	112	0.25	28.05	$101.44	$2,846
2025*	112	0.25	28.05	$101.44	$2,846
Total	1,049		262		$26,608

*Pilot period years with estimated not actual values.

In addition to CBP, rail carrier participants and some other trade members incur costs during the pilot period. The Test implements a few changes that affect rail carrier participants, such as providing advance EEM data within CBP-requested deadlines prior to cargo loading onto trains, transmitting the requested EEM data elements to CBP, and responding to and addressing any issued holds or questions from CBP about the data provided. So far during the pilot period, the participating rail carriers demonstrate very high levels of compliance with providing data within the requested deadlines of the Test, as approximately 94 percent of EEM data provided to CBP was transmitted on time.[50] From 2016–2023, the participating rail carriers electronically transmitted a total of 1,574,002 EEM data submissions, including 1,563,694 simple bills and 10,308 train consists,

[49] CBP bases this wage on the FY 2023 salary, benefits, premium pay, non-salary costs, and awards of the national average of CBP Officer Positions, which is equal to a GS–11, Step 10. Source: Email correspondence with CBP's Office of Finance on September 26, 2023.

[50] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 21, 2022.

representing around 4 percent of all estimated export manifest data submissions.[51]

Since CBP requests that rail carriers participating in the Test continue to provide the paper forms in addition to the EEM data, these rail carriers incur an additional time burden to submit the new electronic data during the Test. CBP estimates that on average rail carriers incur a time burden of approximately 40 minutes (0.667 hours) per train to transmit the EEM data.[52] Unfortunately, CBP does not have data on the exact number of total trains for which the participating rail carriers provide electronic data during the pilot period.[53] Therefore, to provide an estimate, CBP used 2021–2023 data from the Test on the number of simple bills transmitted compared to the number of train consists transmitted.[54] Over the course of these years rail carriers electronically transmitted to CBP a total of 633,336 simple bills and 8,732 train consists as part of the Test, or on average approximately 72.5 simple bills per train consist. CBP used this ratio of simple bills (train cars) to train consists (trains) and the total estimated number of simple bills that would be transmitted during each year of the pilot period (2016–2025) to estimate the total number of trains for which rail carriers will transmit electronic export manifest data to CBP. According to CBP's estimates, there will be approximately 27,384 trains that will have EEM data transmitted to CBP when departing the United States. Assuming that the Test participants will transmit EEM data for approximately 27,384 trains, CBP estimates that these rail carrier participants incur a time bur-

[51] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022 and May 10, 2024. Data obtained from CBP's ACE, Borderstat and OMR databases. CBP notes that most of the time the ratio of a simple bill to train car is 1 to 1, however a simple bill could be submitted for multiple train cars or vice versa. Because CBP only knows the number of simple bills transmitted during the Test and not the number of train cars, CBP assumes in this analysis that the ratio of a simple bill to train car is 1 to 1, essentially the number of simple bills represents the number of train cars. CBP determined the number of total export manifest data submissions during the pilot period by accounting for if all export manifest data were transmitted electronically and by assuming one simple bill per estimated departing train car and one train consist per departing rain, based on the volume of inbound train cars and CBP's estimate for the number of simple bills (train cars) per train.

[52] Information was obtained from feedback and discussions with Trade members on the potential impacts of providing EEM data in addition to the paper forms. Data obtained in February 2023.

[53] Rail EEM test participants didn't start providing the train consists electronically to CBP on a consistent basis until 2021, therefore CBP does not know how many actual trains had electronic data transmitted to CBP earlier in the pilot period.

[54] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022, and May 10, 2024. Data obtained from CBP's ACE. CBP used only three years of year of data 2021–2023, because these were the only full years of data during the pilot period when all train consists were actually transmitted by participating rail carriers in the Test.

den of 18,256 hours for transmission purposes (27,384 trains × 0.667 hours). To estimate the time burden costs, CBP multiplied the time burden hours by the average hourly loaded wage rate for exporters ($35.62).[55] CBP estimates that, during the pilot period when submitting the EEM data to CBP, Test participants incur a total cost of around $650,273 or on average $65,027 annually. Table 6 below displays CBP's estimate for the number of trains that depart the United States and provide EEM data, the estimated time burden and costs to rail carriers during each year of the pilot period.

Table 6. Estimated Time Burden and Costs to Rail Carriers when Providing EEM to CBP during Pilot Period 2016–2025 (undiscounted 2023 U.S. Dollars)

Year	Simple Bills Transmitted	Estimated Simple Bills per Train	Estimated Train Departures	Time Burden per Train Departure	Total Time Burden	Wage Rate	Total Cost
2016	85,122	72.5	1,174	0.67	782	$35.62	$27,869
2017	218,235	72.5	3,009	0.67	2,006	$35.62	$71,451
2018	224,518	72.5	3,096	0.67	2,064	$35.62	$73,508
2019	219,413	72.5	3,025	0.67	2,017	$35.62	$71,837
2020	183,070	72.5	2,524	0.67	1,683	$35.62	$59,938
2021	200,963	72.5	2,771	0.67	1,847	$35.62	$65,796
2022	223,793	72.5	3,086	0.67	2,057	$35.62	$73,271
2023	208,580	72.5	2,876	0.67	1,917	$35.62	$68,290
2024*	211,225	72.5	2,912	0.67	1,941	$35.62	$69,156
2025*	211,225	72.5	2,912	0.67	1,941	$35.62	$69,156

[55] Source of median wage rate: U.S. Bureau of Labor Statistics. Occupational Employment and Wage Statistics, "May 2022 National Occupational Employment and Wage Estimates United States." Updated April 25, 2023. Available at *https://www.bls.gov/oes/2022/may/oes_nat.htm*. Accessed August 21, 2023. The total compensation to wages and salaries ratio is equal to the total compensation cost per hour worked for Office and Administrative Support occupations ($32.52) divided by the wages and salaries cost per hour worked for the same occupation category ($22.01). See "Table 2. Employer Costs for Employee Compensation for civilian workers by occupational and industry group." Bureau of Labor Statistics, "Employer Costs for Employee Compensation—December 2022." Released March 17, 2023. Available at *https://www.bls.gov/news.release/archives/ecec_03172023.pdf*. Accessed August 29, 2023.. CBP assumes an annual growth rate of 7.01% based on the prior year's change in the implicit price deflator, published by the Bureau of Economic Analysis. To adjust to 2023 dollars, multiply by the 2021–2022 percent change in the Bureau of Economic Analysis's Implicit Price Deflators for Gross Domestic Product (127.224/118.895–1). See "Table 1.1.9. Implicit Price Deflators for Gross Domestic Product," Line 1 Gross Domestic Product, annual. Bureau of Economic Analysis. Updated August 30, 2023. Available at *https://apps.bea.gov/iTable/?reqid=19&step;=2&isuri;=1&categories=survey#eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwyLDMsM10sImRhdGEiOltbImNhdGVnb3JpZXMiLCJTdXJ2ZXkiXSxbIk5JUEFfVGFibGVfTGlzdCIsIjEzIl0sWyJGaXJzdF9ZZWFyIiwiMjAxNiJdLFsiTGFzdF9ZZWFyIiwiMjAyMyJdLFsiU2NhbGUiLCIwIl0sWyJTZXJpZXMiLCJBll1dfQ*==*. Accessed September 20, 2023

Year	Simple Bills Transmitted	Estimated Simple Bills per Train	Estimated Train Departures	Time Burden per Train Departure	Total Time Burden	Wage Rate	Total Cost
Total	1,986,143		27,384		18,256		$650,273

*Pilot period years with estimated not actual values.

CBP expects that rail carriers participating in the Test and other trade members also face time burdens and costs when responding to 2H Documentation holds and 1H Enforcement holds. According to CBP internal data and estimates for 2024 and 2025, during the pilot period, CBP will issue a total of 47,375 2H Documentation holds and 1,049 1H Enforcement holds. CBP has not issued any DNL instructions during the Test.[56] By the end of 2023, rail carriers have shown high rates of compliance and responsiveness to CBP holds during the Test, with over 99.8% of holds being resolved and cargo released.[57] CBP expects that the time burden to respond to each hold depends on the complexity of the issue and if the hold results in an examination of cargo which would be more time consuming. When responding to holds, if a rail carrier does not have the necessary information and needs to obtain the data from another trade member, that would also impose a time burden on the other trade member. CBP believes that on average the overall time burden to trade (rail carriers and other trade members) when reviewing and addressing these holds is approximately 12.5 minutes (0.21 hours) per hold.[58] Based on CBP Test data and estimates for 2024 and 2025, there will be a total of 48,424 holds issued during the pilot period (see Table 4) and CBP estimates these holds will impose a time burden to trade of around 10,088 hours (48,424 holds × 0.21 hours per hold). CBP estimated the cost to trade by multiplying the total expected hours spent reviewing and addressing holds (10,088) by the average hourly loaded wage rate for exporters ($35.62). CBP expects that during the pilot period reviewing and addressing holds issued by CBP cost trade approximately $359,350 or on average $35,935 annually. Table 7 shows CBP estimates for the

[56] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022, and May 10, 2024.

[57] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 21, 2022, and May 10, 2024. Data obtained from CBP's ACE.

[58] Data obtained from CBP discussion with Trade members on the potential costs to review and resolve holds issued by CBP in response to EEM data transmitted. Time burdens vary greatly depending on the complexity of the issue; CBP took this into consideration when calculating the average time burden to review and address an issued hold. Data obtained in February 2023.

total number of holds issued, the estimated time burden and costs to rail carriers during each year of the pilot period.

Table 7. Estimated Time Burden and Costs to Rail Carriers Responding to CBP Issued Holds during Pilot Period 2016–2025 (time in hours, costs in undiscounted 2023 U.S. Dollars)

Year	2H Documentation Holds Issued	lH Enforcement Holds Issued	Average Time Burden	Total Time Burden	Wage Rate	Total Cost
2016		30	0.21	6.3	$35.62	$223
2017		37	0.21	7.7	$35.62	$275
2018		34	0.21	7.1	$35.62	$252
2019		41	0.21	8.5	$35.62	$304
2020	691	353	0.21	217.5	$35.62	$7,747
2021	3,779	115	0.21	811.3	$35.62	$28,897
2022	9,281	113	0.21	1957.1	$35.62	$69,711
2023	17,451	102	0.21	3656.9	$35.62	$130,258
2024*	8,087	112	0.21	1708.1	$35.62	$60,841
2025*	8,087	112	0.21	1708.1	$35.62	$60,841
Total	47,375	1,049		10,088		$359,350

*Pilot period years with estimated not actual values.

From the Test, CBP does not know to what extent obtaining pre-departure EEM data improves CBP's enforcement, resulting in identifying additional high-risk cargo or other compliance issues, beyond what CBP would have identified prior to the Test. CBP notes that for all pre-departure EEM that was transmitted to the Test, CBP was able to use ATS for risk assessment compared to the baseline scenario where CBP was only able to use ATS on a very limited number of export cargo data in the rail environment.[59] If CBP identifies more high-risk cargo as a result of the Test, that may result in larger time burdens on rail carriers to respond to and address CBP requests for cargo examination.

During the pilot period, rail carriers that voluntarily participate in the Test, incur costs to adjust and maintain their IT systems to interact with CBP's ACE and provide the required pre-departure EEM data to CBP. The EEM data requirements are very similar to data requirements for advance electronic import manifest data re-

[59] CBP can only use ATS on electronically transmitted data; therefore, because the majority of export manifest data provided to CBP prior to this proposed rule was submitted in paper and or via email, CBP was not able to use ATS to screen any cargo associated with these paper forms.

quired during the import process.[60] Because rail carriers have already developed systems for those electronic processes at import, Test participants do not need to develop entirely new IT systems to transmit EEM data for the Test, but rather rail carriers make adjustments to their already existing internal systems.[61] As rail carriers already have systems to interface with ACE for import filings, among other things, systems needed to be modified rather than developed. In addition, rail carrier employees who file information for imports are typically the same who file for export. The cost of adjusting and maintaining internal systems to support providing EEM data to CBP can vary depending on the rail carrier or trade member. Therefore, CBP provides a range of estimates for the internal system costs to the average Test participant during the pilot period. CBP anticipates that the annual internal systems costs required to participate in the Test could range from $10,000 to $60,000 each year.[62] CBP used the midpoint within the range, $35,000, as CBP's primary estimate for annual internal systems costs to the average rail carrier participating in the Test. As alternate estimates, CBP used a low estimate of $10,000 and the high estimate of $60,000 for the annual internal systems costs per year. According to CBP's primary estimate, the two Test participants will incur approximately $700,000 in total costs to adjust and maintain their internal systems for providing electronic export manifest data to CBP during the pilot period. CBP's alternate low and high estimate show that internal systems total costs to the two rail carriers will be between $200,000 and $1,200,000 during the pilot period. Table 8 displays CBP's range of cost estimates for annual internal systems costs to the two rail carrier participants during the pilot period.

Table 8. Estimated Systems Costs to Rail Carriers during Pilot Period 2016–2025 (undiscounted 2023 U.S. Dollars)

Year	Primary Estimate ($35,000)	Low Estimate ($10,000)	High Estimate ($60 000)
2016	70,000	20,000	120,000

[60] Data obtained from feedback provided by Trade members on similarities between providing electronic import manifest data and the requested EEM. Data obtained in December 2022 and February 2023.

[61] Data obtained from feedback provided by Trade members on potential necessary development, adjustments and maintenance of existing internal systems to support providing EEM to CBP via ACE. Data obtained in December 2022 and February 2023.

[62] Data was obtained from feedback from Trade members on the potential costs to internal systems to support providing EEM to CBP via ACE. Data was obtained in December 2022 and February 2023.

Year	Primary Estimate ($35,000)	Low Estimate ($10,000)	High Estimate ($60 000)
2017	70,000	20,000	120,000
2018	70,000	20,000	120,000
2019	70,000	20,000	120,000
2020	70,000	20,000	120,000
2021	70,000	20,000	120,000
2022	70,000	20,000	120,000
2023	70,000	20,000	120,000
2024	70,000	20,000	120,000
2025	70,000	20,000	120,000
Total	700,000	200,000	1,200,000

CBP estimates that total overall costs from the Test during the pilot period will be approximately $3.6 million or on average $335,767. Total estimated costs to CBP and trade as a result of the Test are displayed below in Table 9. CBP estimates that during the pilot period CBP will incur costs of approximately $1.6 million or on average $164,805 annually. According to CBP's primary estimate for total costs to trade from participating in the Test during the pilot period, costs will be approximately 1.7 million or on average $170,962 annually.

Table 9. Estimated Total Costs during Pilot Period 2016–2025 (undiscounted 2023 U.S. Dollars)

Year	CBP Systems Costs	CBP Review and Address Holds	Total CBP Costs	Trade Costs to Provide EEM	Trade Review & Address Holds	Trade Systems Costs	Total Trade Costs	Total Costs
2016	$700,868	$761	$701,629	$27,869	$223	$70,000	$98,092	$799,721
2017	$94,690	$938	$95,628	$71,451	$275	$70,000	$141,726	$237,354
2018	$96,489	$862	$97,351	$73,508	$252	$70,000	$143,761	$241,112
2019	$98,322	$1,039	$99,361	$71,837	$304	$70,000	$142,141	$241,503
2020	$100,190	$8,950	$109,140	$59,938	$7,747	$70,000	$137,685	$246,825
2021	$102,094	$2,916	$105,010	$65,796	$28,897	$70,000	$164,693	$269,703
2022	$104,034	$2,865	$106,899	$73,271	$69,711	$70,000	$212,982	$319,881
2023	$106,115	$2,586	$108,701	$68,290	$130,258	$70,000	$268,548	$377,249
2024*	$108,237	$2,846	$111,083	$69,156	$60,841	$70,000	$199,997	$311,080
2025*	$110,402	$2,846	$113,247	$69,156	$60,841	$70,000	$199,997	$313,245
Total	$1,621,440	$26,608	$1,648,048	$650,273	$359,350	$700,000	$1,709,623	$3,357,671

*Pilot period years with estimated not actual values.

Cost Savings

CBP anticipates that the implementation of the Test also provides cost savings during the pilot period. As CBP expected, obtaining EEM data through the Test is a more efficient process than obtaining export data from paper forms. As stated earlier, CBP officers manually review all finalized train consists prior to a train's departure from the United States, regardless of whether rail carriers submit the train consists in paper or electronic form. During the pilot period, when CBP receives electronic finalized train consists from participating rail carriers the time burden to review those consists decreased substantially compared to reviewing the paper consists. Additionally, CBP officers are able to conduct and complete their review of a transmitted electronic train consist prior to that train's arrival to the U.S. port of export.[63] CBP's review of these train consists requires on average 35 minutes (0.583 hours) when submitted electronically compared to an average of 2.5 hours when they were submitted to CBP on paper forms.[64] To estimate the total time savings, CBP multiplied the average time savings of reviewing a train consist transmitted electronically (2.5 hours - 35 minutes = 1.92 hours) by the total number of estimated train consists that will be transmitted electronically during the pilot period (16,129, see Table 2). CBP estimates that the Test will generate time savings of approximately 30,915 hours to CBP officers. CBP then multiplied the estimated time savings (30,915 hours) by the average hourly loaded rate for a CBP officer ($101.44) to estimate the total cost savings of approximately $3.1 million to CBP during the pilot period. Table 10 shows CBP's estimates for the time savings and cost savings to CBP officers from swifter review of electronic train consists for each year of the pilot period.

[63] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on November 8, 2022. With electronic transmitted data, the system assists in much of the cargo screening and review of the data allowing CBP to conduct a quicker and more thorough review of export manifest data.

[64] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on August 2, 2022.

Table 10. Estimated Time and Cost Savings to CBP From Improved Review of Electronic Train Consists during Pilot Period 2016–2025 (time in hours, cost savings in undiscounted 2023 U.S. Dollars)

Year	Train Consists Transmitted Electronically	Average Time Savings per Electronic Train Consists	Total Time Savings	Wage Rate	Total Cost Savings
2016		1.92		$101.44	$0
2017	308	1.92	590	$101.44	$59,883
2018		1.92		$101.44	$0
2019	159	1.92	305	$101.44	$30,914
2020	1,109	1.92	2,126	$101.44	$215,619
2021	2,601	1.92	4,985	$101.44	$505,704
2022	2,912	1.92	5,581	$101.44	$566,170
2023	3,219	1.92	6,170	$101.44	$625,859
2024*	2,911	1.92	5,579	$101.44	$565,911
2025*	2,911	1.92	5,579	$101.44	$565,911
Total	16,129		30,915		$3,135,973

*Pilot period years with estimated not actual values.

CBP anticipates that rail carriers may also experience time and cost savings from the Test resulting in a more efficient export process at the U.S. port of export. Rail carriers support CBP's transition to EEM data because rail carriers acknowledge that the former process of providing export information on paper forms is inefficient and unnecessarily burdensome to all parties involved. Additionally, the existing export process using paper forms is inconsistent with the import process which has already transitioned to electronic data transmission. Rail carriers have experienced a more efficient import process as a result, and they acknowledge the potential for improvements to the export process from providing electronic data.

CBP's review of electronic train consists is significantly quicker than train consists in paper form. In the baseline scenario, CBP does not know how often rail carriers sent finalized train consists by email in advance of departure and to what extent CBP officers were able to fully conduct their review of the paper train consist prior to the train's arrival to the U.S. port of export. If CBP officers, prior to the Test, were unable to start their review of a train's consist before the train reached the U.S. port of export and the train was held at the U.S. port of export until CBP officers conducted a review of the train consist, then participants in the Test experience a time savings similar to that estimated above for CBP's officers during CBP's review process (1.92

hours) when transmitting an electric train consist. However, CBP does not know in the baseline scenario the extent to which rail carriers sent finalized pre-departure data via email to CBP providing CBP officers enough time to review the paper train consists prior to the train's arrival to the U.S. port of export. Therefore, during the pilot period CBP does not know exactly how much time savings rail carriers experience from a swifter CBP review of electronic train consists at the U.S. port of export. To estimate the potential time savings to rail carrier participants during the pilot period from quicker CBP processing time, CBP provides a range of time savings under a few situations that could occur in the baseline scenario depending on the amount of review CBP officers complete before the train's arrival to the U.S. port of export.

In Scenario 1, where CBP officers did not begin the review of paper train consists until the train arrived at the port, rail carriers participating in the Test would experience on average a time savings of 1.92 hours per train from a more efficient CBP review using electronic train consists, assuming no 1H Enforcement holds, or other issues CBP identified during the review of the consist. In Scenario 2, during the baseline, where rail carriers sent finalized train consists by email pre-departure and CBP officers were able to complete their review of these paper train consists prior to all trains arriving at the U.S. port of export, rail carriers participating in the Test would likely not experience any time savings from transmitting electronic train consists. CBP anticipates that in this scenario CBP officers were able to fully complete their review of the paper or electronic train consist prior to the train's arrival to the U.S. port of export avoiding any delays to departure from CBP officers conducting their review at the U.S. port of export. CBP is uncertain to what extent these time savings are experienced by rail carriers during the pilot period; however, CBP believes that it would likely be between the 1.92 hours and zero hours per train. For the purposes of this analysis, CBP uses Scenario 3, which is the mid-point between the two values (0.96 hours), as the primary estimate for time savings per electronic train consist reviewed during the pilot period. CBP also considered a Scenario 4 which assumes CBP officers were able to complete 25 percent of the review of finalized train consists prior to a train's arrival at the U.S. port of export during the baseline.

For illustrative purposes, CBP presents these potential time savings to rail carriers in range estimates based on how much review CBP officers completed prior to a train's arrival to the port in the baseline. CBP multiplied the average time savings per train by the estimated number of electronic train consists transmitted to CBP

(16,129, see Table 2) during the pilot period to estimate the total potential time savings from expedited CBP processing at the U.S. port of export. To calculate the cost savings CBP multiplied these potential time savings by the average hourly loaded wage rate for exporters ($35.62). CBP's primary estimate for time savings and costs savings to rail carriers from swifter CBP review of train consists will be approximately 15,484 hours and $551,546. Table 11 displays CBP's primary estimate along with range estimates for potential time savings and cost savings to rail carriers at the U.S. port of export during the pilot period depending on if during the baseline CBP officers were able to complete 0 percent of their review of train consists, 25 percent of their review and 100 percent of their review prior to a train's arrival at the U.S. port of export.[65]

Table 11. Estimated Time and Cost Savings to Rail Carriers from Improved CBP Review during Pilot Period 2016–2025 (time in hours, costs in undiscounted 2023 U.S. dollars)

	Time Savings Per Consist	Total Train Consists	Total Time Savings	Wage Rate	Total Cost Savings
Scenario 1 (0 percent)	1.92	16,129	30,968	$34.81	$1,103,092
Scenario 2 (100 percent)	0	16,129	-	$34.81	$0
CBP's Primary Estimate: Scenario 3 (50 percent)	**0.96**	**16,129**	**15,484**	**$34.81**	**$551,546**
Scenario 4 (25 percent)	0.48	16,129	7,742	$34.81	$275,773

CBP expects that participating rail carriers also experience additional time savings from the Test when compared to the baseline when making corrections to submitted data.[66] Making updates and corrections to data transmitted electronically is significantly more efficient than making updates and corrections to emailed paper forms. Additionally, the Test allows participants to transmit data when it becomes available, and the Test allows them to continuously edit and update data in ACE on a flow basis. CBP estimates that during the pilot period making such corrections when transmitting EEM data save Test participants on average 15 minutes (0.25 hours)

[65] To provide additional possible outcomes CBP also includes Scenario 4 which assumes CBP officers were able to complete 25 percent of the review of finalized train consists prior to a train's arrival at the U.S. port of export.

[66] Information was obtained from feedback and discussions with Trade members on the potential effects of providing EEM data. Data obtained in February 2023.

per train.[67] To calculate the time savings, CBP used the estimate discussed earlier for total trains that had electronic data submitted during the pilot period (27,384 see Table 6) multiplied by the expected time savings per train (0.25 hours). CBP estimates that the total time savings to rail carriers from making data corrections in the electronic environment will be approximately 6,846 hours during the pilot period. CBP multiplied the estimated time savings by the average hourly loaded wage rate for exporters ($35.62) and anticipates the total cost savings to rail carrier participants from making data corrections in the electronic environment will be approximately $243,852 or on average $24,385 annually during the pilot period. Table 12 shows CBP's estimate for time savings and cost savings to rail carrier participants while making data corrections to EEM compared to paper forms during the pilot period.

Table 12. Estimated Time and Cost Savings to Rail Carriers from Making Corrections to EEM Data during the Pilot Period 2016–2025 (time in hours, costs in undiscounted 2023 U.S. Dollars)

Year	Trains Departed providing EEM	Average Time Savings per Train	Total Time Savings	Wage Rate	Total Cost Savings
2016	1,174	0.25	293	$35.62	$10,451
2017	3,009	0.25	752	$35.62	$26,794
2018	3,096	0.25	774	$35.62	$27,566
2019	3,025	0.25	756	$35.62	$26,939
2020	2,524	0.25	631	$35.62	$22,477
2021	2,771	0.25	693	$35.62	$24,674
2022	3,086	0.25	771	$35.62	$27,477
2023	2,876	0.25	719	$35.62	$25,609
2024*	2,912	0.25	728	$35.62	$25,933
2025*	2,912	0.25	728	$35.62	$25,933
Total	27,384		6,846		$243,852

*Pilot period years with estimated not actual values.

CBP anticipates there would be a savings to rail carriers during the Test when CBP identifies issues before trains are loaded and assembled. In the baseline scenario, when CBP identifies a high-risk cargo, the cargo has usually already been loaded onto the train, requiring a burdensome and time-consuming process to detach or unload the cargo from an assembled train. CBP estimates that to

[67] Information was obtained from feedback and discussions with Trade members on the potential effects of providing EEM data. Data obtained in February 2023.

physically detach a freight car from an assembled train typically costs around $3,000 and can result in a delay of up to two hours.[68] This includes the freight and labor costs to safely decouple a train car from a built train. Under this rule, the pre-departure EEM data transmitted to CBP would improve CBP's ability to identify high-risk cargo before it is loaded onto a train, avoiding the costly action of deconstructing trains and unloading cargo for examination. CBP does not track the number of cargo examinations and was unable to generate an estimate for the average number of cargo examinations each year, but feedback received from trade members suggests that such examinations are not a frequent occurrence.[69]

CBP estimates that during the pilot period total cost savings as a result of the Test will be approximately $3.9 million or on average $393,137 annually. CBP expects that trade will experience a total cost savings of approximately $795,398 or on average $79,539 annually. Table 13 displays CBP's estimates for cost savings to CBP, trade and total overall cost savings during the pilot period as a result of the Test.

Table 13. Estimated Cost Savings from Rail EEM during the Pilot Period 2016–2025 (undiscounted 2023 U.S. Dollars)

Year	CBP Cost Savings	Trade Cost Savings from Improved CBP Review	Trade Cost Savings from Making Corrections to EEM Data	Total Cost Savings to Trade	Total Overall Cost Savings
2016	$0	$0	$10,451	$10,451	$10,451
2017	$59,883	$10,532	$26,794	$37,326	$97,210
2018	$0	$0	$27,566	$27,566	$27,566
2019	$30,914	$5,437	$26,939	$32,376	$63,290
2020	$215,619	$37,922	$22,477	$60,399	$276,018
2021	$505,704	$88,942	$24,674	$113,615	$619,319
2022	$566,170	$99,576	$27,477	$127,053	$693,223
2023	$625,859	$110,074	$25,609	$135,683	$761,543
2024*	$565,911	$99,531	$25,933	$125,464	$691,376

[68] Information was obtained from feedback and discussions with Trade members on the potential costs and time burden to remove a train car from a constructed train in order for CBP to conduct an examination of the cargo or container. Data obtained in February 2023.

[69] Information was obtained from feedback and discussions with Trade members on the frequency of cargo examinations prior to the Test and during the Test suggesting such an occurrence was fairly uncommon. Data obtained in February 2023.

Year	CBP Cost Savings	Trade Cost Savings from Improved CBP Review	Trade Cost Savings from Making Corrections to EEM Data	Total Cost Savings to Trade	Total Overall Cost Savings
2025*	$565,911	$99,531	$25,933	$125,464	$691,376
Total	$3,135,973	$551,546	$243,852	$795,398	$3,931,371

*Pilot period years with estimated not actual values.
Note: CBP cost savings and trade cost savings from improved CBP review are based on the estimated number of electronic train consists transmitted as seen in Table 2. Trade cost savings from making corrections to EEM data are based on CBP's estimate for the number of trains that provided EEM data to CBP during the Test as seen in Table 6.

CBP requests feedback and comments from rail carriers and other trade members on the costs and cost savings to rail carriers and other trade members during the Test pilot period discussed above and any other costs or cost savings to rail carriers and other trade members that CBP did not address in this analysis.

Benefits

According to Section 343(a) of the Trade Act of 2002, as amended (Trade Act) (19 U.S.C. 1415), CBP is authorized to establish regulations that provide for the mandatory electronic transmission of data by way of a CBP-approved electronic data interchange before cargo arrives in or departs the United States in all environments (sea, air, rail, and truck). The Test was developed and implemented as a way for CBP to test a feasible process to meet its requirements as per the Trade Act. In addition to meeting its statutory requirements, CBP likely experiences benefits during the pilot period. CBP does not have the data available to quantify these benefits and therefore will discuss these benefits qualitatively. The primary benefit of requiring pre-departure EEM data is improving CBP's security efforts and its ability to use ATS to identify high-risk cargo prior to departing the United States, while minimizing the disruption to the export process. In the baseline, CBP officers usually manually review train consists at the time of departure without using CBP's ATS, so CBP cannot take advantage of the ATS risk assessment during the rail exit process. All EEM data transmitted to CBP as part of the Test are screened by CBP using ATS prior to departure, providing a more robust review and improving CBP's security efforts. Additionally, the gained efficiencies from obtaining data in an integrated system allow CBP to review export rail data more efficiently prior to departure and provide CBP officers the ability to allocate more time to mission-critical activities of cargo security and safety.

Net Impact

CBP has provided its primary estimates for the total costs and cost savings from the Test during the pilot period, displayed in Table 14. CBP estimates that the net cost savings will be approximately $573,700 or on average $57,370 annually.

Table 14. Estimated Net Cost Savings during Pilot Period 2016–2025 (undiscounted 2023 U.S. Dollars)

Year	CBP Cost	Trade Cost	Total Cost	CBP Cost Savings	Trade Cost Savings	Total Cost Savings	Net Cost Savings
2016	$701,629	$98,092	$799,721	$0	$10,451	$10,451	-$789,270
2017	$95,628	$141,726	$237,354	$59,883	$37,326	$97,210	-$140,144
2018	$97,351	$143,761	$241,112	$0	$27,566	$27,566	-$213,546
2019	$99,361	$142,141	$241,503	$30,914	$32,376	$63,290	-$178,213
2020	$109,140	$137,685	$246,825	$215,619	$60,399	$276,018	$29,193
2021	$105,010	$164,693	$269,703	$505,704	$113,615	$619,319	$349,616
2022	$106,899	$212,982	$319,881	$566,170	$127,053	$693,223	$373,342
2023	$108,701	$268,548	$377,249	$625,859	$135,683	$761,543	$384,294
2024*	$111,083	$199,997	$311,080	$565,911	$125,464	$691,376	$380,296
2025*	$113,247	$199,997	$313,245	$565,911	$125,464	$691,376	$378,131
Total	$1,648,048	$1,709,623	$3,357,671	$3,135,973	$795,398	$3,931,371	$573,700

*Pilot period years with estimated not actual values.

Table 15 displays CBP's primary estimate for quantifiable net cost savings from the Test adjusted for discounting. As shown, CBP expects that this proposed rule will result in total net cost savings to CBP, rail carriers and other trade members during the pilot period of around $343,946 using a two percent discount rate. CBP estimates that annualized net cost savings will be around $38,290 using a two percent discount rate.

Table 15. Total Monetized Present Value and Annualized Net Cost Savings of Pilot Period 2016–2025 (2023 U.S. Dollars)

	2% Discount Rate
Present Value Net Cost Savings	$343,946
Annualized Net Cost Savings	$38,290

Regulatory Period

For the regulatory period, CBP estimated the future costs, cost savings, and benefits to rail carriers, the Federal Government, and other trade members as a result of requiring EEM data in the rail environment. CBP anticipates the effects of the proposed rule would

be similar to those experienced during the pilot period but on a larger scale as the proposed rule would make transmission of pre-departure EEM data mandatory for all U.S. exports in the rail environment.

Costs

CBP anticipates that this proposed rule would result in costs to both CBP and trade members during the regulatory period. CBP will bear technology and opportunity costs by expanding the existing test to a requirement for all rail carriers. CBP does not anticipate it will incur any costs to develop new systems during the regulatory period because CBP completed the system development and implementation of the rail EEM data tool application into ACE during the pilot period. CBP does expect to incur some ongoing systems operations and maintenance costs associated with the rail EEM data application in ACE. Over the course of the regulatory period, CBP estimates that ongoing systems costs in ACE would be approximately $586,026 or on average $117,205 each year.[70]

In addition to the ongoing systems costs, CBP expects to incur additional time burdens as a result of CBP officers manually reviewing, addressing and resolving 1H Enforcement holds. CBP estimates that a total of 11,137 1H Enforcement holds would be issued during the regulatory period (see Table 4 above). CBP expects that the time burden to a CBP officer to manually review a 1H Enforcement hold on average is about 5 minutes (0.083 hours). CBP also anticipates that CBP officers will incur an additional time burden to address and resolve these 1H Enforcement holds. Depending on the complexity of the hold and if it is determined that a CBP officer needs to manually examine cargo, the time burden to CBP officers to address and resolve these holds varies from a few minutes to a few hours.[71] CBP expects that the majority of these 1H Enforcement holds issued would not result in a cargo examination.[72] CBP estimates that the average time burden incurred by CBP officers during the regulatory period for addressing and resolving 1H Enforcement holds is the same as during the pilot period, 10 minutes (0.167 hours).[73] Combined, CBP expects that that on average the total time burden to CBP officers during the

[70] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on December 7, 2022. Rail EEM ACE cost estimates were provided by CBP's Office of Information and Technology, ongoing costs are expected increase at a fixed rate each year.

[71] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 21, 2022.

[72] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on November 8, 2022.

[73] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on November 21, 2022.

regulatory period to review, address and resolve a 1H Enforcement hold is approximately 15 minutes (0.25 hours). CBP estimates that the proposed rule would result in 1H Enforcement holds that would cause an additional time burden to CBP officers of approximately 2,784 hours (11,137 1H Enforcement holds × 0.25 hours per hold). CBP calculated the costs to CBP officers in the regulatory period, by multiplying the total time burden (2,784) hours by the average hourly loaded rate for a CBP Officer ($101.44) = $282,433. Table 16 shows CBP estimates for total costs to CBP during the regulatory period including ongoing systems and maintenance costs and the time burden and cost to CBP officers from additional review of 1H Enforcement holds during the regulatory period. Over the regulatory period this proposed rule would cost CBP approximately $868,459 or on average $173,691 annually.

Table 16. Estimated Time Burden and Costs to CBP during the Regulatory Period 2026–2030 (time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
1 H Enforcement Holds	2,227	2,227	2,227	2,227	2,227	11,137
Time Burden per Hold	0.25	0.25	0.25	0.25	0.25	
Time Burden	557	557	557	557	557	2,784
Time Burden Costs	$56,487	$56,487	$56,487	$56,487	$56,487	$282,433
Rail EEM System O&M Costs	$112,610	$114,862	$117,159	$119,502	$121,892	$586,026
Total Costs	$169,096	$171,349	$173,646	$175,989	$178,379	$868,459

CBP does not expect that this proposed rule would result in additional cargo examinations when compared to the baseline. In the case where CBP determines it is necessary to conduct a physical examination of cargo or a container on average a CBP officer is able to complete the examination and submit the findings in about 60 minutes.[74] Given the CBP officer hourly loaded wage rate of $101.44, CBP estimates the average time burden cost to CBP to conduct a cargo or container examination is approximately $101.44 per examination. If there are more manual examinations of cargo as a result of 1H Enforcement holds when compared to the baseline, then the time burden to CBP officers during the regulatory period could be larger than CBP expected. Unfortunately, CBP does not have data on how many 1H Enforcement holds typically result in a cargo examination.

[74] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on December 15, 2022.

However, because the EEM data is provided in advance of departure CBP would likely be able to issue holds before trains reach the U.S. port of export and possibly before cargo is loaded, limiting the time burden and costs of conducting these cargo examinations when compared to the baseline scenario.

CBP anticipates that this proposed rule would result in costs to trade members in the form of both systems and opportunity costs. CBP expects that the remaining rail carriers (five) that did not participate in the Test would incur costs to adjust and maintain their IT systems to provide the electronic export manifest data directly to CBP via ACE. CBP anticipates that the cost of adjusting and maintaining internal systems can vary depending on the rail carrier or trade member and therefore CBP provides a range of estimates for the annual internal system costs to the rail EEM participants during the regulatory period. CBP anticipates that the annual internal systems costs would range from the low end $10,000 to as high as $60,000 each year.[75] For the primary estimate during the regulatory period CBP used the same estimate as proposed during the pilot period, $35,000 in internal system costs to the average rail EEM participant to maintain its internal systems each year. To provide a range of cost estimates, CBP also provides estimates if maintaining the internal systems cost the average Rail EEM participant $10,000 each year or $60,000 each year. CBP expects that at least the seven rail carriers will incur these systems costs each year of the regulatory period; however, CBP does not know how many other trade members would also elect to participate and provide the EEM cargo data directly to CBP via ACE thus incurring systems costs. CBP notes that it is voluntary for the other trade members to provide the EEM cargo data. If no other party provides this EEM cargo data, then it must be provided by rail carriers. CBP believes that other trade members would only participate if it were beneficial for their business or company. Therefore, CBP does not anticipate these other trade members would participate if it resulted in a net cost. To estimate the cost to rail carriers from operating and maintaining their internal systems to support participation in providing EEM data, CBP multiplied the average annual cost by the number of expected rail carrier participants each year (seven). According to CBP's primary estimate for operating and maintaining internal systems, rail EEM participants would incur costs of approximately $1.2 million or on average $245,000 annually. Under CBP's low estimate, rail EEM participants

[75] Data obtained from feedback and discussions with Trade members on the potential costs associated with internal systems to support providing EEM to CBP via ACE. Data was obtained in December 2022 and February 2023.

would incur costs of around $350,000 or $70,000 annually and the high estimate shows internal systems costs of approximately $2.1 million or $420,000 annually. Table 17 displays CBP's estimates of internal systems costs to trade members during the regulatory period.

Table 17. Estimated Internal Systems Costs to Trade during Regulatory Period 2026–2030 (undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Primary Estimate	***$245,000***	***$245,000***	***$245,000***	***$245,000***	***$245,000***	***$1,225,000***
Low Estimate	$70,000	$70,000	$70,000	$70,000	$70,000	$350,000
High Estimate	$420,000	$420,000	$420,000	$420,000	$420,000	$2,100,000

The proposed rule adjusted data elements and deadlines for the transmission of EEM data from what CBP established during the Test. Rail EEM participants (rail carriers and other trade members such as USPPIs, FPPIs, NVOCCs, freight forwarders, CHB, or other third-parties with knowledge of manifest data elements) would provide the initial filing data elements to CBP 24 hours prior to the cargo and train departing the U.S. port of export. As stated earlier, during the Test CBP considered what data elements were most important, CBP's needs, and what trade members could provide, given the time frames recommended and CBP adjusted the required data elements for this proposed rule. CBP expects that most rail carriers would have access to most export manifest data early in the planning stages of an export rail cargo transaction and would be able to comply with the new deadlines imposed by the proposed rule. CBP notes that some rail carriers will have the export manifest data available days in advance prior to departure and therefore would have all the necessary information to submit the initial filing data to CBP and all other export manifest data well in advance of the 24-hour and 2-hour prior to departure deadlines.[76] CBP anticipates that all parties that would participate in transmitting EEM data to CBP would have the necessary export data elements to provide the required EEM data within the two-hour prior to departure deadline.[77] However, for some rail carriers acquiring the necessary data for the initial filing 24 hours prior to departure may require a change in business practices and additional coordination with other trade members or parties that

[76] CBP obtained feedback and information from Trade members on when in the export transaction process, the export manifest data is typically available for them to submit to CBP. Information obtained in February 2023.

[77] Data obtained from feedback and discussions with Trade members on the timeline for when export manifest data elements are made available and can be provided to CBP. Data was obtained in February 2023.

have the required export information. CBP does not believe that in such instances the export manifest data does not exist; rather, the other trade member has not yet provided this information to the rail carrier.[78] Based on input from the trade community, CBP expects that in such instances the net costs to rail carriers to obtain this information earlier from other trade members would be minimal. Additionally, if other trade members are reluctant to provide this information to the rail carriers within the 24-hour prior to departure deadlines the other trade members would be able to provide this data to CBP directly as a rail EEM participant.

The transition from a paper form process to an electronic data process could also result in parties that provide EEM data adjusting business practices. CBP expects any costs related to adjusting business practices would be minimal and should not have a large effect on rail carriers and other trade members, specifically because they likely already have such practices developed to provide manifest data for rail imports.[79] Additionally, participation in directly providing the rail EEM data to CBP by other trade members is voluntary; CBP expects that these parties would likely only directly provide data to CBP if the benefits outweighed the costs to their company. CBP requests comments from rail carriers and trade members on the potential costs during the regulatory period related to internal system adjustments, operation and maintenance needed to support transmitting pre-departure EEM data to CBP via ACE. CBP also requests comment on any other costs to trade members associated with transitioning from paper forms to the transmission of EEM data that CBP did not address in this analysis.

CBP expects that rail carriers and other trade members that provide EEM data to CBP would incur time burdens and costs while responding to CBP-issued holds. During the regulatory period, the party that provides the EEM data to CBP is the party responsible for responding to any questions, holds or issues that arise from CBP's review of that export data. During the regulatory period CBP expects that the time burden to respond to each hold depends on the complexity of the issue. When a party is reviewing and responding to holds, if that party does not have the necessary information and needs to obtain the data from another trade member, that would

[78] Information provided during discussion with some Trade members in regard to the timeline for when export manifest data is available to be provided to CBP and challenges to providing pre-departure data well in advance. Data obtained in February 2023.

[79] CBP requested feedback from Trade members on the potential costs from adjusting business practices as a result of this proposed rule. Trade members suggested that there could be some costs but were unable to provide additional details on the costs for such adjustments to business practices or if this would be a one-time adjustment cost or ongoing adjustment costs.

impose an additional time burden on both parties. To estimate the time burden to trade to review and resolve the average hold (including both 2H Documentation holds and 1H Enforcement holds) during the regulatory period CBP used the same time burden estimate as proposed during the pilot period of approximately 12.5 minutes (0.21 hours) to trade when reviewing and resolving each 2H Documentation and 1H Enforcement hold.[80]

CBP does not expect that such holds would result in CBP officers conducting additional cargo examinations when compared to the baseline. Cargo examinations conducted after cargo has been loaded onto the train is a burdensome and time-consuming process and would result in a larger time burden to resolve holds that result in an examination. CBP does not track the number of cargo examinations and was unable to generate an estimate for the average number of cargo examinations each year, but feedback received from trade members suggests that cargo examinations are not a frequent occurrence.[81] Although CBP does not anticipate examinations would increase as a result of this proposed rule, if CBP did conduct more examinations when compared to the baseline then time burden costs to trade members to review and resolve holds could be higher than what CBP provides in this analysis. Additionally, CBP does not track and was unable to estimate the number of holds issued that would result in multiple parties being involved in reviewing and resolving of holds. If responding to issued holds always requires multiple parties to be involved, then the time burden to review and resolve a hold would also likely be higher than the 12.5-minute estimate CBP provided above.

To estimate the time burden to trade during the regulatory period when reviewing and resolving holds, CBP multiplied the total number of expected holds issued each year during the regulatory period by the estimated average time burden to review and resolve a hold (0.21 hours). CBP expects that during the regulatory period trade will review and resolve around 813,537 holds (see Table 4) resulting in a total time burden of approximately 169,487 hours or on average 33,897 hours annually. CBP calculated the costs to trade from reviewing and resolving these holds by multiplying the total hours of time burden by the average hourly loaded wage rate for exporters ($35.62).

[80] Data obtained from CBP discussion with Trade members on the potential costs to review and resolve holds issued by CBP in response to EEM data transmitted. Time burdens vary greatly depending on the complexity of the issue. CBP took this into consideration when calculating the average time burden to review and address an issued hold. Data obtained in February 2023.

[81] Information was obtained from feedback and discussions with Trade members on the frequency of cargo examinations prior to the Test and during the Test suggesting such an occurrence was fairly uncommon. Data obtained in February 2023.

CBP anticipates that overall costs to trade from reviewing and resolving holds as a result of this proposed rule would be around $6.0 million or on average $1.2 million annually. Table 18 shows CBP's regulatory period estimates for time burden and costs to trade associated with the review and resolution of holds issued by CBP.

Table 18. Estimated Time Burden and Costs to Trade from Issued Holds during the Regulatory Period 2026–2030 (time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
2H Documentation Holds	160,480	160,480	160,480	160,480	160,480	802,400
lH Enforcement Holds	2,227	2,227	2,227	2,227	2,227	11,137
Total Holds	162,707	162,707	162,707	162,707	162,707	813,537
Average Time Burden	0.21	0.21	0.21	0.21	0.21	
Total Time Burden	33,897	33,897	33,897	33,897	33,897	169,487
Wage Rate	$35.62	$35.62	$35.62	$35.62	$35.62	
Total Costs	$1,207,424	$1,207,424	$1,207,424	$1,207,424	$1,207,424	$6,037,119

Note: totals may not sum due to rounding.

The proposed rule prohibits rail carriers from transporting cargo with a hold across the border until the issues have been addressed and the hold has been lifted. Upon notification of a hold being issued on a specific cargo the party responsible for providing that information to CBP would need to contact CBP for specifics and further instructions regarding the hold. If CBP requires a manual examination of cargo, the rail carrier must coordinate with CBP to identify a place where a proper examination of cargo can be conducted. CBP would prohibit a train's departure from a U.S. port of export if there are any unresolved holds issued for cargo currently loaded onto a train. Parties that do not address a CBP-issued hold on specific cargo or freight cars before the required deadlines could face enforcement actions. Because CBP experienced very high rates of compliance during the Test (the compliance rate was over 99.8%), CBP expects excellent rates of compliance during the regulatory period.[82] As stated earlier, CBP's primary goal is compliance and CBP intends to work with parties providing the EEM data during this process to minimize the disruption of the flow of goods.

[82] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on August 2, 2022.

This proposed rule would also require a party providing the EEM data to CBP to have a bond on file with CBP. Carriers and other potential filers generally are all subject to other bond requirements that would qualify them to submit EEM data to CBP.[83] Therefore, CBP expects that any costs to rail carriers or other trade members from being required to have a bond to provide export manifest data electronically to CBP would be negligible. Rail carriers and other trade members could also incur some costs to meet the requirement of this proposed rule of having someone available 24 hours a day 7 days a week to respond to questions and issues that may arise from CBP's review for EEM data transmitted. CBP anticipates that any additional staffing costs to participants would be negligible because they typically have someone working at all times for other business operations that can respond to CBP questions and issues.

Rail carriers and other trade members may also be subject to claims for liquidated damages of $5,000 for each violation and up to a maximum of $100,000 per departure for noncompliance. These claims imposed by CBP are a compliance tool and CBP anticipates that there would be high levels of compliance from participants during the regulatory period such that violations that result in claim issuance would likely not be a common occurrence. CBP acknowledges that compliance is CBP's primary goal and CBP plans to work with rail carriers and other trade members to ensure they provide the appropriate EEM data in a timely manner. To the extent that CBP issues claims against rail carriers or other trade members that would place an additional cost onto these parties as a result of this proposed rule, costs that would not be incurred if the charged parties are compliant.

CBP estimated that during the regulatory period total overall costs of the proposed rule would be approximately $8.1 million or on average $1.6 million annually. Table 19 below displays CBP's estimates for total costs to CBP and trade members as a result of this proposed rule. CBP requests feedback and comments on the regulatory period costs from this proposed rule to rail carriers and other trade members discussed above and any other cost to rail carriers and other trade members that CBP did not address in this analysis.

[83] CBP anticipates that any of the following bonds would be appropriate depending upon the party filing, CBP Basic Importation and Entry Bond containing the provisions found in section 113.62 of this chapter, a Basic Custodial Bond containing the provisions found in 113.63 of this chapter, or an International Carrier Bond containing the provisions found in section 113.64 of this chapter.

Table 19. Estimated Total Costs during Regulatory Period 2026–2030 (undiscounted 2023 U.S. Dollars)

	2026	2027	2028	2029	2030	Total
CBP Systems Costs	$112,610	$114,862	$117,159	$119,502	$121,892	$586,026
CBP Review of Holds	$56,487	$56,487	$56,487	$56,487	$56,487	$282,433
Total CBP Costs	$169,096	$171,349	$173,646	$175,989	$178,379	$868,459
Trade Systems Costs	$245,000	$245,000	$245,000	$245,000	$245,000	$1,225,000
Trade Review of Holds	$1,207,424	$1,207,424	$1,207,424	$1,207,424	$1,207,424	$6,037,119
Total Trade Costs	$1,452,424	$1,452,424	$1,452,424	$1,452,424	$1,452,424	$7,262,119
Total Overall Costs	$1,621,520	$1,623,773	$1,626,070	$1,628,413	$1,630,803	$8,130,578

Cost Savings

The mandatory transmission of pre-departure EEM data would provide cost savings to CBP and to some trade members during the regulatory period. As discussed in the pilot period cost savings section of this analysis, obtaining, and reviewing EEM data is a more efficient process when compared to working with paper forms. During the regulatory period, CBP officers would continue to review all train consists prior to each train departing the U.S. port of export. As the transmission of EEM data becomes mandatory for all cargo departing the United States in the rail environment, CBP would experience more time savings through the expedited review of train consists. To estimate the time savings to CBP during the regulatory period CBP uses the time savings estimate provided during the pilot period of 1.92 hours per train consist. CBP multiplied this time savings per train consist by the forecasted number of departing trains exporting goods during the regulatory period, 288,969 trains (see Table 3). CBP estimates that as a result of this proposed rule CBP would experience time savings of approximately 110,771 hours each year or 553,857 hours in total during the regulatory period. To calculate the total cost savings, CBP multiplied the time savings estimate by the average loaded hour wage rate for a CBP officer ($101.44). CBP estimates that the total cost savings to CBP during the regulatory period would be approximately $56.2 million or on average $11.2 million annually. Table 20 displays these estimated time and cost savings to CBP for each year of the regulatory period.

Table 20. Estimated Time and Cost Savings to CBP during the Regulatory Period 2026–2030 (time in hours, costs in 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Train Consists Transmitted	57,794	57,794	57,794	57,794	57,794	288,969
Time Savings Per Consist	1.92	1.92	1.92	1.92	1.92	
Time Savings	110,771	110,771	110,771	110,771	110,771	553,857
CBP Officer Wage Rate	$101.44	$101.44	$101.44	$101.44	$101.44	
Cost Savings	$11,236,646	$11,236,646	$11,236,646	$11,236,646	$11,236,646	$56,183,231

Because the transmission of EEM data would be mandatory for all cargo trains departing across approximately 68 U.S. ports of export as a result of this proposed rule, rail carriers and other trade members would likely experience some time and cost savings during the regulatory period. CBP notes that during the pilot period when Test participants transmitted all EEM within the required deadlines, CBP officers are able to complete their review of those train consists prior to that train's arrival to the U.S. port of export. CBP anticipates this would also be the case during the regulatory period.[84] Therefore, the time savings to rail carriers during the regulatory period from a swifter CBP processing of an electronic train consist is dependent on how much review of a paper train consist CBP completed before the train arrives at the U.S. port of export in the baseline. CBP defines a few potential scenarios depending on when rail carriers provided export data to CBP prior to this proposed rule. In Scenario 1 rail carriers prior to this proposed rule did not provide export data pre-departure to CBP—meaning CBP officers were unable to start their review of the train consist until the train is at the U.S. port of export—in this scenario CBP anticipates these rail carriers would experience the same amount of time savings per train as CBP officers: 1.92 hours per outbound train. For Scenario 2, rail carriers who, prior to this proposed rule, provided pre-departure export data and the finalized train consists to CBP in advance such that CBP officers were able to conduct and complete their review of this information before the train arrived at the U.S. port of export, these rail carriers would likely not experience any time savings from the expedited CBP review of train consists. As CBP does not have data prior to this proposed rule on how many trains submit pre-departure export data to CBP in

[84] Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on November 8, 2022.

time for CBP to review it, CBP anticipates that the time savings to rail carriers from the expedited review of electronic train consists would be somewhere between 1.92 hours to 0 hours per departing train. Similar to the pilot period estimate, CBP determined to use the midpoint between these two values (0.96 hours) as Scenario 3 and as CBP's primary estimate for the time savings to rail carriers per outbound train during the regulatory period. CBP also provides the potential time savings from Scenario 4 which assumes CBP officers were able to complete 25 percent of the review of finalized train consists prior to a train's arrival at the U.S. port of export.

Because of this uncertainty for the actual amount of time savings to rail carriers from this process CBP provides a range of potential time savings to rail carriers during the regulatory period using the same alternate estimates provided in the pilot period portion of this analysis, assuming CBP officers completed 0 percent of their review of train consists in Scenario 1 (1.92 hours of time savings per train), 100 percent of their review in Scenario 2 (0 hours of time savings per train), 50 percent of their review in Scenario 3 (0.96 hours of time savings per train), and 25 percent of their review in Scenario 4 (0.48 hours of time saving per train) before the train arrives at the U.S. port of export. CBP estimated the time savings to rail carriers by multiplying the average time savings per train by the forecasted number of outbound trains (see Table 3) during each year of the regulatory period. CBP then calculated a range of potential cost savings each year of the regulatory period by multiplying the estimated time savings by the average hourly loaded wage rate for exporters ($35.62). Under CBP's primary estimate, time savings to rail carriers during the regulatory period from swifter CBP review of electronic train consists would be approximately 277,410 hours or on average 55,482 hours annually. Cost savings to rail carriers would be approximately $9.88 million during the regulatory period or on average $1.98 million annually. According to CBP's range of estimates, cost savings to rail carriers from shorter review time of train consists could be anywhere from $0 to $19.8 million or at most on average $3.95 million annually. Table 21 displays CBP's primary estimate and alternative range estimates for these potential time savings and cost savings to rail carriers and other trade members.

Table 21. Estimated Time and Cost Savings to Rail Carriers from Improved CBP Review during the Regulatory Period 2026–2030 (time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Scenario I (time savings per train 1.92 hours)						
Train Consists Transmitted	57,794	57,794	57,794	57,794	57,794	288,969
Time Savings	110,964	110,964	110,964	110,964	110,964	554,820
Wage Rate	$35.62	$35.62	$35.62	$35.62	$35.62	
Cost Savings	$3,952,538	$3,952,538	$3,952,538	$3,952,538	$3,952,538	$19,762,688
Scenario 2 (time savings per train 0 hours)						
Train Consists Transmitted	54,559	54,559	54,559	54,559	54,559	272,797
Time Savings	0	0	0	0	0	0
Wage Rate	$35.62	$35.62	$35.62	$35.62	$35.62	
Cost Savings	$0	$0	$0	$0	$0	$0
Scenario 3 CBP's Primary Estimate (time savings per train 0.96 hours)						
Train Consists Transmitted	57,794	57,794	57,794	57,794	57,794	288,969
Time Savings	55,482	55,482	55,482	55,482	55,482	277,410
Wage Rate	$35.62	$35.62	$35.62	$35.62	$35.62	
Cost Savings	$1,976,269	$1,976,269	$1,976,269	$1,976,269	$1,976,269	$9,881,344
Scenario 4 (time savings per train 0.48 hours)						
Train Consists Transmitted	57,794	57,794	57,794	57,794	57,794	288,969
Time Savings	27,741	27,741	27,741	27,741	27,741	138,705
Wage Rate	$35.62	$35.62	$35.62	$35.62	$35.62	
Cost Savings	$988,134	$988,134	$988,134	$988,134	$988,134	$4,940,672

CBP expects that rail carriers and other trade members that decide to provide EEM cargo data would also experience some other time and costs savings as a result of this proposed rule. During the regulatory period, rail carriers would transmit EEM data to CBP and would no longer submit finalized train consists in paper form to CBP either via email or at the U.S. port of export. Eliminating the time burden and cost to provide the paper form train consists would be a cost savings of this proposed rule, but parties would now incur the time and cost to provide the EEM data. CBP expects providing the EEM data takes less time than providing the data on paper forms and rail EEM participants would experience a time savings when provid-

ing EEM data.[85] During the regulatory period, CBP estimates that eliminating paper forms and providing the EEM data would help rail carriers and other trade members to automate the process for providing export manifest data to CBP and would generate a time savings of approximately 20 minutes (0.333 hours) on average for each train exporting goods out of the United States.[86]

CBP used the number of total outbound trains estimated above 288,969 (see Table 3) for the number of trains that would potentially be affected and experience this time savings during the regulatory period. According to CBP calculations, trade members would experience a total of 96,323 hours (288,969 trains × 0.333 hours) in time savings from a more efficient process of providing the electronic export manifest data when compared to the baseline. To provide an estimate for the total cost savings from this process, CBP multiplied the total expected time savings (96,323 hours) by the average hourly loaded wage rate for exporters ($35.62). CBP estimates that these cost savings to trade during the regulatory period would be approximately $3.43 million or on average $686,204 annually. Additionally, during the regulatory period CBP expects that rail EEM participants will experience time savings when making corrections and/or updates to electronically transmitted data in ACE when compared to making corrections and updates to paper forms in the baseline scenario. CBP uses the same time savings estimate used in the pilot period of 15 minutes (0.25 hours) per train for the time savings experienced by rail EEM participants during the regulatory period. CBP multiplied this time savings per train by the expected number of outbound trains during each year of the regulatory period (57,794 trains, see Table 3). CBP estimates that rail EEM participants would experience a time savings of approximately 72,242 hours on average and 14,448 each year from being able to make updates and corrections to EEM data in ACE when compared to paper forms. To provide an estimate for the total cost savings from this process, CBP multiplied the total expected time savings during the regulatory period (72,242 hours) by the average hourly loaded wage rate for exporters ($35.62). CBP estimates that these cost savings to trade during the regulatory period would be approximately $2.57 million or on average $514,653 annually. Table 22 displays CBP estimates for time savings to rail EEM participants from transitioning to transmitting EEM data and mak-

[85] Information was obtained from feedback and discussions with Trade members on the potential effects of providing EEM data instead of paper forms. Data obtained in February 2023.

[86] Information was obtained from feedback and discussions with Trade members on the potential effects of providing EEM data instead of paper forms. Data obtained in February 2023.

ing corrections and updates to electronic data in ACE. Overall, CBP estimates that transitioning to EEM data transmission would save rail EEM participants approximately $6.0 million or on average $1.2 million annually.

Table 22. Estimated Time and Cost Savings to Trade from Transmitting EEM during the Regulatory Period 2026–2030 (time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Total Outbound Trains	57,794	57,794	57,794	57,794	57,794	288,969
Time Savings to Submit EEM per Train	0.333	0.333	0.333	0.333	0.333	
Total Time Savings to Submit EEM	19,265	19,265	19,265	19,265	19,265	96,323
Wage Rate	$35.62	$35.62	$35.62	$35.62	$35.62	
Total Cost Savings from Submitting EEM	$686,204	$686,204	$686,204	$686,204	$686,204	$3,431,022
Time Savings to Make Corrections per Train	0.250	0.250	0.250	0.250	0.250	
Total Time Savings to Make Corrections	14,448	14,448	14,448	14,448	14,448	72,242
Wage Rate	$35.62	$35.62	$35.62	$35.62	$35.62	
Total Cost Savings from Making Corrections	$514,653	$514,653	$514,653	$514,653	$514,653	$2,573,267
Total Cost Savings	$1,200,858	$1,200,858	$1,200,858	$1,200,858	$1,200,858	$6,004,289

Note: totals may not sum due to rounding.

CBP also expects that rail carriers would experience time and cost savings if the pre-departure EEM data results in CBP identifying a high-risk cargo prior to that cargo being loaded or added to a train, thereby avoiding the costly burden of identifying high-risk cargo after the train has been constructed. CBP did not track how often such examinations occur prior to this proposed rule and CBP was unable to provide an estimate for how often such examinations occur, but CBP expects that they are fairly uncommon.[87] Additionally, CBP does not

[87] Information was obtained from feedback and discussions with Trade members on the frequency of cargo examinations prior to the Test and during the Test suggesting such an occurrence was fairly uncommon. Data obtained in February 2023.

anticipate this rule would result in additional examinations compared to the baseline. CBP estimates that the cost to rail carriers to remove a car from a constructed train for CBP examination is approximately $3,000 per occurrence and results in a delay of up to two hours.[88] This includes the freight and labor costs to safely decouple a train car from a built train. Rail carriers would avoid these costs if CBP receives pre-departure data and is able to issue holds and examine these cargo or train cars before constructed to the train. Additionally, moving to transmission of EEM data would reduce the space required to store and file paper form manifest documents generating savings to rail carriers and other trade members. Unfortunately, CBP does not have data available to provide a quantifiable estimate for the savings to trade members from reduced storage space as a result of eliminating paper form manifest documents, but based on feedback from trade members, does not consider the costs to be substantial.

CBP estimates that total cost savings as a result of this proposed rule would be approximately $72.1 million or on average $14.4 million annually during the regulatory period. In total, CBP anticipates that trade members will experience a cost savings of $15.9 million or on average $3.2 million during the regulatory period, while CBP would experience cost savings of around $56.2 million or on average $11.2 million annually. Table 23 below displays CBP's estimates for total cost savings to CBP and trade during each year of the regulatory period. CBP requests feedback and comments from rail carriers and trade members on CBP's estimates for the cost savings to trade as a result of this proposed rule and any other potential cost savings from this proposed rule that CBP may not have included in this analysis.

Table 23. Estimated Total Cost Savings during Regulatory Period 2026–2030 (undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
CBP Review of Train Consists	$11,236,646	$11,236,646	$11,236,646	$11,236,646	$11,236,646	$56,183,231
Trade Cost Savings from Improved CBP Review	$1,976,269	$1,976,269	$1,976,269	$1,976,269	$1,976,269	$9,881,344
Trade Savings from Providing EEM	$686,204	$686,204	$686,204	$686,204	$686,204	$3,431,022

[88] Information was obtained from feedback and discussions with Trade members on the potential costs and time burden to remove a train car from a constructed train in order for CBP to conduct an examination of the cargo or container. Data obtained in February 2023.

	2026	2027	2028	2029	2030	Total
Trade Cost Savings from Making Corrections to EEM Data	$514,653	$514,653	$514,653	$514,653	$514,653	$2,573,267
Total Trade Cost Savings	$3,177,127	$3,177,127	$3,177,127	$3,177,127	$3,177,127	$15,885,633
Total Cost Savings	$14,413,773	$14,413,773	$14,413,773	$14,413,773	$14,413,773	$72,068,864

Benefits

CBP expects that parties involved in U.S. rail exports would likely experience benefits as a result of this proposed rule during the regulatory period. Unfortunately, CBP does not have the data available to quantify these benefits and therefore will discuss these benefits qualitatively. A primary benefit of requiring pre-departure EEM data would be an improvement in CBP's security efforts and its ability to use CBP's ATS to conduct risk assessment for all rail export cargo prior to departing the United States, while also minimizing the disruption to the export process. This proposed rule would assist CBP in preventing illegal, dangerous, and hazardous cargo from being exported out of the United States and would allow CBP to ensure cargo safety and security for all exports in the rail environment. Additionally, transitioning to electronic data would reduce the use of paper for all parties involved and bring the outbound rail process level with existing inbound rail processing technology. The deadlines for submitting EEM data and the gained efficiencies from moving from paper forms to electronic data transmission using an integrated system would provide CBP more time to review the necessary detailed export data prior to a train's departure, allowing CBP officers to allocate more time to mission-critical activities. CBP also anticipates this proposed rule would generate benefits to the Federal Government through improved coordination and communication among CBP, the Department of Commerce, and other Government agencies with export jurisdiction, while enforcing U.S. export laws and regulations. In addition, CBP would be compliant in the rail environment with the Trade Act, which requires CBP to establish regulations providing for the mandatory electronic transmission of data by way of a CBP-approved electronic data interchange before cargo arrives or departs the United States in all environments.

Net Impact of the Proposed Rule

CBP anticipates that the cost savings generated from this proposed rule would outweigh the costs during the regulatory period. In addition, this rule generates meaningful unquantified security benefits.

During the regulatory period, CBP anticipates that this proposed rule would generate net cost savings to both CBP and trade members. CBP notes that lack of data available prevented CBP from providing exact estimates for some of the potential costs and cost savings from the implementation of rail EEM and therefore the actual net cost savings could be more or less than what CBP's primary estimates project in this analysis. Additionally, CBP acknowledges that for other trade members, participating directly in providing rail EEM data to CBP is voluntary and CBP expects that they would only do so if it were beneficial to their company and the benefits or cost savings outweigh the costs. Because CBP does not have data on how many of these other trade members would decide to directly participate in providing rail EEM data during the regulatory period the actual costs and cost savings from this proposed rule could be higher than what CBP has provided during the regulatory period of this analysis. For this reason, CBP presents a range of estimates. CBP estimates that, during the regulatory period, CBP, rail carriers, and other trade members bear costs of approximately $8.1 million or an average of $1.6 million per year. Meanwhile, CBP estimates a total cost savings to CBP, rail carriers and other trade members of approximately $72.1 million during the regulatory period, or an average of $14.4 million per year. This results in a net cost savings of approximately $63.9 million, or an average of $12.8 million per year. Table 24 displays CBP's estimates for costs and cost savings to CBP and trade members during each year of the regulatory period.

Table 24. Estimated Net Cost Savings to CBP and Trade during Regulatory Period 2026-2030 (undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Costs						
CBP	$169,096	$171,349	$173,646	$175,989	$178,379	$868,459
Trade Members	$1,452,424	$1,452,424	$1,452,424	$1,452,424	$1,452,424	$7,262,119
Total Costs	$1,621,520	$1,623,773	$1,626,070	$1,628,413	$1,630,803	$8,130,578
Cost Savings						
CBP	$11,236,646	$11,236,646	$11,236,646	$11,236,646	$11,236,646	$56,183,231
Trade Members	$3,177,127	$3,177,127	$3,177,127	$3,177,127	$3,177,127	$15,885,633
Total Cost Savings	$14,413,773	$14,413,773	$14,413,773	$14,413,773	$14,413,773	$72,068,864
CBP Net Cost Savings	$11,067,550	$11,065,298	$11,063,000	$11,060,657	$11,058,267	$55,314,772

	2026	2027	2028	2029	2030	Total
Trade Member Net Cost Savings	$1,724,703	$1,724,703	$1,724,703	$1,724,703	$1,724,703	$8,623,514
Total Net Cost Savings	$12,792,252	$12,790,000	$12,787,703	$12,785,360	$12,782,970	$63,938,286

Note: totals may not sum due to rounding.

Table 25. Total Monetized Present Value and Annualized Costs in Regulatory Period 2026–2030 (2023 U.S. dollars)

	2% Discount Rate
Present Value Cost	$7,366,587
Annualized Cost	$1,626,024

Table 25 shows the discounted total quantified costs during the regulatory period from this proposed rule. As shown, the total costs over the 5-year regulatory period of analysis would be around $7.4 million using a two percent discount rate. Expected annualized costs from this proposed rule are about 1.6 million using a two percent discount rate.

Table 26. Total Monetized Present Value and Annualized Cost Savings in Regulatory Period 2026–2030 (2023 U.S. dollars)

	2% Discount Rate
Present Value Cost Savings	$67,938,735
Annualized Cost Savings	$14,413,773

Table 26 displays the discounted total quantified cost savings as a result of this proposed rule during the regulatory period. CBP's primary estimates show that this rule will provide cost savings to CBP, rail carriers and other trade members of around $68.0 million using a two percent discount rate. Annualized cost savings from this proposed rule would be approximately $14.4 million.

Table 27. Total Monetized Present Value and Annualized Net Cost Savings of Regulatory Period 2026–2030 (2023 U.S. dollars)

	2% Discount Rate
Present Value Net Cost Savings	$60,274,537
Annualized Net Cost Savings	$12,787,749

Table 27 displays CBP's primary estimate for quantifiable net cost savings from the implementation of rail EEM. As shown, CBP expects that this proposed rule would result in total net cost savings to CBP, rail carriers and other trade members of around $60.3 million using a two percent discount rate. CBP estimates that annualized net cost savings are approximately $12.8 million using a two percent discount rate.

Total Impact of the Proposed Rail EEM Program

CBP anticipates that over the entire 15-year time period of analysis 2016–2030, the proposed rail EEM program would result in overall net cost savings compared to the baseline (before the rail EEM test was introduced). Initially as the rail EEM test was introduced, costs outweighed the cost savings but CBP estimates that as the test expanded and after the proposed rule would be implemented, cost savings would far outweigh the costs incurred by this proposed rule. In addition, CBP expects that this proposed rule would generate meaningful unquantified security benefits after it is implemented as discussed above in the regulatory period net impact section. CBP estimates that between 2016–2030 the rail EEM program would result in total costs of $11,488,249 or on average $765,883 annually. Additionally, the rail EEM program would result total cost savings of $76,000,235 or on average $5,066,682 annually between 2016–2030. CBP estimates that total net cost savings from the rail EEM program during the period of analysis 2016–2030 would be $64,511,986 or on average $4,300,799 annually when compared to the baseline. Table 28 displays CBP's estimates for total costs, cost savings and net cost savings as a result of this proposed rule from 2016–2030.

Table 28. Estimated Cost, Cost Savings, and Net Cost Savings from Rail EEM 2015–2030 (undiscounted 2023 U.S. dollars)

Year	Costs			Cost Savings			Net Cost Savings		
	CBP	Trade Members	**Total**	CBP	Trade Members	**Total**	CBP	Trade Members	**Total**
2016	$701,629	$98,092	**$799,721**	$0	$10,451	**$10,451**	($701,629)	($87,641)	**($789,270)**
2017	$95,628	$141,726	**$237,354**	$59,883	$37,326	**$97,210**	($35,745)	($104,399)	**($140,144)**
2018	$97,351	$143,761	**$241,112**	$0	$27,566	**$27,566**	($97,351)	($116,195)	**($213,546)**
2019	$99,361	$142,141	**$241,503**	$30,914	$32,376	**$63,290**	($68,448)	($109,765)	**($178,213)**
2020	$109,140	$137,685	**$246,825**	$215,619	$60,399	**$276,018**	$106,479	($77,286)	**$29,193**
2021	$105,010	$164,693	**$269,703**	$505,704	$113,615	**$619,319**	$400,694	($51,078)	**$349,616**
2022	$106,899	$212,982	**$319,881**	$566,170	$127,053	**$693,223**	$459,272	($85,929)	**$373,342**
2023	$108,701	$268,548	**$377,249**	$625,859	$135,683	**$761,543**	$517,159	($132,865)	**$384,294**
2024	$111,083	$199,997	**$311,080**	$565,911	$125,464	**$691,376**	$454,829	($74,533)	**$380,296**
2025	$113,247	$199,997	**$313,245**	$565,911	$125,464	**$691,376**	$452,664	($74,533)	**$378,131**
2026	$169,096	$1,452,424	**$1,621,520**	$11,236,646	$3,177,127	**$14,413,773**	$11,067,550	$1,724,703	**12,792,252**

Year	Costs			Cost Savings			Net Cost Savings		
	CBP	Trade Members	**Total**	CBP	Trade Members	**Total**	CBP	Trade Members	**Total**
2027	$171,349	$1,452,424	**$1,623,773**	$11,236,646	$3,177,127	**$14,413,773**	$11,065,298	$1,724,703	**$12,790,000**
2028	$173,646	$1,452,424	**$1,626,070**	$11,236,646	$3,177,127	**$14,413,773**	$11,063,000	$1,724,703	**$12,787,703**
2029	$175,989	$1,452,424	**$1,628,413**	$11,236,646	$3,177,127	**$14,413,773**	$11,060,657	$1,724,703	**$12,785,360**
2030	$178,379	$1,452,424	**$1,630,803**	$11,236,646	$3,177,127	**$14,413,773**	$11,058,267	$1,724,703	**$12,782,970**
Total	$2,516,507	$8,971,742	**$11,488,249**	$59,319,203	$16,681,031	**$76,000,235**	$56,802,696	$7,709,289	**$64,511,986**
Average	$167,767	$598,116	**$765,883**	$3,954,614	$1,112,069	**$5,066,682**	$3,786,846	$513,953	**$4,300,799**

Table 29. Total Monetized Present Value and Annualized Costs of Rail EEM 2016–2030 (2023 U.S. dollars)

	2% Discount Rate
Present Value Cost	$9,330,571
Annualized Cost	$726,156

Table 29 shows the discounted total quantified costs from the rail EEM program from 2016–2030 compared to the baseline scenario. As shown, the total costs over the 15-year period of analysis would be $9,330,571 using a two percent discount rate. Expected total annualized costs from this proposed rule are $726,156 using a two percent discount rate.

Table 30. Total Monetized Present Value and Annualized Cost Savings of Rail EEM 2016–2030 (2023 U.S. dollars)

	2% Discount Rate
Present Value Cost Savings	$59,120,631
Annualized Cost Savings	$4,601,091

Table 30 shows the discounted total quantified costs savings as a result of this proposed rule from 2016–2030. As shown, the total cost savings over the 15-year period of analysis would be $59,120,631 using a two percent discount rate. Expected total annualized cost savings from this proposed rule would be $4,601,091 using a two percent discount rate.

Table 31. Total Monetized Present Value and Annualized Net Cost Savings of Rail EEM 2016–2030 (2023 U.S. dollars)

	2% Discount Rate
Present Value Net Cost Savings	$49,790,060
Annualized Net Cost Savings	$3,874,935

Table 31 shows the discounted total quantified net cost savings during the regulatory period from this proposed rule. As shown, the total net cost savings over the 15-year period of analysis compared to the baseline would be $49,790,060 using a two percent discount rate. Expected total annualized net cost savings from this proposed rule would be $3,874,935 using a two percent discount rate. Accounting statements 1 and 2 show the expected costs, cost savings and benefits from this proposed rule for the regulatory period and the program as a whole, respectively. Though CBP presents the costs of the program as a whole, including both the pilot period and the regulatory period, the costs of the pilot period are sunk for the purposes of decision-making. Therefore, CBP considered the net effects for the regulatory period when deciding whether to proceed with this rule.

Accounting Statement 1: Regulatory Period (Fiscal Years 2026–2030) (thousands of $2023)

	2% Discount Rate
Costs	
Annualized monetized costs	$1,626,024
Annualized quantified, but non-monetized costs	None
Qualitative (non-quantified) costs	If additional cargo examinations occur estimated cost to CBP would be around $101.44 per additional exam. Rail carriers and voluntary participants may have to adjust business practices when moving from a paper to electronic process. Securing a Bond is required to participate. Rail carriers and voluntary participants must have someone available 24 hours a day 7 days a week to respond to CBP questions about data transmitted. Liquidated damages, $5,000 for each violation up to max of $100,000 per departure.

Cost Savings	
Annualized monetized cost savings	$14,413,773
Annualize quantified, but non-monetized cost savings	None
Qualitative (non-quantified) cost savings	Reduce paper, printing and storage costs related to paper forms. Rail carriers may avoid CBP cargo examinations on already constructed trains, resulting in delays (up to 2 hours) and costs ($3,000 per occurrence).
Benefits	
Annualized monetized benefits	None
Annualized quantified, but non-monetized benefits	None
Qualitative (non-quantified) benefits	Improve CBP's security efforts on rail exports, electronic data transmissions will allow CBP to use its ATS system to conduct risk assessment on all rail exports. Gained efficiencies from trade by switching from paper to electronic data transmission. Improved communication among Federal Agencies with export jurisdiction.

Accounting Statement 2: Rail EEM Program (Fiscal Years 2016–2030) (Discounted 2023 U.S. dollars)

	2% Discount Rate
Costs	
Annualized monetized costs	$726,156
Annualized quantified, but non-monetized costs	None

Qualitative (non-quantified) costs	If additional cargo examinations occur estimated cost to CBP would be around $101.44 per additional exam. Rail carriers and voluntary participants may have to adjust business practices when moving from a paper to electronic process. Securing a Bond is required to participate. Rail carriers and voluntary participants must have someone available 24 hours a day 7 days a week to respond to CBP questions about data transmitted. Liquidated damages, $5,000 for each violation up to max of $100,000 per departure.
Cost Savings	
Annualized monetized cost savings	$4,601,091
Annualize quantified, but non-monetized cost savings	None
Qualitative (non-quantified) cost savings	Reduce paper, printing and storage costs related to paper forms. Rail carriers may avoid CBP cargo examinations on already constructed trains, resulting in delays (up to 2 hours) and costs ($3,000 per occurrence).
Benefits	
Annualized monetized benefits	None
Annualized quantified, but non-monetized benefits	None
Qualitative (non-quantified) benefits	Improve CBP's security efforts on rail exports, electronic data transmissions will allow CBP to use its ATS system to conduct risk assessment on all rail exports. Gained efficiencies from trade by switching from paper to electronic data transmission. Improved communication among Federal Agencies with export jurisdiction.

B. Regulatory Flexibility Act

This section examines the impact on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small

not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

CBP acknowledges that this proposed rule, requiring pre-departure transmission of EEM data, could potentially affect a large number of small U.S. entities. CBP expects that all seven rail carrier companies that engage in exporting goods from the United States in the rail environment and an unknown number of other trade members (such as USPPIs, FPPIs, NVOCCs, freight forwarders, CHB, or other third parties with knowledge of export manifest data elements) at approximately 68 U.S. ports of export would be affected by this proposed rule. CBP notes that of the seven rail carriers affected by this proposed rule, two carriers are Canadian companies and the other five companies are large companies according to the U.S. Small Business Administration's size standards for small businesses.[89] Therefore, CBP does not anticipate that this proposed rule would affect any small U.S. entity rail carriers. The scope of impact on small U.S. entities depends largely on how many other trade members elect to provide electronic manifest cargo data voluntarily to CBP as a result of this proposed rule. This proposed rule does not require other trade members to provide electronic manifest cargo to CBP, and CBP expects that they would only do so if their benefits outweigh the costs. CBP expects that even if this proposed rule affects a significant number of small U.S. entities, such entities would not incur significant net costs. CBP expects that this proposed rule would save businesses time and money by transitioning from a paper process to a more efficient electronic process. CBP anticipates that providing rail export data electronically would generate time savings to those submitting data to CBP, when making any corrections to data submitted electronically, and would reduce paper, and printing costs. According to CBP's calculations on the impacts from this proposed rule on average the estimated cost to provide a single rail EEM data transmission to CBP is approximately $0.34, meanwhile the estimated cost savings per data transmission is around $0.75, resulting in a net savings per data transmission.[90] CBP does not know how many of these trade mem-

[89] CBP compared the five U.S. companies with the given U.S. Small Business Administration's size standards for small businesses based on the associated NAICS classification listed in Hoovers Online Company Reports, *available at http://subscriber.hoovers.com/H/home/index.html.*

[90] According to CBP's estimates each year during the regulatory period total costs to trade members would be $1,452,424, the total cost savings to trade would be $3,177,127 and the total expected rail EEM data transmissions each year are expected to be around 4,249,601. CBP calculated the average cost per rail EEM data submission by dividing the total cost by the estimated number of rail EEM data transmission ($1,452,424/4,249,602 = $0.34) and the average cost savings per rail EEM data submission by dividing the total cost saving by the estimated number of rail EEM data transmission ($3,177,127/4,249,601 = $0.75).

bers will choose to submit this data to CBP or how often, so CBP is unable to estimate the annual savings to these trade members as a result of this rule. Overall, as discussed above, this rule would result in average annual total filing costs to trade members of $1,452,424 and savings of $3,177,127. We note that these costs and savings will be split between rail carriers (which are not small businesses) and other trade members (which may be small businesses). CBP anticipates that cost savings outweigh costs for parties affected; hence, CBP does not expect small U.S. entities would experience net costs as a result of this proposed rule. Therefore, CBP certifies that this proposed rule would not have a significant economic impact on a substantial number of small U.S. entities. CBP requests comments from the public on CBP's certification that this proposed rule would not have a significant economic impact on a substantial number of small U.S. entities.

C. Paperwork Reduction Act

An agency may not conduct, or sponsor, and an individual is not required to respond to a collection of information unless it displays a valid OMB control number. The collections of information in the current regulations have already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB control number 1651–0001. This collection already provides estimated burdens to the public for voluntarily participating in the Rail EEM test. CBP anticipates that this proposed rule would result in an additional time burden to respondents that would provide rail EEM directly to CBP. This proposed rule establishes new requirements for trade members to provide rail EEM data to CBP prior to a train departing from a U.S. port of export. CBP notes that prior to providing EEM data, rail carriers typically incurred time burdens to provide some export data to CBP that were not originally included on this information collection or any other information collection as the data was not a statutory or regulatory requirement. Trade members have expressed that providing export data to CBP as part of the rail EEM did provide a reduction in time burden compared to the prior process, but because the original time burden to provide export data to CBP prior to rail EEM was not included in this information collection CBP estimates that the time burden to the public from this proposed rule would be insignificant.

As a result of this proposed rule, CBP estimates that at least all seven major rail carriers that currently engage in exporting goods out of the United States in the rail environment would be affected. Col-

lection 1651–0001 would be revised to reflect the changed burden hours for requiring trade members to provide rail EEM data to CBP prior to departure of the train from a U.S. port of export. The new information collection requirements from this proposed rule would result in the following change in the estimated time burdens to the public for the information collection number 1651–0001 from submitting rail EEM data to CBP:

Estimated number of respondents annually: 7.

Average responses per respondent: 598,830.

Total responses: 4,191,807.

Estimated time burden per respondent: 5,506 hours.

Total added time burden: 38,545 hours.

CBP estimates that this added time burden would increase the cost to the public by $1,372,986 and adjust the total cost to the public for this information collection to $611,127,188.

CBP also expects that this new information collection requirement would result in a decrease in the annual cost to the Federal Government through the automated review of rail EEM data by ATS. CBP officers would experience a reduced time burden from reviewing only 0.05 percent of all rail EEM responses provided by the public. This revision to the total number of responses reviewed by CBP for this information collection decreased by 12,803 responses resulting in a reduced time burden of around 1,067 hours and cost reduction of around $77,884 annually.

D. Privacy

CBP will ensure that all Privacy Act requirements and applicable DHS privacy policies are adhered as a result of this proposed regulation.[91] CBP has issued a Privacy Impact Assessment (PIA) for the Automated Commercial Environment (ACE),[92] which outlines how CBP ensures compliance with Privacy Act protections and DHS privacy policies, including 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 addresses issues such as the security, integrity, and sharing of data, use limitation and trans-

[91] *See* the DHS Privacy Policy web page, *available at https://www.dhs.gov/privacy-policy-guidance.*

[92] *See* U.S. Department of Homeland Security, U.S. Customs and Border Protection, Privacy Impact Assessment for The Automated Commercial Environment, DHS/CBP/PIA–003 and all subsequent updates, *available at https://www.dhs.gov/privacy-documents-us-customs-and-border-protection.*

parency. The PIA is publicly available at: *http://www.dhs.gov/privacy-documents-us-customs-and-border-protection.*

The Privacy Act of 1974 requires that federal agencies issue a System of Record Notice (SORN) to provide the public notice regarding personally identifiable information (PII) collected in a system of records. SORNs explain how the information is used, retained, and may be accessed or corrected, and whether certain portions of the system are subject to Privacy Act exemptions for law enforcement, national security, or other reasons. CBP issued the DHS/CBP–001 Import Information Systems (IIS) System of Records and the DHS/CBP–020 Export Information System (EIS) System of Records, which provide coverage for the proposed regulation.[93]

E. Unfunded Mandates Reform Act of 1995

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

IX. Signing Authority

The signing authority for these amendments falls under 19 CFR 0.2(a). Accordingly, this document is signed by the Secretary of Homeland Security (or his delegate).

List of Subjects

19 CFR Part 113

Common Carriers, Exports, Freight, Laboratories, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 123

Canada, Customs duties and inspection, Freight, International Boundaries, Mexico, Motor Carriers, Railroads, Reporting and recordkeeping requirements, Vessels.

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[93] *See* DHS/CBP–001 Import Information System, 81 FR 48826 (July 26, 2016), *available at https://www.federalregister.gov/documents/2016/07/26/2016–17596/privacy-act-of-1974-department-of-homeland-security-us-customs-and-border-protection-dhscbp-001;* and DHS/CBP–020 Export Information Systems (EIS), 80 FR 53181 (September 02, 2015), *available at https://www.federalregister.gov/documents/2015/09/02/2015–21675/privacy-act-of-1974-department-of-homeland-security-us-customs-and-border-protection-dhscbp-020.*

For the reasons stated in the preamble, parts 113 and 123 of title 19, Code of Federal Regulations (19 CFR parts 113 and 123), are proposed to be amended as set forth below:

PART 113—CBP Bonds

■ 1. The general authority section for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

■ 2. Amend § 113.62 by adding paragraph (k)(3) to read as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(k) *Agreement to comply with electronic entry and/or advance cargo information filing requirements.* (1) ***

(2) * * *

(3) If the principal elects to provide advance outbound information to CBP electronically, the principal agrees to provide such information in the manner and in the time period required under § 123.93 of this chapter. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation.

* * * * *

■ 3. Amend § 113.63 by revising and republishing paragraph (g) to read as follows:

§ 113.63 Basic custodial bond conditions.

* * * * *

(g) *Agreement to comply with electronic entry and/or advance cargo information filing requirements.* (1) The principal agrees to comply with all Importer Security Filing requirements set forth in part 149 of this chapter including but not limited to providing security filing information to CBP in the manner and in the time period prescribed by regulation. If the principal defaults with regard to any obligation, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 per violation.

(2) If the principal elects to provide advance outbound information to CBP electronically, the principal agrees to provide such information in the manner and in the time period required under § 123.93 of this chapter. If the principal defaults with regard to these obligations,

the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation.

* * * * *

■ 4. Amend § 113.64 by revising and republishing paragraph (d) to read as follows:

§ 113.64 International carrier bond conditions.

* * * * *

(d) Agreement to provide advance cargo information. (1) The incoming carrier agrees to provide advance cargo information to CBP in the manner and in the time period required under §§ 4.7 and 4.7a of this chapter. If the incoming carrier, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation, to a maximum of $100,000 per conveyance arrival.

(2) The outbound carrier agrees to transmit advance outbound information to CBP electronically, in the manner and in the time period required under § 123.93 of this chapter. If the outbound carrier, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation, to a maximum of $100,000 per departure.

* * * * *

PART 123—CBP RELATIONS WITH CANADA AND MEXICO

■ 1. The general authority section for part 123 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1415, 1431, 1433, 1436, 1448, 1624, 2071 note.

■ 2. Revise and republish § 123.0 to read as follows:

§ 123.0 Scope.

This part contains special regulations pertaining to Customs procedures at the Canadian and Mexican borders. Included are provisions governing report of arrival, manifesting, unlading and lading, instruments of international traffic, shipments in transit through Canada or Mexico or through the United States, commercial traveler's samples transiting the United States or Canada, baggage arriving from Canada or Mexico including baggage transiting the United

States or Canada or Mexico, and electronic information for rail and truck cargo in advance of arrival or departure. Aircraft arriving from or departing for Canada or Mexico are governed by the provisions of part 122 of this chapter. The arrival of all vessels from, and clearance of all vessels departing for, Canada or Mexico are governed by the provisions of part 4 of this chapter. Fees for services provided in connection with the arrival of aircraft, vessels, vehicles and other conveyances from Canada or Mexico are set forth in § 24.22 of this chapter. Regulations pertaining to the treatment of goods from Canada or Mexico under the North American Free Trade Agreement are contained in part 181 of this chapter. The requirements for the United States Postal Service to transmit advance electronic information for inbound international mail shipments are set forth in § 145.74 of this chapter.

■ 3. Revise the heading of Subpart J to read as follows:

Subpart J—Advance Information for Cargo Arriving or Departing by Rail or Truck

■ 4. Add section 123.93 to Subpart J to read as follows:

§ 123.93 Electronic information for rail conveyance and cargo required in advance of export.

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 1415), for any train departing the United States, U.S. Customs and Border Protection (CBP) must receive electronically from the rail carrier, or other eligible filer as specified in paragraph (c), certain information concerning the train and cargo, as enumerated in paragraphs (d), (e), and (f) of this section. CBP must receive this information, known as outbound electronic rail manifest data, no later than the time frames prescribed in paragraph (b) of this section. The transmission of the required data must occur through the Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system. Any examination referrals must be resolved in accordance with the provisions and time frames prescribed in paragraph (g) of this section. Any Do-Not-Load (DNL) or Hold instructions must be addressed in accordance with the provisions prescribed in paragraph (h) of this section.

(b) *Time frame for transmitting data.* (1) *Initial filing.* The required initial filing data enumerated in paragraph (d) of this section must be transmitted as early as practicable, but no later than 24 hours prior to departure of the train from the United States.

(2) *Subsequent Filing.* The required subsequent filing will include the data identified below:

(i) *Export manifest cargo data.* Export manifest cargo data other than initial filing data must be transmitted no later than two hours prior to departure of the train from the United States.

(ii) *Export manifest transportation data.* Export manifest transportation data other than initial filing data must be transmitted no later than two hours prior to departure of the train from the United States.

(iii) *Empty container data.* Data related to empty containers must be transmitted no later than the time of assembly of the train.

(3) *Updates.* The party who transmits data must update it if, after the filing is transmitted, any of the transmitted data changes or more accurate data becomes available. Updates are required upon discovery of data changes.

(c) *Parties filing cargo and conveyance data.* (1) *Outbound carrier.* The outbound carrier is responsible for transmitting export manifest transportation data and empty container data. If no other eligible party elects to transmit the initial filing data or export manifest cargo data, the outbound carrier must transmit it. If another eligible party elects to transmit either the initial filing data or export manifest cargo data, the outbound carrier may also choose to do so.

(2) *Other filers.* In addition to the outbound carrier for whom participation is mandatory, one of the following parties meeting the qualifications of paragraph (a) of this section that require transmission of information through ACE or any other CBP-authorized electronic data interchange system may elect to transmit to CBP the initial filing data and/or the export manifest cargo data for outgoing cargo listed in paragraph (d) of this section:

(i) The U.S. Principal Party in Interest (USPPI), as defined by the provisions of section 30.1 of the Foreign Trade Regulations (FTR) of the Department of Commerce, Bureau of the Census (15 CFR 30.1), or its authorized agent;

(ii) The Foreign Principal Party in Interest (FPPI) or its authorized agent with the FPPI being defined by the provisions of section 30.1 of the Foreign Trade Regulations (FTR) of the Department of Commerce, Bureau of the Census, (15 CFR 30.1); or

(iii) Any other party with direct knowledge of the export information, which may include a customs broker, Automated Broker Interface (ABI) filer, non-vessel operating common carrier (NVOCC) as defined by § 4.7(b)(3)(ii) of this chapter, or a freight forwarder as defined in § 112.1 of this chapter.

(3) *Nonparticipation by other party.* If another party specified in paragraph (c)(2) of this section does not transmit advance export information to CBP, the party that arranges for and/or delivers the cargo to the outbound carrier must fully disclose and present to the

outbound carrier the cargo information listed in paragraph (d) of this section. The outbound carrier must transmit this information to CBP in accordance with this section.

(4) *Bond required.* A party transmitting any of the information described in this subsection must have at least one of the following bonds on file with CBP: a CBP Basic Importation and Entry Bond containing the provisions found in § 113.62 of this chapter, a Basic Custodial Bond containing the provisions found in § 113.63 of this chapter, or an International Carrier Bond containing the provisions found in § 113.64 of this chapter.

(5) *Required information in possession of third party.* Any entity, other than the outbound carrier or a party described in paragraph (c)(2) of this section, in possession of data required to be transmitted to CBP under this section must fully disclose and present the required data to either the outbound carrier or other electronic filer, as applicable, which must transmit such data to CBP.

(6) *Party receiving information believed to be accurate.* Where the party electronically transmitting the data required in paragraph (d) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the transmitting party acquired such information, and whether and how the transmitting party is able to verify this information. Where the transmitting party is not reasonably able to verify such information, CBP will permit the party to electronically transmit the information based on what that party reasonably believes to be true.

(d) *Initial Filing.* The following information comprises the initial filing which is mandatory and may be made by any party identified in paragraph (c)(1) or (c)(2) of this section:

(1) Bill of lading number;

(2) The numbers and quantities of the cargo laden aboard the train as contained in the carrier's bill of lading, either master or house, as applicable (this means the quantity of the lowest external packaging unit; numbers or quantities of containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);

(3) Total weight of cargo expressed in pounds or kilograms;

(4) A precise cargo description (or the Harmonized Tariff Schedule (HTSUS) number(s) to the 6-digit level under which the cargo is classified if that information is received from the shipper) and weight of the cargo; or, for a sealed container, the shipper's declared description and weight of the cargo (generic descriptions, specifically those

such as "FAK" ("freight of all kinds"), "general cargo," and "STC" ("said to contain") are not acceptable);

(5) The shipper's complete name and address, or identification number, from the bill(s) of lading (for each house bill in a consolidated shipment);

(6) The consignee's complete name and address, or identification number, from the bill(s) of lading (The consignee is the party to whom the cargo will be delivered in the foreign country. However, in the case of cargo shipped "to order of [a named party]," the "to order" party must be named as the consignee; and if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact information including address in the "Notify party" field.); and

(7) The Automated Export System (AES) Exemption Statement, as applicable.

(e) *Export manifest transportation data.* (1) *Mandatory data.* The following transportation data is mandatory and must be transmitted by the rail carrier or its agent:

(i) Port of departure from the United States;

(ii) Date of departure;

(iii) Estimated time of departure;

(iv) Carrier-assigned conveyance name, equipment number and trip number;

(v) Train Consist, which includes:

(A) Manifest number;

(B) Train number;

(C) Rail car order; and

(D) Empty containers;

(vi) The rail carrier identification SCAC code (the unique Standard Carrier Alpha Code assigned for each carrier by the National Motor Freight Traffic Association; see § 4.7a(c)(2)(iii) of this chapter); and

(vii) Container or equipment numbers (for containerized shipments) or rail car Numbers (for all other shipments).

(2) *Conditional data.* The following transportation data is conditional and must be transmitted by the rail carrier or agent if applicable:

(i) 6-character Hazmat Code. The UN (for United Nations Number) or NA (North American Number) and the corresponding 4-digit identification number assigned to the hazardous material must be provided;

(ii) Marks and numbers; and

(iii) Seal number (only required if container was sealed). The seal numbers for all seals affixed to containers and/or rail cars to the extent that CBP's data system can accept this information (for example, if a container has more than two seals, and only two seal numbers can be accepted through the system per container, electronic presentation of two of these seal numbers for the container would be considered as constituting full compliance with this data element).

(3) *Optional data.* The following transportation data is optional and may be transmitted by the rail carrier or its agent:

(i) Mode of transportation (containerized rail cargo or non-containerized rail cargo);

(ii) Equipment type code; and

(iii) Place where the rail carrier takes possession of the cargo shipment or empty rail car.

(f) *Export manifest cargo data.* (1) *Mandatory data.* The following export manifest cargo data is mandatory and may be transmitted by any party eligible to transmit as described in paragraph (c) of this section. If the information has been provided in the initial filing, it need not be transmitted again unless there are updates or changes:

(i) Shipper name and address (for empty rail cars, the shipper may be the railroad from whom the rail carrier received the empty rail car to transport);

(ii) Consignee name and address (for empty rail cars, the consignee may be the railroad to whom the rail carrier is transporting the empty rail car);

(iii) Port of Lading;

(iv) Port of Unlading;

(v) Bill of Lading type (Master, House, Simple or Sub);

(vi) Bill of Lading Numbers (Master, House, Simple or Sub);

(vii) AES Internal Transaction Number or In-bond Number (per shipment);

(viii) Cargo description;

(ix) Weight of cargo (may be expressed in either pounds or kilograms); and

(x) Quantity of cargo and unit of measure.

(2) *Conditional data.* The following export manifest cargo data is conditional and must be transmitted if applicable:

(i) In-bond type;

(ii) Notify party name and address; and

(iii) Secondary notify party name and address.

(3) *Optional data.* The following export manifest cargo data is optional and may be transmitted by any party eligible to transmit as described in paragraph (c):

(i) Mexican Pedimento Number (only for shipments for export to Mexico);

(ii) Secondary notify party Standard Carrier Alpha Code (SCAC);

(iii) Country of ultimate destination; and

(iv) Number of house bills of lading.

(g) *Examination referrals.* (1) *Potential referrals.* There are two types of referrals that may be issued by CBP after a risk assessment of an outbound export manifest data transmission.

(i) *Referral for information.* A referral for information will be issued if a risk assessment of the cargo cannot be conducted due to non-descriptive, inaccurate, or insufficient data. This can be due to typographical errors, vague cargo descriptions, and/or unverifiable information; or

(ii) *Referral for screening.* A referral for screening will be issued if the potential risk of the cargo is deemed high enough to warrant enhanced screening.

(2) *Rail export referral resolution.* All outbound rail export data transmitters must respond to and take the necessary action to address all referrals, no later than prior to departure of the train. The appropriate protocols and time frame for taking the necessary action to address these referrals must be followed as directed. The parties responsible for taking the necessary action to address outbound rail export data referrals are as follows:

(i) *Referral for information.* The data transmitter is responsible for taking the necessary action to address a referral for information. The last party to file the outbound rail manifest data for which referral is sought is responsible for such action.

(ii) *Referral for screening.* If the outbound rail export manifest transmitter is the rail carrier, it may address a referral for screening directly. If the outbound rail export manifest transmitter is a party other than the outbound rail carrier, it may choose to address the referral for screening directly while informing the outbound carrier of the referral. If the outbound rail export manifest transmitter chooses not to address the referral for screening, it must notify the outbound rail carrier of the referral for screening. Upon such notification, the outbound rail carrier is responsible for taking the necessary action to address the referral.

(3) *Prohibition on transporting cargo with unresolved referrals.* The outbound rail carrier may not transport cargo destined for departure from the United States until all referrals issued pursuant to this section with respect to such cargo have been resolved.

(h) *Do-Not-Load (DNL)/Hold instructions.* (1) A Do-Not-Load (DNL) instruction will be issued if it is determined that the cargo or rail car may contain a potential threat to the train and its vicinity.

(2) A Hold instruction will be issued, even after loading, if it is determined that further examination of the cargo or rail car is required.

(3) All outbound rail manifest data transmitters must provide a telephone number and email address that is monitored 24 hours/7 days a week in case a Do-Not-Load (DNL) instruction is issued. All transmitters and/or outbound rail carriers, as applicable, must respond and fully cooperate when the entity is reached by phone and/or email when a Do-Not-Load (DNL) or Hold instruction is issued. The party with physical possession of the cargo will be required to carry out the Do-Not-Load (DNL) or Hold protocols and the directions provided by law enforcement authorities.

(4) The outbound rail carrier may not transport cargo with a Do-Not-Load (DNL) or Hold instruction.

ALEJANDRO N. MAYORKAS,
Secretary of Homeland Security.

DEPARTMENT OF THE TREASURY

19 CFR PARTS 10, 101, 128, 143, 145

RIN 1685–AA01 (FORMERLY RIN 1515–AE84)

ENTRY OF LOW-VALUE SHIPMENTS

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to the U.S. Customs and Border Protection (CBP) regulations pertaining to the entry of certain low-value shipments not exceeding $800 that are eligible for an administrative exemption from duty and tax. Specifically, CBP proposes to create a new process for entering low-value shipments, allowing CBP to target high-risk shipments more effectively, including those containing synthetic opioids such as illicit fentanyl. This document also proposes to revise the current process for entering low-value shipments to require additional data elements that would assist CBP in verifying eligibility for duty- and tax-free entry of low-value shipments and bona-fide gifts.

DATES: Comments must be received by March 17, 2025.

ADDRESSES: Please submit comments, identified by docket number, by the following method:

• *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments via docket number USCBP–2025–0002.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Comments must be submitted in English, or an English translation must be provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov*. In accordance with 5 U.S.C. 553(b)(4), a summary of this rulemaking may also be found at *https://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Christopher Mabelitini, Director, Intellectual Property Rights & E-Commerce Division, Office of Trade, U.S. Customs and Border Protection, 202–325–6915, *ecommerce@cbp.dhs.gov*.

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I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this notice of proposed rulemaking (NPRM). U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic,

environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP will reference a specific portion of the NPRM, explain the reason for any recommended change, and include data, information, argument, or authority that supports such recommended change. CBP is also specifically seeking comments regarding the "product identifier" and "security screening report number" data elements discussed in section VI.D. In addition, CBP requests comment on the Harmonized Tariff Schedule of the United States (HTSUS) waiver process discussed in section VI.D and its potential for lowering the costs of the rule.

II. Background and Purpose

Section 321(a)(2) of the Tariff Act of 1930 (19 U.S.C. 1321(a)(2)), as amended by the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), section 901, Public Law 114–125, 130 Stat. 122, authorizes administrative exemptions from duty and tax for three categories of articles. These categories include: bona-fide gifts valued at $100 or less ($200, if the gift is from certain island possessions) sent from persons in foreign countries to persons in the United States; certain personal or household articles valued at $200 or less accompanying persons arriving in the United States; and other articles when the value of the article is $800 or less.[1] These exemptions are subject to the condition that the aggregate fair retail value in the country of shipment of articles imported by one person on one day and exempted from duty cannot exceed the authorized amounts. Also, these exemptions are not to be granted if merchandise covered by a single order or contract is forwarded in separate lots to obtain the benefit of duty- and tax-free entry.

This proposed rulemaking primarily concerns shipments covered by the administrative exemption in 19 U.S.C. 1321(a)(2)(C), *i.e.,* shipments of merchandise (other than bona-fide gifts and certain personal and household goods accompanying travelers arriving from abroad) imported by one person on one day and having an aggregate fair retail value in the country of shipment of not more than $800. For simplicity, all references to "the administrative exemption" in this document will be to the administrative exemption found in 19 U.S.C. 1321(a)(2)(C). References made to the other administrative exemptions in 19 U.S.C. 1321(a)(2) will be specified as appropriate. In addition, this document refers to shipments not exceeding $800 as "low-value shipments."[2] Low-value shipments that qualify for the

[1] 19 U.S.C. 1321(a)(2).

[2] These shipments are also commonly referred to as "*de minimis*" shipments.

administrative exemption in 19 U.S.C. 1321(a)(2)(C) are referred to as "qualifying low-value shipments." The administrative exemption is implemented in part 10 of title 19 of the Code of Federal Regulations (19 CFR part 10) at 19 CFR 10.151 and 10.153, and is also referenced in 19 CFR parts 128, 143, and 145.

The Customs Administrative Act of 1938 amended the Tariff Act of 1930 by adding section 321 and establishing the administrative exemption at $1 in order to limit the "expense and inconvenience" of collecting duty when "disproportionate to the amount of such duty."[3] The value of these shipments was deemed to be so minimal that they were not subject to the same formal customs entry procedures and extensive data requirements as higher-value shipments entering the United States. Congress has since raised the value of the administrative exemption to $5 in 1978, $200 in 1993, and most recently, to $800 in 2016.[4]

The framework for the current version of the regulations pertaining to the administrative exemption was promulgated through a final rule in 1995, which, among other things, amended the customs regulations to implement the legislative increase of the exemption to $200, specify the special informal entry procedures applicable to qualifying low-value shipments, set forth the parties qualified to make entry, and define the word "shipment."[5]

In 2016, section 901(d) of TFTEA amended 19 U.S.C. 1321(a)(2)(C) by increasing the daily value limit for the administrative exemption from $200 to $800.[6] CBP published an interim final rule amending the regulations to implement the new statutory amount and to specify certain goods excluded from the administrative exemption.[7] Otherwise, CBP has not made any significant changes to the regulatory requirements by which such shipments are entered since 1995. In the nearly three decades since, however, there have been signifi-

[3] Customs Administrative Act of 1938, Public Law 75–721, 52 Stat. 1077, 1081 (1938).

[4] Customs Procedural Reform and Simplification Act of 1978, Public Law 95–410, 205(b)(3), 92 Stat. 888, 900 (1978) (raising the value to $5); North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057, 2209 (1993) (raising the value to $200 and also removing the specific authorization to the Secretary of the Treasury to diminish the dollar amount of the administrative exemption); Trade Facilitation and Trade Enforcement Act of 2015, Public Law 114–125, 130 Stat. 122 (2016) (raising the value to $800).

[5] 60 FR 18983 (Apr. 14, 1995).

[6] Section 901 did not change the administrative exemptions for bona-fide gifts and personal or household articles accompanying travelers under 19 U.S.C. 1321(a)(2)(A) and (B), respectively.

[7] 81 FR 58831 (Aug. 26, 2016). In the interim final rule, CBP solicited comments regarding the collection of data on behalf of partner government agencies for shipments valued at $800 or less. CBP received eight public comments and intends to respond to the comments at the final rule stage of this rulemaking.

cant changes in the trade environment and supply chains, substantial increases in the volume of shipments, and advancements to CBP's capabilities that necessitate the modernization of these regulations to better serve both CBP and the trade community.

Firstly, e-commerce is a growing segment of the U.S. economy and has been increasing significantly for the past several years.[8] Consumer habits are changing as the internet empowers individuals to make purchases online. These advances in economic activity have led to increasing volumes of imports of low-value shipments, creating inspection challenges for CBP. Low-value e-commerce shipments pose the same health, safety, and economic security risks as higher-value shipments. Transnational criminal organizations and other bad actors perceive low-value shipments as less likely to be interdicted because these types of shipments are not subject to the more extensive formal entry procedures. This has resulted in attempts to enter illicit goods, such as illicit fentanyl, into the country through these types of shipments. As noted below, the information requirements for low-value shipments are less rigorous than those required for other entry types, and often do not provide sufficient detail for CBP to accurately identify the merchandise in the shipment and the parties involved in its sale and purchase. Furthermore, novel and complex e-commerce business models have complicated and added to the traditional array of parties involved in the import transaction. New or infrequent importers often possess less familiarity with U.S. customs laws and regulations, which can lead to the attempted importation of non-compliant goods. This rulemaking proposes data requirements that are tailored to capture the key parties in these modern trade transactions (*e.g.,* the seller, purchaser, final deliver-to party, and marketplace), thus strengthening CBP's enforcement posture.

Secondly, the volume of low-value shipments has increased dramatically in recent years. The boom in e-commerce, coupled with the statutory increase in the daily value limit for the administrative exemption from $200 to $800 in 2016, greatly increased the number of shipments qualifying for the exemption, resulted in new types of products becoming eligible for the exemption, and revived the trade community's interest in the exemption. This boom in e-commerce resulted from several factors, including the development of the Automated Commercial Environment (ACE) Entry Type 86 Test, the COVID–19 pandemic, and new e-commerce business models structured around low-value shipments. In fiscal year (FY) 2015, prior to the passage of TFTEA, approximately 139 million shipments valued

[8] Although the administrative exemption is not limited to only e-commerce shipments, the reality is that e-commerce shipments comprise a significant portion of low-value shipments.

at $200 or less were imported into the United States. In FY 2017, after the TFTEA increase to $800 went into effect, low-value shipments numbered nearly 325 million. By the end of FY 2022, that number more than doubled to 685 million. Then in FY 2023, CBP cleared more than one billion low-value shipments.[9] Currently, approximately 4 million shipments are released each day free of duty and tax pursuant to the administrative exemption. In fact, CBP estimates that over 90 percent of the number of shipments entering the United States are low-value shipments valued at $800 or less.[10] The information requirements for these shipments are less rigorous than those required for other entry types, *e.g.,* formal entries, and no longer provide sufficient detail for CBP to accurately identify the merchandise in the shipment and the parties involved in its sale and purchase. This overwhelming volume of low-value shipments and lack of actionable data collected pursuant to the current regulations inhibits CBP's ability to identify and interdict high-risk shipments that may contain illegal drugs such as illicit fentanyl, merchandise that poses a risk to public safety, counterfeit or pirated goods, or other contraband. The new enhanced entry process for low-value shipments proposed in this rulemaking would provide CBP with the necessary information regarding the contents of shipments to more accurately segment risk and determine eligibility for the administrative exemption in advance of a shipment's arrival in the United States. The receipt of advance electronic data would also reduce the burden for CBP officers who process these large volumes of shipments because better data would lead to more accurate targeting. With more accurate targeting, CBP resources will be better focused on accurately identifying and interdicting violative shipments. Today, the quality of targeting is often impeded by the lack of information.

Lastly, both CBP and the trade community's technological capabilities have greatly advanced since 1995, and this proposed rule would adapt the regulations to current capabilities. As explained below in section IV, in the past, CBP cleared low-value shipments exclusively through a time-consuming and burdensome manual process, and staff at the ports of entry became unable to quickly and efficiently process the increasing volume of trade. Consequently, it was not unusual for clearance to take up to eight days. Over the last several years, CBP has collaborated with the trade community to obtain input regarding how to more accurately identify the nature, origin, and ultimate

[9] Commercial Customs Advisory Committee Holds Final Public Meeting of 2023, December 20, 2023, *https://www.cbp.gov/newsroom/national-media-release/commercial-customs-advisory-committee-holds-final-public-meeting* (last accessed Jan. 31, 2024).

[10] Email correspondence with the Office of Trade on Feb. 2, 2024.

destination of low-value shipments. This effort served as the foundation for two pilot programs, the Section 321 Data Pilot and the Entry Type 86 Test, which were implemented in 2019 to test CBP's capabilities to collect, and the trade community's ability to provide, certain enhanced data through CBP-approved electronic systems.[11] The details of the pilot programs, along with the results, are described below in section V. The innovations from the two pilots are incorporated into this proposed rule.

As illustrated above, the existing regulations do not account for the complex supply chains surrounding e-commerce transactions, today's volume of trade, or recent technological advancements. Consequently, this environment is more vulnerable to various challenges, including, but not limited to, illicit substances like fentanyl and other narcotics, counterfeit or pirated goods, and goods potentially made with forced labor. CBP's enforcement efforts have brought to light violations of the right to make entry, mismanifesting of cargo, misclassification, misdelivery (*e.g.,* delivery of goods prior to release from CBP custody), undervaluation, and incorrectly executed powers of attorney. Of particular concern is the threat posed by illicit fentanyl, fentanyl analogues, as well as precursor and other chemicals used in illicit drug production that are smuggled into the United States by transnational criminal organizations. In FY 2023, CBP seized more than 27,000 pounds of fentanyl nationwide.[12] The drugs are mostly smuggled though ports of entry at the Southwest Border via privately owned and commercial vehicles and through pedestrian lanes, or smuggled into the United States through the mail or through express consignment carriers.[13] CBP uses a multi-faceted approach to prevent illegal drugs from entering the country, and one key facet is advance information and targeting. Advance electronic shipping information allows CBP to quickly identify, target, and deter the entry of dangerous illicit drugs in all operational environments. This rulemaking contributes to the effort to stop the flow of illegal drugs into the United States by expanding the collection of enhanced advance electronic data for low-value shipments.

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[11] Section 321 Data Pilot, 84 FR 35405 (July 23, 2019); Test Concerning Entry of Section 321 Low-Valued Shipments Through Automated Commercial Environment (ACE), 84 FR 40079 (Aug. 13, 2019).

[12] CBP Releases November 2023 Monthly Update, December 22, 2023, *https://www.cbp.gov/newsroom/national-media-release/cbp-releases-november-2023-monthly-update* (last accessed Jan. 31, 2024).

[13] Joint Written Testimony of Diane J. Sabatino, Deputy Executive Assistant Commissioner, Office of Field Operations, and James Mandryck, Deputy Assistant Commissioner, Office of Intelligence, before the U.S. Senate Committee on Appropriations, "Combatting Transnational Criminal Organizations and Related Trafficking" (May 3, 2023), *https://www.cbp.gov/about/congressional-resources/testimony* (last accessed Sept. 1, 2023).

To address the above challenges, this document will explain the statutory authority that authorizes CBP to regulate the entry of low-value shipments, describe the current regulatory landscape, and propose new regulations that establish a new electronic entry process and clarify the parameters of the administrative exemption.

III. Statutory Authority

All merchandise imported into the customs territory of the United States is subject to entry and clearance procedures. These procedures ensure the proper appraisement, valuation, and tariff classification of the merchandise for the purpose of collecting the lawful amount of duties owed, as well as compliance with all other laws and regulations administered and enforced by CBP. Different procedures are provided for the entry and clearance of merchandise depending upon the value of the merchandise. There are "formal entry" procedures established by 19 U.S.C. 1484 and 1485, which are generally applicable to shipments of merchandise valued in excess of $2,500. Part 142 of title 19 of the CFR (19 CFR part 142) implements 19 U.S.C. 1484, as amended, and prescribes formal entry procedures. Formal entry generally involves the completion and filing of one or more CBP forms, or their electronic equivalent, as well as the filing of commercial documents pertaining to the transaction.

Exempt from the requirements of 19 U.S.C. 1484 and 1485 are entries made under 19 U.S.C. 1498, which, for the most part, are limited to shipments of merchandise valued at $2,500 or less (referred to as "informal entries"). Specifically, 19 U.S.C. 1498 authorizes the Secretary of the Treasury to "prescribe rules and regulations for the declaration and entry of merchandise when the aggregate value of the shipment does not exceed an amount specified . . . by regulation, but not more than $2,500." Informal entry regulations are found at 19 CFR part 143, subpart C. While informal entries are "excepted" from formal entry requirements, the Secretary may include any formal entry requirement in the rules and regulations governing informal entry.[14] The statutory framework of 19 U.S.C. 1498 authorizes, in effect, a less formal entry process than under 19 U.S.C. 1484. As a result, informal entry procedures are less burdensome and complex than the formal entry procedures. These simplified procedures reduce the overall administrative burden on informal entry filers.

Shipments that are eligible for the administrative exemptions at 19 U.S.C. 1321(a)(2) are a subset of the informal entries covered by 19 U.S.C. 1498, which authorizes the Secretary to promulgate such special rules and regulations as the Secretary determines are neces-

[14] 19 U.S.C. 1498(b).

sary and appropriate for the declaration and entry of shipments valued at $2,500 or less. Under 19 U.S.C. 1321, the Secretary is authorized to promulgate regulations to admit certain low-value articles duty- and tax-free in order to avoid expense and inconvenience to the Government that is disproportionate to the amount of revenue that would otherwise be collected. As noted above, regulations for the entry of low-value shipments, which are authorized under 19 U.S.C. 1498 may, but are not required to, include any of the rules that are otherwise applicable for formal entry under 19 U.S.C. 1484 and 1485.

Lastly, the Secretary is authorized by 19 U.S.C. 1321(b) to prescribe exceptions to an administrative exemption, if consistent with the purposes of the exemption or if "necessary for any reason to protect the revenue or to prevent unlawful importations."

IV. Current Regulatory Procedures for Entry of Qualifying Low-Value Shipments

The regulations pertaining to the exemptions in 19 U.S.C. 1321(a)(2) are found throughout various parts of title 19 of the CFR. The administrative exemption at 19 U.S.C. 1321(a)(2)(C) is implemented at 19 CFR 10.151, which explains that qualifying merchandise not exceeding $800 and meeting the conditions of 19 CFR 10.153 will be admitted free of duty and tax. The exemption for bona-fide gifts is implemented at 19 CFR 10.152. For low-value shipments accompanying a person, the merchandise comes in under an oral declaration pursuant to 19 CFR part 148.[15] Shipments imported by mail are covered by 19 CFR part 145, and shipments imported by express consignment operators and carriers are covered by 19 CFR part 128. Lastly, informal entry procedures for qualifying low-value shipments are found in 19 CFR part 143, subpart C.

A. Release From Manifest Process

With certain exceptions, low-value shipments qualifying for the administrative exemption may be entered by presenting the bill of lading or a manifest listing each bill of lading.[16] This type of informal entry is termed the "release from manifest process." Generally, such shipments are released from CBP custody based on the information provided on the manifest or bill of lading. Qualifying low-value shipments may be entered, using reasonable care, by the owner, purchaser, or consignee of the shipment, or, when appropriately designated by one of these persons, a customs broker licensed under 19

[15] The procedures for personal or oral declarations are set forth in 19 CFR 148.12, 148.13, and 148.62, and are not affected by this proposed rule.

[16] 19 CFR 143.23(j). This same process is also used for entry of bona-fide gifts meeting the requirements of 19 CFR 10.152 and 10.153.

U.S.C. 1641.[17] The information required for release from manifest may be provided by consignees, such as carriers and express consignment operators. The following information must be provided as part of the release from manifest process: the country of origin of the merchandise; shipper name, address and country; ultimate consignee name and address; specific description of the merchandise; quantity; shipping weight; and value.[18] No Harmonized Tariff Schedule of the United States (HTSUS) subheading is required on a manifest, and no entry summary is required, for low-value shipments.[19]

Among other things, 19 CFR 10.153 sets forth the conditions to be applied by a CBP officer in determining whether an article or parcel shall be exempted from duty and tax under 19 CFR 10.151 as a qualifying low-value shipment. In particular, 19 CFR 10.153 provides that consolidated shipments addressed to one consignee shall be treated as one importation; alcoholic beverages and cigars (including cheroots and cigarillos) and cigarettes containing tobacco, cigarette tubes, cigarette papers, smoking tobacco (including water pipe tobacco, pipe tobacco, and roll-your-own tobacco), snuff, or chewing tobacco are not exempt; any merchandise of a class or kind provided for in any absolute or tariff-rate quota, whether the quota is open or closed, is not exempt; and, there is no exemption from any tax imposed under the Internal Revenue Code that is collected by other agencies on imported goods. In addition, any merchandise subject to antidumping and countervailing duties is not exempt.[20]

In addition to the regulations described above, which generally apply to all low-value shipments, CBP has established regulations for express consignment operators and carriers (ECOs) in 19 CFR part 128.[21] The procedure for entry of qualifying low-value shipments imported by ECOs is set forth in 19 CFR 128.21 and 128.24(e). CBP requires that ECOs provide the manifest information listed in 19 CFR 128.21 in advance of arrival of all cargo (*i.e.,* the advance manifest). The information required on the advance manifest for qualify-

[17] 19 CFR 143.26(b).

[18] 19 CFR 128.21(a); 19 CFR 143.23(k).

[19] 19 CFR 143.23(k); 19 CFR 128.24(e).

[20] *See* 19 U.S.C. 1671h; 19 U.S.C. 1673g (requiring CBP to collect antidumping and countervailing duty deposits for "*all* entries, or withdrawals from warehouse, for consumption of merchandise subject to [an antidumping or countervailing duty] order") (emphasis added).

[21] An "express consignment operator or carrier" is defined in 19 CFR 128.1(a) as "an entity operating in any mode or intermodally moving cargo by special express commercial service under closely integrated administrative control. Its services are offered to the public under advertised, reliable timely delivery on a door-to-door basis. An express consignment operator assumes liability to Customs for the articles in the same manner as if it is the sole carrier."

ing low-value shipments is identical to the information required for the release from manifest process under 19 CFR 143.23(k), but, pursuant to 19 CFR 128.24(e), such shipments must be segregated on the advance manifest when it is used as the entry document.[22]

Pursuant to 19 CFR 145.31, qualifying low-value shipments sent through the mail are generally passed free of duty and tax without the preparation of an entry in accordance with 19 CFR 145.12. The information needed for entry and release is supplied in the documentation accompanying the mail package. Generally, this documentation consists of the customs declaration and invoice or bill of sale (or, in the case of merchandise not purchased or consigned for sale, a statement of the fair retail value in the country of shipment).[23]

Regardless of the method or mode of transportation, CBP may require a formal entry for any merchandise if deemed necessary for import admissibility enforcement purposes, revenue protection, or the efficient conduct of customs business.[24]

B. Partner Government Agency Requirements

A low-value shipment is not exempt from partner government agency (PGA) requirements.[25] Many PGAs do not have exemptions from their reporting requirements for low-value shipments and require strict accountability of imported goods for national security and health and safety reasons, and to identify specific shipments of potentially violative products for reporting or enforcement purposes. Low-value shipments may also require the payment of applicable PGA duties, fees, or excise taxes collected by other agencies. Shipments that have PGA data reporting requirements or require the payment of any duties, fees, or taxes must generally be entered using the appropriate informal or formal entry process to ensure that the PGA requirements are met. Low-value shipments subject to PGA requirements are currently ineligible for entry under the release from manifest process.

C. Challenges of the Release From Manifest Process

The release from manifest process is a slow and labor-intensive process. A CBP officer must review each entry and provide a determination regarding release. While this process may have been suffi-

[22] 19 CFR 128.21 and 128.24(e).

[23] 19 CFR 145.11.

[24] 19 CFR 143.22; *see also* 19 CFR 145.12(a)(1).

[25] In this rulemaking, CBP uses the phrase "partner government agencies" in the preamble interchangeably with the phrase "other government agencies," which is found in title 19 of the CFR.

cient decades ago, the sheer volume of imports and the limited resources at the ports of entry make it untenable today.

Moreover, the data currently provided on the standard manifest is insufficient or too vague for CBP to effectively screen merchandise and provide admissibility decisions in a timely manner. The data often does not adequately identify the entity causing the shipment to cross the border, the final recipient, or the contents of the package. With the dramatic increase in shipments that only provide minimal data, CBP is left with fewer data points about a greater number of shipments. Many of these shipments are undervalued or incorrectly presented for release from manifest as non-PGA shipments, and thus do not qualify for the administrative exemption. More information about these shipments will help CBP to identify these shipments prior to release, thereby protecting consumers from purchasing goods that do not meet regulatory health and safety standards and protecting U.S. businesses from unfair competition against imported goods that would otherwise be charged duties or restricted from entry.

V. Section 321 Data Pilot and Entry Type 86 Test

To address the challenges described above, CBP launched two voluntary pilot programs pertaining to low-value shipments in 2019: the Section 321 Data Pilot and the Entry Type 86 Test. The Section 321 Data Pilot began with nine voluntary participants from the trade community to test the feasibility of CBP accepting advance data for shipments eligible for the administrative exemption.[26] Currently, CBP requires carriers and other regulated parties to transmit certain information relating to commercial cargo prior to the arrival of the cargo in the United States. However, in the e-commerce environment, traditionally regulated parties, such as carriers, are unlikely to possess all of the information relating to a shipment's supply chain that CBP needs to effectively identify high-risk shipments. The Section 321 Data Pilot tests the feasibility of obtaining this advance information from parties other than those required to submit it pursuant to the existing regulations, such as online marketplaces. The Section 321 Data Pilot also tests the collection of additional data that is generally not required under current regulations. Participants in the Section 321 Data Pilot agree to transmit certain data elements for each qualifying low-value shipment. Initial pilot participants included carriers, e-commerce marketplaces, a technology firm, and logistics providers. In 2023, CBP modified the Section 321 Data Pilot

[26] 84 FR 35405 (July 23, 2019). The original pilot was expanded to include shipments arriving by ocean and international mail and was extended through August 2021. 84 FR 67279 (Dec. 9, 2019). It was subsequently extended through August 2023 (86 FR 48435 (Aug. 30, 2021)), and then again through August 2025 (88 FR 10140 (Feb. 16, 2023)).

to allow participants to transmit optional data elements and to permit additional trade members to participate.[27] The purpose of the pilot is to improve CBP's ability to identify and target high-risk e-commerce shipments including narcotics, weapons, and products posing a danger to the public's health and safety.

The other pilot, the Entry Type 86 Test, authorized a new entry process for qualifying low-value shipments in the Automated Commercial Environment (ACE) through the development of a new informal entry type 86.[28] The test created a means for qualifying low-value shipments subject to PGA data requirements to benefit from the use of a section 321 entry process for the first time, allowing these shipments to claim duty- and tax-free treatment under the administrative exemption. Prior to the development of entry type 86, low-value shipments subject to PGA requirements were required to be entered using the more complex informal entry type 11 or formal entry.[29] The Entry Type 86 Test also expedites the clearance of compliant low-value shipments into the United States through the use of an electronic release in ACE.

Under this test, an owner, purchaser, or customs broker appointed by an owner, purchaser, or consignee may file an entry type 86.[30] Ten data elements in the entry type 86 are required to be transmitted to CBP, including the 10-digit classification for the merchandise under the Harmonized Tariff Schedule of the United States (HTSUS). This information allows CBP to determine whether the shipment is subject to PGA data reporting requirements. Any PGA data reporting requirements must be satisfied by the transmission of the PGA Message Set and the filing of any supporting documentation via the Document Image System (DIS). The PGA Message Set enables the trade community to electronically submit all data required by the PGAs only once to CBP, eliminating the necessity for the submission and subsequent manual processing of paper documents, and makes the required data available to the relevant PGAs for import and transportation-related decision-making. The Entry Type 86 Test has allowed CBP to test electronic release in ACE for low-value shipments, including those with PGA data requirements. It has also allowed CBP to test operational procedures involved with the new

[27] 88 FR 10140 (Feb. 16, 2023).

[28] 84 FR 40079 (Aug. 13, 2019).

[29] Merchandise imported by mail is excluded from the Entry Type 86 Test and may not be entered under entry type 86.

[30] For example, a party with a financial interest in the merchandise could constitute an owner or a purchaser that may file an entry type 86. Additionally, a broker properly appointed by the owner or the purchaser, or for example, by a third-party warehouse receiving the merchandise as a consignee, may file an entry type 86.

entry type, including associated challenges with electronic release in ACE and necessary coordination with PGAs.

Both pilots have yielded positive benefits for CBP and the trade community. Specifically, under the Section 321 Data Pilot, CBP was able to test the feasibility of collecting new data elements that identify the entities responsible for the movement of low-value shipments, the precise contents of these shipments, and their final destination after arriving in the United States. Collection of this information allows CBP to conduct faster and more accurate risk assessments, and trade members providing this more detailed data may benefit from fewer CBP holds. Similarly, as a result of the Entry Type 86 Test, the trade community has experienced fewer holds and faster clearance, often same-day clearance, versus the previous wait times of up to eight days. Trade members have also reported time and cost savings as detailed below in section VII.

If and when this proposed rule becomes a final rule, CBP will end the Entry Type 86 Test. CBP proposes to codify the Entry Type 86 Test's electronic entry process as part of the new enhanced entry process, with certain changes as discussed in the next section. The Section 321 Data Pilot, however, will continue with respect to those data elements and filers not covered by a final rule, for further evaluation of the pilot and the risks associated with low-value shipments. Changes to the Section 321 Data Pilot will be announced in a separate **Federal Register** notice.

VI. Discussion of Proposed Amendments

This rulemaking proposes amendments to provisions found in 19 CFR parts 10, 101, 128, 143, and 145. CBP generally intends this proposed rule's provisions to be severable from each other. CBP expects to provide additional detail on severability in the final rule once CBP has considered public comments and finalized the regulatory language. CBP proposes to combine the successful aspects of the Section 321 Data Pilot and Entry Type 86 Test to create a new, alternative[31] process for entering low-value shipments (referred to as the "enhanced entry process") that would, among other benefits, allow CBP to target high-risk shipments more effectively in advance of the shipment's arrival in the United States, including those shipments containing synthetic opioids such as illicit fentanyl. The new enhanced entry process incorporates a selection of the most useful data

[31] The enhanced entry process is required for goods subject to PGA data requirements seeking duty-free entry under the administrative exemption.

elements tested in the Section 321 Data Pilot and uses an electronic entry process similar to what was tested in the Entry Type 86 Test.[32]

The enhanced entry process would require the submission of advance data, within specified time frames, about the contents, origin, and destination of the shipments. Furthermore, the new process would allow CBP to maintain two key benefits of the Entry Type 86 Test, namely the expedited clearance of certain shipments and the availability of duty- and tax-free entry for qualifying low-value shipments, including those that are subject to PGA requirements.

This document also proposes to revise the current release from manifest process for entering low-value shipments (renamed as the "basic entry process") to require additional data elements that would assist CBP in verifying eligibility for duty- and tax-free entry of low-value shipments and bona-fide gifts.

Additionally, this document proposes to define who is the "one person" to whom the $800 exemption applies, explain eligibility requirements for the exemption, and clarify the definition of a "shipment," among other things. Lastly, this document proposes to correct typographical errors and make minor amendments for clarity and stylistic purposes.

Part 10, among other things, establishes the administrative exemptions for low-value shipments and bona-fide gifts in the regulations and lists the conditions that must be met to qualify for the exemptions. Part 101 contains general definitions, which includes the definition of a "shipment." Part 143, subpart C contains the informal entry procedures. Accordingly, the new enhanced entry process is set forth in proposed § 143.23(j) and (l). The parties who can make entry of low-value shipments and the applicable standards of care are found in § 143.26. Specific procedures for shipments imported by mail are found in part 145, and procedures for express consignment operators and carriers are found in part 128.

A. Part 10

Section 10.151 broadly sets forth the administrative exemption of 19 U.S.C. 1321(a)(2)(C) in the CBP regulations. Similarly, § 10.152 sets forth the administrative exemption for bona-fide gifts under 19

[32] Some of the data elements collected under the enhanced entry process in this proposed rulemaking may be similar to advance data collected for cargo security purposes pursuant to regulations issued under the authority of 19 U.S.C. 1415, such as in the case of Air Cargo Advance Screening (ACAS) data. CBP notes that 19 U.S.C. 1415(a)(3)(F) prohibits data collected under that statute's implementing regulations from being used for commercial enforcement purposes, including for determining merchandise entry. This rulemaking is being proposed under the statutory authorities pertaining to the entry of merchandise as detailed in section III. Accordingly, the regulations issued under 19 U.S.C. 1415 will continue to apply without any modification by this proposed rulemaking.

U.S.C. 1321(a)(2)(A).[33] Section 10.153 sets forth the conditions to be applied by a CBP officer in determining whether an article or parcel shall be exempted from duty and tax under § 10.151 or 10.152. CBP is proposing several changes to these sections to clarify the parameters of these exemptions and more closely align the language in the regulations with the statutory text.

1. Shipments Exceeding $800

There has been some confusion in the trade community regarding how the $800 value limit is applied when multiple low-value shipments are imported by one person on the same day. To provide clarity, CBP proposes to amend § 10.151 to explain that when the aggregate fair retail value of shipments imported by one person on one day under § 10.151 exceeds $800, then all such shipments imported on that day by that person become ineligible for duty-and tax-free entry under the administrative exemption. Such shipments would have to be entered under appropriate informal or formal entry procedures.

2. Party Eligible for Administrative Exemption and Party Authorized To Make Entry

In order to enforce the administrative exemption, CBP must ensure that the aggregate fair retail value in the country of shipment of articles imported by one person on one day and exempted from the payment of duty does not exceed the statutory limit of $800. CBP proposes to amend § 10.151 to require that the "one person" eligible for the administrative exemption is the owner or purchaser of the merchandise imported on one day.

It is possible that the party who is eligible for the administrative exemption (*i.e.,* the owner or purchaser) is different from the party who is authorized to make entry under § 143.26(b). Accordingly, CBP proposes to include a cross-reference in § 10.151 to clarify that merchandise for which the administrative exemption is being claimed must be entered by a party authorized to make entry under § 143.26(b).

3. Single Orders Sent Separately To Circumvent Duties and Evidence of Fair Retail Value

The statutory text of 19 U.S.C. 1321(a) prohibits goods from a single order or contract from being forwarded in separate lots to obtain the benefit of the administrative exemption. The current regulation differs from the statute in that the regulation requires that the single

[33] The separate exemption for articles accompanying and for the personal/household use of travelers returning from abroad, under 19 U.S.C. 1321(a)(2)(B), is not implicated or changed by this rulemaking.

order must be sent separately for the "express purpose" of obtaining free entry or avoiding compliance with pertinent laws. CBP proposes to align this provision with the statute and remove the limiting language that requires an "express purpose" to be established.

CBP proposes removing the clause in § 10.151 that describes the documents (or oral declaration) used to evidence the fair retail value of a shipment. CBP believes that the informal entry procedures cited to in the last sentence of § 10.151 more comprehensively describe the required data and documents needed to file or support entry of the shipment.

4. Other Amendments to §§ 10.151 and 10.152

Currently, the regulations in §§ 10.151 and 10.152 state that the port director "shall" provide duty- and tax-free entry of shipments meeting the value limits in 19 U.S.C. 1321(a)(2)(A) and (C). The value limit, however, is not the only requirement that shipments must meet in order to obtain duty- and tax-free entry under these sections. All other applicable statutory and regulatory requirements must also be met. Furthermore, the administrative exemptions are a privilege and not an absolute right. CBP maintains the authority, pursuant to 19 CFR 143.22, to require a formal entry, and assess any attendant duties, taxes, and fees, as applicable, for any such shipment for import admissibility enforcement purposes, revenue protection, or the efficient conduct of customs business.[34] Therefore, CBP proposes to replace "shall" with "may," reflecting that the exemptions are granted based on the port director's discretion.

CBP also proposes amending §§ 10.151 and 10.152 to clarify that eligible merchandise *must* be entered under the specific informal entry procedures listed in each section in order to enter free of duty and tax. If another form of entry is used, such as informal type 11 entry or formal entry, then applicable duties and taxes will be assessed. For clarity, in §§ 10.151 and 10.152, CBP proposes replacing the more general cross-reference to subpart C of part 143 with the specific citations to the applicable informal entry procedures in § 143.23(j).

In § 10.152, CBP is proposing to remove the cross-references to §§ 148.12, 148.51, and 148.64 because they reference the process of entering gifts along with household or personal articles which accompany a person upon the person's arrival from abroad, all of which may be entered pursuant to an oral declaration. Section 10.152 pertains to

[34] CBP may require a formal consumption or appraisement entry for any merchandise if deemed necessary for import admissibility enforcement purposes, revenue protection, or the efficient conduct of customs business. 19 CFR 143.22. Any such formally entered merchandise is not eligible for the administrative exemptions. *See* 19 CFR 10.151and 10.152.

bona-fide gifts sent from persons in foreign countries to persons in the United States subject to the exemption under 19 U.S.C. 1321(a)(2)(A), which is distinct from the separate exemption under 19 U.S.C. 1321(a)(2)(B) for personal and household goods (including gifts) accompanying persons arriving in the United States. Accordingly, CBP proposes to remove those cross-references to avoid confusion.

Lastly, CBP proposes updating the undesignated center heading preceding § 10.151 to replace "$200" with "$800" to align with the current value limit in 19 U.S.C. 1321(a)(2)(C). In the same heading, CBP proposes hyphenating the phrase "bona fide" for consistency with the text in § 10.152.

5. Antidumping and Countervailing Duties

Section 10.153 sets forth, among other things, the guidance to be applied by a CBP officer in determining whether an article or parcel should be exempted from duty and tax under § 10.151. CBP proposes adding a new paragraph (i), which would clarify the existing requirement that merchandise subject to antidumping and countervailing duties (AD/CVD) is not eligible for the administrative exemption. CBP has a ministerial role in administering and enforcing AD/CVD orders in accordance with instructions from the U.S. Department of Commerce (Commerce). Commerce's instructions specifically direct CBP to assess AD/CVD on all entries for consumption of subject merchandise, without any exceptions. Further, the AD/CVD statutes specifically apply to "all entries, or withdrawals from warehouse, for consumption of merchandise subject to [an AD/CVD] order on or after the date of publication of such order," without any mention of the administrative exemption or other exemption from the applicability of AD/CVD to all entries of subject merchandise.[35]

In addition, new paragraph (i) also reinforces CBP's authority to deny the administrative exemption for any other merchandise otherwise precluded by law from eligibility.

6. Other Amendments to § 10.153

CBP proposes updating the nomenclature in the introductory text of § 10.153 by changing "Customs" to "CBP." Additionally, in paragraph (a) and the introductory text of paragraph (d), CBP proposes hyphenating the phrase "bona fide" for consistency with the text in § 10.152.

[35] 19 U.S.C. 1671h (CVD); 19 U.S.C. 1673g (AD).

B. Part 101

CBP proposes amending the definition of "shipment" in § 101.1 to clarify that a single shipment corresponds to an individual bill of lading. An individual bill of lading is not a consolidation of several bills of lading and is not a master bill or other consolidated document. An individual bill of lading is a bill representing an individual shipment that has its own unique bill number and tracking number, where the shipment is assigned to a single ultimate consignee, and no lower bill unit exists. An individual bill of lading, also known as a "house bill," is used in all modes of transportation. It may be referred to as an "individual air waybill" in the air environment or a "simple bill" in the ocean environment.

C. Part 128

Part 128 sets forth requirements and procedures for the clearance of imported merchandise carried by ECOs, including couriers, under special procedures.

Current § 128.24 explains the informal entry procedures for express consignment shipments, including shipments meeting the requirements of § 10.151. As was done above in § 10.151, CBP proposes replacing the word "will" with "may" in the first sentence of the introductory text of § 128.24(e) to reflect that CBP has the discretion to require formal entry for any low-value shipment.[36] CBP proposes adding a cross-reference in the introductory text of § 128.24(e) to the entry procedures for low-value shipments in § 143.23(j). The procedures in § 143.23(j) require that an individual bill of lading must accompany each entry. Under the current regulations, an advance manifest listing each bill of lading may be used as the entry document, and shipments valued at $800 or less must be segregated on the advance manifest. Accordingly, CBP is removing the requirement to segregate shipments valued at $800 or less on an advance manifest because, although the advance manifest is still required, it is the individual bill of lading that serves as the entry document. As a result, there is no need to segregate shipments on the advance manifest. CBP is also removing paragraphs (e)(1) and (e)(2), because the data and documents required for entry are explained in § 143.23(j)–(l).

CBP proposes to add a new paragraph (f) to § 128.24 to specify the entry procedures to be used for entering bona-fide gifts. Bona-fide gifts may not be entered under the new enhanced entry process. CBP is also amending paragraph (d) to clarify that an entry summary is

[36] *See* 19 CFR 143.22.

not required for qualifying low-value shipments and bona-fide gifts passing free of duty and tax pursuant to paragraphs (e) and (f), respectively.

Current § 128.21(a) lists the manifest information required in advance of the arrival of all express consignment cargo. CBP proposes to amend paragraph (a)(4)(ii) to explain that the HTSUS subheading number is not required for low-value shipments entered under the basic entry process in § 143.23(k), but it is required for shipments entered under the enhanced entry process in § 143.23(l) (unless a waiver is obtained). Lastly, CBP proposes to replace the reference to "Customs" in § 128.21(b) with "CBP."

D. Part 143

Under this proposed rulemaking, qualifying low-value shipments can be entered under two alternative processes to receive duty- and tax-free entry, either under the basic entry process or the enhanced entry process. This section explains the requirements of each process.

1. General Requirements for Shipments Not Over $800 and Bona-Fide Gifts

The general requirements for entry of qualifying low-value shipments and bona-fide gifts are set forth in the revisions proposed in § 143.23(j). Paragraph (j) states that in order to enter qualifying shipments, the party making entry must provide the individual bill of lading (house bill or equivalent), or other shipping document used to file or support entry, as a basic requirement. In addition, the requirements of either the basic entry process in paragraph (k) or the enhanced entry process in paragraph (l) must be met.

The proposed revisions to paragraphs (j)(1)–(3) explain when certain types of merchandise are limited to entry under either the basic or enhanced process in order to qualify for the administrative exemption. Proposed paragraph (j)(1) states that merchandise may be subject to other legal requirements, including the requirements of other Federal, State, or local agencies, as applicable. In the case of merchandise regulated by other Federal agencies, the merchandise may not be entered under the basic entry process under § 143.23(k), but may be entered under the enhanced entry process under § 143.23(l). However, any merchandise that is not exempt from the payment of any applicable PGA duties, fees, or taxes is not eligible for entry under either entry process. Any filing that is determined to owe any duties, fees, or taxes will be rejected by CBP and must be re-filed using the appropriate informal or formal entry process.

Proposed paragraph (j)(2) explains that mail importations may not be entered using the basic entry process in § 143.23(k), but may be

entered using the enhanced entry process in § 143.23(l). Further information about mail importations is found in § 145.31. Lastly, proposed paragraph (j)(3) explains that bona-fide gifts under § 10.152 are not eligible to use the enhanced entry process and must use the basic entry process in § 143.23(k).

2. Basic Entry Process

CBP proposes to amend the current release from manifest process described in § 143.23(j) and (k). First, CBP proposes renaming the existing process in § 143.23(j) and (k) as the "basic entry process" to differentiate it from the proposed new "enhanced entry process." The requirements for the basic entry process will be consolidated in § 143.23(k).

The proposed basic entry process maintains the general procedures of the existing release from manifest process, with slight modifications. As explained in paragraph (k), low-value shipments meeting the requirements in § 10.151 or bona-fide gifts meeting the requirements in § 10.152 may be entered under the basic entry process. Release under the proposed basic entry process will be obtained by providing an individual bill of lading (house bill or equivalent) and will require the filer to provide the data elements listed in paragraph (k). The entry data may either be transmitted electronically through a CBP-authorized electronic data interchange (EDI) system or be submitted in paper format.

There are some changes to the data elements from the current process. The following information must be provided under the existing process: the country of origin of the merchandise; shipper name, address and country; ultimate consignee name and address; specific description of the merchandise; quantity; shipping weight; and value.[37] In § 143.23(k)(3), CBP proposes to also require the name and address of the person claiming the administrative exemption under § 10.151 or 10.152, *i.e.,* the person who is being exempted from the payment of duty for the qualifying low-value shipment. For qualifying low-value shipments, this would be the name and address of the owner or purchaser as set forth in § 10.151. For bona-fide gifts, it would be the name and address of the person receiving the articles as set forth in § 10.152.[38] This is crucial information that CBP needs to enforce the cumulative statutory "one person on one day" monetary restriction.

[37] 19 CFR 143.23(k).

[38] 19 CFR 10.152. The exemption may be granted if the conditions in § 10.153 are met and "the aggregate fair retail value in the country of shipment of such *articles received by one person* on one day does not exceed $100 or, in the case of articles sent from a person in the Virgin Islands, Guam, and American Samoa, $200." (Emphasis added.)

Additionally, in proposed § 143.23(k)(8), CBP requires the name and address of the final deliver-to party, if distinct from the party eligible for the administrative exemption in paragraph (k)(3). This refers to the final party in the United States to whom the merchandise is to be delivered. The purpose of this data element is to enable CBP to know to whom and where the imported merchandise is destined to be delivered in the United States. To avoid duplication of data elements, CBP is proposing to remove the name and address of the ultimate consignee, currently required by § 143.23(k)(3).

CBP is also proposing amendments to several of the existing data elements. CBP proposes to clarify that the quantity requested is the "manifested quantity of the merchandise" and the weight is referring to the "shipment weight." Lastly, to maintain consistency with the statutory language, CBP is specifying that the value required is the "fair retail value in the country of shipment" in U.S. dollars.[39]

3. Enhanced Entry Process

Proposed § 143.23(l) sets forth the enhanced entry process. This process is limited to low-value shipments meeting the requirements of § 10.151. Accordingly, qualifying bona-fide gifts under § 10.152 must use the basic entry process for duty- and tax-free entry.

The enhanced entry process requires the electronic transmission of the individual bill of lading (house bill or equivalent) or other shipping document used to file or support entry. In addition, enhanced entry filers must transmit the data elements in paragraph (k) and paragraphs (l)(1)–(2) to CBP. CBP acknowledges that it is possible that the required data elements do not all reside with one party. The entry, however, can only be filed by *one* of the parties eligible to file entry. Therefore, in such cases, the party filing the entry will need to gather the required data from others before filing.

The enhanced entry process requires data to be transmitted to CBP in advance of arrival of the shipment to allow for CBP to timely conduct targeting and offer expedited release. For consistency with other advance data requirements, CBP proposes to adopt, for the enhanced entry process, the same time frames as currently applicable for filing advance electronic data (AED) under regulations promulgated pursuant to section 343 of the Trade Act of 2002, 19 U.S.C. 1415 (the Trade Act regulations). Therefore, all the required information and documentation must be transmitted to CBP through a CBP-

[39] When duties or other charges or fees are assessed on an import, they are calculated using the appraised value of the imported good, pursuant to 19 U.S.C. 1401a, which is not based on the good's retail value in the country of shipment. Alternatively, for the purposes of the administrative exception, the value to be evaluated to determine qualification for duty-and tax-free treatment is the fair retail value in the country of shipment.

authorized EDI system on or before the deadline for receipt of advance cargo information. Mail shipments using the enhanced entry process are subject to a separate filing deadline, which can be found in § 145.31. For all other shipments, the required time frame to file an enhanced entry varies depending on the mode of transportation, and will be the same as provided for AED filings for each mode under the Trade Act regulations, which are as follows:

• For vessel cargo, the filing must be received by CBP 24 hours before the cargo is laden aboard the vessel at the foreign port. 19 CFR 4.7 and 4.7a.

• For air cargo, the filing must be received by CBP either: (1) no later than the time of the departure of the aircraft for the United States,[40] in the case of aircraft that depart for the United States from any foreign port or place in North America, including locations in Mexico, Central America, South America (from north of the Equator only), the Caribbean, and Bermuda; or (2) no later than four hours prior to the arrival of the aircraft in the United States, in the case of aircraft that depart for the United States from any foreign area other than those specified in 19 CFR 122.48a(b)(1). 19 CFR 122.48a(b)(1).

• For rail cargo, the filing must be received by CBP no later than two hours prior to the cargo reaching the first port of arrival in the United States. 19 CFR 123.91.

• For truck cargo, the filing must be received by CBP no later than either 30 minutes or one hour prior to the carrier's reaching the first port of arrival in the United States, or such lesser time as authorized, based upon the CBP-approved system employed to present the information. 19 CFR 123.92.

If the required information has not been transmitted by the time frames specified, those shipments will not receive a release message upon arrival of the conveyance. Such shipments will be held for additional action, such as an exam or document review before a manual clearance may be given.

In order to account for the various types of merchandise that may be entered subject to the administrative exemption, the data elements required for the enhanced entry process are split into subparagraphs (1) and (2). Subparagraph (1) data must be transmitted for all shipments. The data in subparagraph (2) may not be applicable to all shipments, but if the data exists, it must be transmitted. CBP may request supporting documentation to conduct verification of any of the data elements.

[40] The trigger time is no later than the time that wheels are up on the aircraft, and the aircraft is en route directly to the United States. 68 FR 68140; *see also,* 19 CFR 122.48a(b).

Under proposed § 143.23(l)(1), the following data elements must be transmitted for all shipments:

(i) Clearance Tracing Identification Number (CTIN)

The CTIN refers to the individual bill of lading number or other unique identification number used to associate the merchandise on the individual bill of lading with the eligible imported merchandise for which entry is sought.

(ii) Country of Shipment of the Merchandise

This refers to the country where the goods were located when the shipment was created for exportation to the United States. For example, a good originating in Country A is shipped to a storage facility in Country B and is then sold and prepared for exportation to the United States. It is then transshipped through Country C before arriving in the United States. In this scenario, the country of shipment is Country B.

(iii) 10-Digit Classification of the Merchandise in Chapters 1–97 (and Additionally in Chapters 98–99, if Applicable) of the Harmonized Tariff Schedule of the United States (HTSUS)

The 10-digit HTSUS classification must be provided for all shipments unless the HTSUS waiver privilege has been obtained pursuant to paragraph (m) and asserted for the entry. Regardless of whether the waiver privilege is granted, merchandise subject to requirements of other government agencies will always require the HTSUS subheading number to be filed. The intent of collecting HTSUS data is primarily for CBP to verify what partner government agency requirements may apply to the merchandise.

Unless otherwise prohibited, a Chapter 98 or Chapter 99 commodity may also be entered under the enhanced entry process. In such cases, the Chapter 98 or Chapter 99 HTSUS classification must be provided in addition to the underlying Chapters 1–97 HTSUS classification for the merchandise.

(iv) Additional Data Elements

CBP is also requiring at least one of the data elements listed under paragraph (l)(1)(iv). These data elements include the internet address known as the uniform resource locator (URL) to the marketplace's product listing for the merchandise in the entry; product picture; product identifier; and/or a shipment x-ray or other security screening report number verifying completion of foreign security scanning of the shipment. These data elements would be used by CBP to verify the contents of the shipment for admissibility purposes.

CBP intends for the product identifier to be a commercial product identifier such as the part number, stock keeping unit (SKU), or product code. However, CBP is seeking the trade community's input regarding suggestions for acceptable product identifiers.

The security screening report number, applicable to ECOs, is also included as one of the four options. CBP seeks the trade community's input about its viability for being submitted as part of the enhanced entry process.

Next, proposed § 143.23(l)(2) lists additional information that must be transmitted for all shipments, if applicable. These data elements include:

(i) Seller Name and Address

The seller is the party that made, or offered or contracted to make, a sale of the merchandise. Seller information is critical to CBP's efforts to identify and interdict shipments of goods that infringe intellectual property rights or are of a substandard quality that renders them otherwise restricted from entry. These goods undercut the competitiveness of U.S. businesses and pose health and safety concerns.

(ii) Purchaser Name and Address

The purchaser is the last known party to whom the goods are sold, or the party to whom the goods are contracted to be sold, at the time of importation. Importation occurs when a vessel arrives within the limits of a port in the United States with intent then and there to unlade such merchandise.[41] In the case of merchandise imported other than by vessel, importation occurs when the merchandise arrives within the customs territory of the United States.[42]

Although this data element may seem to overlap with the data elements in § 143.23(k)(3) and (8), that would not always be the case. One of the main purposes of this proposed rule is to try to capture *all* the parties involved with complex e-commerce transactions. It is possible, for example, that Party A purchases a product on an online marketplace from Party B to be sent to Party C's address in the United States. In this scenario, it is possible that the name of Party B could be provided in § 143.23(k)(3) as the owner, and the name of Party C is provided in § 143.23(k)(8) as the final deliver-to party in the United States. Without this separate data element requesting the name and address of the purchaser, CBP would not know the party who initiated this transaction (*i.e.,* Party A).

[41] 19 CFR 101.1.

[42] *Id.*

(iii) Any Data or Documents Required by Other Government Agencies

If the merchandise is subject to any PGA data reporting requirements, the filer must transmit the PGA Message Set and file any supporting documentation via the Document Image System (DIS).[43]

(iv) Advertised Retail Product Description

This refers to the exact product description as listed in the advertisement for sale. This must include a description that is more detailed than what is provided on the manifest. For example, products listed on online marketplaces include detailed descriptions of the merchandise, dimensions, weight, etc.

(v) Marketplace Name and Website or Phone Number

This refers to the party that provides an internet (*e.g.,* online, website, application ("app"), electronic mail) or telephonic (*e.g.,* telephone, television, or catalog) means of offering products for sale. The marketplace may be a seller or a third party offering products on behalf of a seller.

4. HTSUS Waiver Privilege

The proposed enhanced entry process requires the submission of a 10-digit HTSUS classification for determining whether the merchandise is subject to PGA data requirements. CBP understands that many companies have their own internal risk assessment processes, which include ways to determine whether imported merchandise is subject to PGA requirements. Accordingly, the proposed regulations provide for parties to apply for a waiver of the reporting requirement for the 10-digit HTSUS classification if the filing party has documented internal controls that ensure certain compliance measures. This waiver is intended for filers with demonstrated capabilities and histories of segmenting out goods subject to PGA requirements. The waiver lifts the data requirement for 10-digit HTSUS classification as part of the enhanced entry only for goods that are not subject to PGA requirements. Waivers do not apply to goods that are subject to PGA requirements, for which the 10-digit HTSUS classification is always required under the enhanced entry process.

Proposed § 143.23(m) sets forth the application requirements for the HTSUS waiver privilege, actions CBP may take on the application, and the appeals process. Notwithstanding the availability of this privilege, a 10-digit HTSUS classification would still be required for imported merchandise subject to PGA requirements. The waiver may

[43] *See* the December 13, 2013 **Federal Register** notice (78 FR 75931) for a further discussion of the PGA Message Set and the October 15, 2015 **Federal Register** notice (80 FR 62082) for a further discussion of DIS.

only be used to enter merchandise under the enhanced entry process without providing the 10-digit HTSUS classification, when the imported merchandise is not subject to PGA requirements.

A party eligible to make an enhanced entry may apply for the HTSUS waiver privilege by submitting an application containing the information in paragraph (m)(2) to the Director, Cargo Security and Controls Division, Office of Field Operations, at *ecommerce@cbp.dhs.gov.* The application process must include information demonstrating that the applicant does not import goods subject to PGA requirements or it must have in place documented internal controls used in the ordinary course of business to identify PGA goods with certainty. An applicant must demonstrate that the internal controls allow the applicant to properly classify merchandise under the HTSUS at the 10-digit classification, determine whether merchandise is subject to the requirements of other government agencies, and determine whether merchandise is otherwise precluded by law from eligibility for the administrative exemption under 19 U.S.C. 1321(a)(2)(C). Participation in the Customs Trade Partnership Against Terrorism (CTPAT) program does not guarantee approval of an application, but may be considered along with other factors on a case-by-case basis.

The Office of Field Operations, in consultation with the Office of Trade, will make the determination to grant or deny the application on a case-by-case basis. CBP will respond to applications within 60 days of receipt. CBP will conduct periodic compliance reviews of privileges granted. CBP may revoke the privilege at any time if it determines that a company's internal controls fall below the standards set by CBP, as proposed in 19 CFR 143.23(m)(2)(ii). If a company does not agree to participate in a review, then the privilege will be revoked.

If an application is denied or the waiver is revoked, an appeal may be submitted by email within 30 days of the date of denial or revocation to the Executive Director, Trade Policy and Programs, Office of Trade, CBP Headquarters, at *ecommerce@cbp.dhs.gov.* The denial of an application or the revocation of a waiver, does not preclude a party from reapplying for the privilege in the future. Reapplications must specify and address past denials and revocations of the privilege.

Once obtained, the waiver privilege must be asserted as part of the entry filing for a shipment. CBP will track whether the imported merchandise in a shipment is eligible for the privilege through a "flag" or certification checkbox in ACE.

5. Party Who May Make Entry and Standard of Care

Section 143.26 addresses the right to make entry and the standard of care for informal entries. Current § 143.26(b) addresses who has

the right to make entry, and states that shipments valued at $800 or less may be entered, using reasonable care, by the owner, purchaser, or consignee of the shipment or, when appropriately designated by one of these persons, a customs broker. These parties may continue to file entry under the basic entry process, and CBP proposes to add a clarifying cross-reference to § 143.23(k). Carriers often enter low-value shipments as nominal consignees under the release from manifest process. They will continue to be able to do so under the basic entry process in proposed § 143.23(k). This is not the case, however, under the enhanced process in proposed § 143.23(l). CBP proposes to add new paragraph (c) to § 143.26 that establishes an exception for enhanced entries regarding the parties who may make entry and the standard of care required.

CBP proposes that an enhanced entry under § 143.23(l) may be entered using reasonable care, by the owner or purchaser of the shipment, an express consignment operator or carrier in possession of the shipment (see § 128.1(a)), or when appropriately designated by the owner, purchaser, or consignee of the shipment, a customs broker. The filing of a basic or an enhanced entry, like the filing of any entry, is considered "customs business" under 19 U.S.C. 1641.[44] CBP notes that customs brokers must be authorized to conduct customs business on behalf of another party through a valid power of attorney and must comply with all other statutory and regulatory requirements applicable to brokers.[45] This proposed rule does not preclude further amendments of the regulations at a later date to include other enhanced entry filers, including possibly the United States Postal Service. Any such expansion would be considered in a future rulemaking.

Unlike in the basic entry process, consignees are not permitted to file an enhanced entry without using a customs broker. However, ECOs are permitted to file an enhanced entry without using a customs broker, even though they are consignees, because they are better able to provide detailed information to CBP about the imported merchandise. ECOs, by regulation, are expected to exercise "a high de-

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

[45] *See* 19 CFR 141.46; *see, e.g.,* 19 U.S.C. 1641; 19 U.S.C. 1484; 19 CFR parts 111 and 141.

gree of control over the shipments, particularly in regard to the reliability of information supplied for Customs purposes."[46] Typically, it is the owner or purchaser (*i.e.,* a party with a direct nexus to the merchandise) who provides ECOs with information about the shipment. This closely integrated administrative control over shipments from pick-up to delivery uniquely positions ECOs, as opposed to other consignees, to obtain and provide to CBP accurate information about the contents of the shipment and to determine if the merchandise is subject to PGA requirements.

ECOs transporting eligible shipments would qualify to file without using a customs broker under the enhanced entry process. Under 19 U.S.C. 1498, CBP has broad authority to promulgate special rules for the declaration and entry of merchandise subject to the 19 U.S.C. 1321(a)(2)(C) exemption, to include identifying specific parties in the implementing regulations who are permitted to make entry on their own behalf.

Section 143.26 also addresses the standard of care required for informal entries, including for entries of low-value shipments. Shipments entered under the basic process in proposed § 143.23(k) are covered by § 143.26(b) and the standard of care continues to be "reasonable care."

For enhanced entries under proposed § 143.23(l), proposed § 143.26(c) states that the general standard of care is reasonable care, but sets forth more specific provisions for the data elements in § 143.23(l)(1)(iv)(A)–(D) and 143.23(l)(2)(iv)–(v). Specifically, these include the URL to the product listing, product picture, product identifier, shipment x-ray or other security screening report number, advertised product description, and marketplace information. CBP recognizes that these are non-traditional data elements and may not be easily verifiable by the party filing the entry if they are being passed onto the filer by third parties. Accordingly, when a party eligible to file the entry transmits the entry information specified above and receives any of that information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the transmitting party acquired such information, and whether and how the transmitting party is able to verify this information. When the transmitting party is not reasonably able to verify such information, CBP will permit the party to transmit the information on the basis of what the party reasonably believes to be true.

[46] 19 CFR 128.1(f).

CBP proposes adding a cross-reference to the first sentence in paragraph (b) to recognize the more specific provisions in new paragraph (c).

E. Part 145

CBP proposes amending § 145.31 to allow for mail shipments to be entered though the enhanced entry process. Parties interested in using the postal service to ship merchandise using the enhanced entry process will have to ensure that all required information is transmitted to CBP using the procedure set forth in § 143.23(l).[47] A mail customs declaration and invoice will continue to be required in accordance with § 145.11. The customs declaration is the "other shipping document used to file or support entry" referenced in § 143.23(j) and (l). The data for mail shipments must be received by CBP no later than the date the merchandise departs from the country of posting. Mail shipments are not eligible to use the basic entry process because the current method of entering qualifying low-value mail shipments free of duty and tax will continue to remain available. Under the current method, the information needed for entry and release is supplied in the documentation accompanying the mail package. Generally, this documentation consists of the customs declaration and invoice or bill of sale (or, in the case of merchandise not purchased or consigned for sale, a statement of the fair retail value in the country of shipment).[48]

Lastly, CBP proposes to replace the word "will" with "may" in the first sentence of § 145.31 and the word "shall" with "may" in the first sentence of § 145.32 to reflect that CBP has the discretion to require formal entry for any low-value shipment.[49]

VII. Statutory and Regulatory Reviews

A. Executive Orders 12866, 13563, and 14094

Executive Orders 13563 (Improving Regulation and Regulatory Review) and 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), direct agencies to assess the costs and benefits of available regulatory alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts,

[47] This rulemaking does not place any new requirements on the U.S. Postal Service to provide data to CBP and does not impose any new liabilities on it.

[48] 19 CFR 145.11.

[49] 19 CFR 143.22 and 145.12(a)(1).

and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

This rulemaking is a "significant regulatory action" under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094, because the rulemaking would have an annual effect of $200 million or more during at least one year of the analysis. A regulatory impact analysis, entitled *Entry of Low-Value Shipments (ELVS) Rulemaking,* has been included in the docket of this rulemaking (docket number [USCBP– 2025–0002]). The following presents a summary of the aforementioned regulatory impact analysis.

1. Purpose of the Rule

Section 321(a)(2) of the Tariff Act of 1930 (19 U.S.C. 1321(a)(2)), as amended by the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), section 901, Public Law 114–125, 130 Stat. 122, authorizes administrative exemptions from duty and tax for three categories of articles. These categories include: bona-fide gifts valued at $100 or less ($200, if the gift is from certain island possessions) sent from persons in foreign countries to persons in the United States; certain personal or household articles valued at $200 or less accompanying persons arriving in the United States; and other articles when the value of the article is $800 or less.[50] These exemptions are subject to the condition that the aggregate fair retail value in the country of shipment of articles imported by one person on one day and exempted from duty cannot exceed the authorized amounts. Also, these exemptions are not to be granted if merchandise covered by a single order or contract is forwarded in separate lots to obtain the benefit of duty- and tax-free entry.

This proposed rulemaking primarily concerns shipments covered by the administrative exemption in 19 U.S.C. 1321(a)(2)(C), *i.e.,* shipments of merchandise (other than bona-fide gifts and certain personal and household goods accompanying travelers arriving from abroad) imported by one person on one day having an aggregate fair retail value in the country of shipment of not more than $800. For simplicity, all references to "the administrative exemption" in this document will be to the administrative exemption found in 19 U.S.C. 1321(a)(2)(C). References made to the other administrative exemptions in 19 U.S.C. 1321(a)(2) will be specified as appropriate. In addition, this document refers to shipments not exceeding $800 as

[50] 19 U.S.C. 1321(a)(2).

"low-value shipments."[51] Low-value shipments that qualify for the administrative exemption in 19 U.S.C. 1321(a)(2)(C) are referred to as "qualifying low-value shipments." The administrative exemption is implemented in part 10 of title 19 of the Code of Federal Regulations (19 CFR part 10) at 19 CFR 10.151 and 10.153, and is also referenced in 19 CFR parts 128, 143, and 145.

Goods exceeding the *de minimis* limit ($800) or not satisfying all other statutory and regulatory requirements are not eligible for the administrative exemption and may not use the entry procedures for qualifying low-value shipments. Such goods must be entered using the appropriate formal or informal entry procedure and may be subject to duties and tax as provided by law. Put simply, qualifying low-value shipments must be entered in limited quantities per recipient (so as not to exceed the value limit). Everyday examples of typical low-value shipments might include cosmetics, a sweater, or a phone charger purchased from an online retailer.

Over the past eight years, the number of low-value shipments entering the United States has increased dramatically, from approximately 139 million shipments in 2015 to over 1 billion in 2023.[52] This increase in shipment volume poses significant challenges for CBP, which must mitigate the risk of illicit items entering the country. Illicit items may include items that pose potential health, safety, and economic security threats; however, the illegal importation of illicit fentanyl via the smaller parcels that characterize low-value shipments is of particular concern.[53]

To facilitate the flow of legitimate trade while also mitigating risks associated with the substantial increase in the number of low-value shipments, in September 2019, CBP launched a test program, called the "Entry Type 86 Test." The test program is voluntary and open to all trade participants, and it modernizes the submission of entry data for these low-value shipments by providing for an electronic entry and clearance process. This process results in faster clearance times for these shipments, a benefit to the trade and consumers, and reduces the amount of manual time that must be spent by CBP officers clearing goods that are considered low risk. As an additional benefit, the test program allows certain low-value shipments subject to the requirements of partner government agencies (PGAs) like the U.S. Food and Drug Administration (FDA) or the U.S. Department of

[51] These shipments are also commonly referred to as "*de minimis*" shipments.

[52] Data provided by CBP's Office of Field Operations on July 6, 2023 (FY2015) and CBP's Office of Trade on November 8, 2023 (FY2023).

[53] Fentanyl is a potent synthetic opioid that is contributing to the ongoing opioid crisis in the United States.

Agriculture (USDA) to be entered without filing an informal type 11 or formal entry. For any dutiable merchandise, filing an informal type 11 or formal entry requires the payment of duties even for qualifying low-value shipments that would otherwise be exempt under the administrative exemption.

In exchange for improved clearance times and the ability to use the administrative exemption for low-value goods subject to PGA requirements, as part of the electronic filing process, trade participants provide additional information about each shipment. This additional information allows CBP to better identify and focus on relatively higher-risk shipments, such as those suspected of containing illicit fentanyl. Although these shipments are low value, they pose the same potential health, safety, and economic security risks as larger and more traditional containerized shipments. In FY 2023, the overwhelming majority of CBP actions on inadmissible cargo were taken against low-value goods. Of 107,300 seizures across all cargo types, 93,065 (87 percent) were seizures of low-value cargo.[54] CBP faces significant challenges in targeting these low-value shipments, while still maintaining the clearance speeds the private sector has come to expect.

While CBP receives some advance electronic data for low-value shipments from carriers, the transmitted data often does not adequately identify the entity causing the shipment to cross the border, the final recipient, or the contents of the package. For example, in today's environment, CBP may not receive any advance information on the entity causing the shipment to travel to the United States (*e.g.,* the seller or manufacturer). Taken together, the overwhelming volume of low-value packages as well as the vague and inaccurate electronic data, pose a significant challenge to CBP's ability to identify and interdict high risk packages. The provision of additional data also facilitates CBP's ability to properly vet shipments requiring review by PGAs and request presentation of the merchandise for inspection, when necessary.

The test program has been embraced by a large portion of the trade community, which appreciates the administrative efficiency of the electronic process, substantially faster clearance of low-risk shipments, and in certain cases, lawful avoidance of duties and taxes, including for shipments subject to PGA requirements. Many members of the trade community have begun utilizing entry type 86 for

[54] Seizure statistics provided by CBP subject matter experts on September 27, 2024. These data are from CBP's seizure database (SEACATS) and are specifically cargo-related seizures and do not include seizures in the passenger environment or seizures performed by U.S. Border Patrol or Air and Marine Operations.

some or all of their low-value shipments. Previously, these filers would have utilized release from manifest (including shipments entered through the express environment) or formal or informal entry (*i.e.,* type 01 or 11).

From CBP's perspective, the test has been successful, but certain modifications can close identified security gaps. The modernization of the filing process for these shipments was essential to facilitating the flow of trade. Absent an automated CBP process, under current funding and staffing constraints, CBP would have faced significant challenges processing the current quantity of low-value shipments under the release from manifest process. However, to achieve significant security improvements and better facilitate the flow of legitimate trade, CBP believes the transmission of additional information about the contents of each shipment is necessary.

In this rulemaking, CBP proposes codifying the successful elements of the Entry Type 86 Test, including the provision of an electronic entry and automated clearance process for qualifying low-value shipments and duty- and tax-free entry for qualifying low-value PGA goods, while also adding new data requirements to the entry filing. As an example, filers may choose to provide an internet address, known as the uniform resource locator (URL), to the product's online listing or another image of the product as part of the entry filing.[55] The data collected through this "enhanced entry process" will further improve CBP's ability to quickly release legitimate qualifying low-value shipments, allowing its officers to focus on targeting higher-risk shipments. Ultimately, CBP anticipates this increased focus on higher-risk shipments will improve its ability to intercept illicit goods, such as fentanyl. Importantly, under the proposed rule, use by the trade of the enhanced entry process continues to be voluntary; CBP will also continue to offer a process similar to the existing release from manifest process with more limited data requirements, referred to as the "basic entry process."

The report accompanying this NPRM includes two separate analyses. First, we estimate the incremental benefits and costs of the Entry Type 86 Test, beginning in 2020 and assuming that the test would continue uninterrupted in the future (through 2034) in the absence of this rulemaking effort. CBP believes this assumption is reasonable because both CBP and industry participants have made significant logistical and administrative changes in order to achieve the benefits of electronic entry and clearance.

[55] For a complete list of the proposed changes to the data elements required for the enhanced entry process, please see chapter 1 of the full regulatory impact analysis included in the docket of this rulemaking.

Second, we estimate the future incremental benefits and costs of the proposed rule, which creates the new, voluntary enhanced entry process and retains, with minor revisions, the current release from manifest process. We estimate these incremental benefits and costs relative to a baseline (counterfactual) scenario where entry type 86 remains an option for entering qualifying low-value shipments into the United States. In addition, we present these impacts relative to a baseline without the Entry Type 86 Test to help readers understand the combined effect of the program that is being codified in the rulemaking as well as the modifications to the program under consideration in the proposed rule. Impacts are estimated from 2025 through 2034 (10 years).

For the Entry Type 86 Test, our analysis finds that the benefits of automation and faster clearance are likely to outweigh the burden of providing additional data. Potential security benefits are discussed qualitatively. We also find that some parties utilizing entry type 86 benefit from reduced tariff payments relative to other entry options. Available peer-reviewed literature suggests that the reduced tariff payments associated with a portion of the affected shipments is likely to affect U.S. consumers in the form of lower prices, making the lost tariff revenue a transfer of resources from the U.S. Government to consumers.[56]

For the proposed rule, we quantify additional administrative costs, while additional security benefits are discussed qualitatively. Processing clearance times are unchanged relative to the Entry Type 86 Test. Similarly, no additional transfers, including reduced tariff payments, result from the proposed rule. Our findings are discussed in greater detail in the remainder of this summary of the aforementioned regulatory impact analysis in the docket of this rulemaking.

2. Need for the Proposed Rule

In 2016, section 901(d) of TFTEA amended 19 U.S.C. 1321(a)(2)(C) by increasing the daily value limit for the administrative exemption from $200 to $800. CBP published an interim final rule amending the regulations to implement the new statutory amount and to specify certain goods excluded from the administrative exemption.[57] Otherwise, CBP has not made any significant changes to the regulatory requirements by which such shipments are entered since 1995. In the nearly three decades since, however, there have been significant changes in the trade environment and supply chains, substantial

[56] Please see chapter 5 of the full regulatory impact analysis included in the docket of this rulemaking for additional information.

[57] 81 FR 58831 (Aug. 26, 2016).

increases in the volume of shipments, and advancements to CBP's capabilities that necessitate the modernization of these regulations to better serve both CBP and the trade community.

3. Summary of the Proposed Rule

In the proposed rule, CBP seeks to codify an electronic entry process for qualifying low-value shipments seeking entry into the United States. Under this process, advance data elements are transmitted to CBP via a CBP-authorized electronic data interchange (EDI) system, such as the Automated Commercial Environment (ACE). This proposed new process is termed the "enhanced entry process." In order to file an enhanced entry, CBP will require the submission of certain advance electronic data, including data about the contents, value, origin, and final destination of eligible shipments. This information will enable CBP to more efficiently target high-risk shipments while maintaining expedited clearance for low-risk shipments submitting advance data. This rulemaking also proposes to create an HTSUS waiver that would allow certain approved entities to use the enhanced entry process without providing an HTSUS number in certain cases.

Filing entry under the enhanced entry process is optional. Shipments subject to PGA requirements may use the enhanced entry process or entry types 01 and 11, as well as other appropriate entry types.[58] The enhanced entry process will not be available for shipments subject to PGA fees; such shipments must be entered as an informal entry type 11 or formal entry, or other appropriate entry type, subject to payment of all applicable duties, taxes, and fees.[59]

Finally, the current default clearance process for qualifying low-value shipments, known as the "release from manifest" process, will continue to be offered with some modifications described below, and will be referred to as the "basic entry process." The basic entry process may not be utilized for goods subject to PGA data requirements.[60]

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[58] While other entry types are available, entry type 01 and 11 volumes far surpass those of all other entry types to the point where they do not measurably impact the effects of the rule. Therefore, for the purposes of this analysis, CBP focuses on type 01 and 11 volumes.

[59] Not all PGA shipments are subject to fees, which are separate and distinct from duties and taxes. Shipments subject to PGA fees may not use the enhanced entry process for low-value shipments and instead must file a formal or informal type 11 entry, or other appropriate type of entry. Qualifying low-value PGA shipments that are not subject to any PGA fees will be eligible to use the enhanced entry process.

[60] Please see chapter 1 of the full regulatory impact analysis included in the docket of this rulemaking for a detailed discussion of the data elements required for the enhanced and basic entry processes.

CBP considered two additional regulatory alternatives; neither alternative is embodied in this NPRM. First, CBP considered a less stringent alternative formalizing the Entry Type 86 Test through a rulemaking that would make entry type 86 permanent. This scenario represents a continuation of existing entry options for low-value shipments under the test with no changes to entry processes or required data elements. Second, CBP considered a more stringent regulatory alternative in which the enhanced entry process did not include an option for filers to obtain a HTSUS waiver privilege ("waiver") from CBP. This waiver is intended for filers with demonstrated capabilities and histories of segmenting out goods subject to PGA requirements. The waiver lifts the data requirement for the 10-digit Harmonized Tariff Schedule of the United States (HTSUS) classification as part of the enhanced entry for qualifying low-value goods that are not subject to PGA requirements. Under this regulatory alternative, such a waiver would not be made available to any filers.[61]

4. Entry Type 86 Test Benefits, Costs, and Transfers

This analysis first estimates the past and future effects of the existing Entry Type 86 Test, assuming no new rule is promulgated. We estimate effects on CBP, customs brokers, software providers, express consignment operators and carriers (ECOs), and importers. We estimate benefits and transfers using information provided by affected entities, including impacts to clearance times, tariff payments, and express fees.[62] To estimate costs, we rely on information provided during discussions with CBP and interviews with the trade industry.[63] Many of these outcomes are informed by our understanding of historical shipment volumes and expectations as to future growth in low-value shipments. Based on our analysis, effects of the Entry Type 86 Test include the following:

• *Benefits:* The primary benefit is faster release of low-value shipments into commerce resulting from the automated clearance process. These benefits are quantified based on peer-reviewed literature estimating willingness to pay for saving a day of transit time per

[61] Regulatory alternatives are discussed in greater detail in chapter 10 of the full regulatory analysis.

[62] Please see chapter 5 of the full regulatory impact analysis included in the docket of this rulemaking for a more detailed discussion.

[63] Please see chapter 4 of the full regulatory impact analysis included in the docket of this rulemaking for more detail.

shipment.[64] In addition, the Entry Type 86 Test has improved CBP's ability to target inadmissible goods, resulting in security-related benefits.

• *Costs:* Administrative implementation costs focus on activities such as software reprogramming, staff training, and additional data collection. These implementation costs are offset by administrative cost savings associated with reduced CBP officer time reviewing documentation and reduced administrative time preparing filings for shipments that switch from informal type 11 or formal entry to entry type 86. Relevant unit costs and cost savings are estimated based on interviews with the trade and CBP staff.[65]

• *Transfers:* Two types of transfers are likely, including reduced revenues to the U.S. Government due to importers opting for entry type 86 instead of entry types subject to express fees[66] (*i.e.*, manifest clearance in express hubs) and tariffs (*i.e.*, informal type 11 or formal entries). These revenues are estimated based on express fees published in the **Federal Register** and tariff rates available from the U.S. International Trade Commission.[67]

Where possible, we quantify and monetize these impacts over a 15-year period from 2020 to 2034. These outcomes are the incremental effects of the Entry Type 86 Test relative to a baseline scenario where entry type 86 is not available. Table 1 summarizes these quantified benefits, costs, and cost savings (excluding transfers) through time and presents net benefits for each year. Based on our analysis, the total net benefits of the Entry Type 86 Test are estimated to be approximately $19 billion (undiscounted, 2023 dollars) over the 15-year period. In present value terms, the net benefits are approximately $17 billion (assuming a 2 percent discount rate).

[64] Please see chapters 3 and 5 of the full regulatory impact analysis included in the docket of this rulemaking for additional information.

[65] Please see chapters 3 and 4 of the full regulatory impact analysis included in the docket of this rulemaking for additional information.

[66] 19 U.S.C. 58c(b)(9)(A)(ii); 19 CFR 24.23(b). The express fee refers to the express consignment carrier/centralized hub facility fee, per individual waybill/bill of lading.

[67] Please see chapters 3 and 5 of the full regulatory impact analysis included in the docket of this rulemaking for additional information.

TABLE 1—SUMMARY OF TOTAL ENTRY TYPE 86 TEST BENEFITS, COSTS, AND COST SAVINGS

[In 2023 dollars] [c] [d]

Fiscal year	Benefits (A)	Costs (B)	Cost savings (C)	Net benefits (= A – B + C)
Past Impacts				
2020	$43,030,483	$4,316,816	$127,208,543	$165,922,210
2021	139,966,936	3,758,383	361,271,949	497,480,501
2022	129,442,889	3,678,928	351,131,510	476,895,471
2023	282,639,872	6,022,697	650,253,194	926,870,369
2024	311,757,221	6,547,586	717,241,795	1,022,451,430
Total undiscounted	906,837,401	24,324,410	2,207,106,990	3,089,619,981
Total present value (2 percent) [a]	948,430,560	25,682,967	2,312,234,507	3,234,982,100
Annualized (2 percent) [b]	178,675,386	4,838,429	435,603,206	609,440,162
Future Impacts				
2025	340,874,571	7,072,475	784,230,396	1,118,032,491
2026	369,991,920	7,597,365	851,218,997	1,213,613,552
2027	399,109,270	8,122,254	918,207,598	1,309,194,614
2028	428,226,620	8,647,144	985,196,199	1,404,775,675
2029	457,343,969	9,172,033	1,052,184,800	1,500,356,736
2030	486,461,319	9,696,922	1,119,173,401	1,595,937,797
2031	515,578,669	10,221,812	1,186,162,002	1,691,518,859
2032	544,696,018	10,746,701	1,253,150,603	1,787,099,920
2033	573,813,368	11,271,591	1,320,139,204	1,882,680,981
2034	602,930,718	11,796,480	1,387,127,805	1,978,262,042
Total undiscounted	4,719,026,442	94,344,777	10,856,791,003	15,481,472,668
Total present value (2 percent) [a]	4,280,128,169	85,655,755	9,847,043,148	14,041,515,561
Annualized (2 percent) [c]	423,111,089	8,467,480	973,427,194	1,388,070,803
Past and Future Impacts (2020–2034)				
Total undiscounted	5,625,863,843	118,669,187	13,063,897,993	18,571,092,649
Total present value (2 percent) [a]	5,228,558,729	111,338,723	12,159,277,655	17,276,497,661
Annualized (2 percent) [d]	361,328,921	7,694,262	840,288,674	1,193,923,333

Notes:

We present unrounded values in the table to facilitate replication of our analysis. For reporting purposes, and to reflect the uncertainty inherent in these estimates, we recommend rounding these estimates to two significant figures.

Table does not include transfers (see Table 2 for transfers).

[a] Present value calculations use 2025 as the base year.

[b] Benefits, costs, and net benefits for past years are annualized over a 5-year period from 2020 to 2024.

[c] Benefits, costs, and net benefits for future years are annualized over a 10-year period from 2025 to 2034.

[d] Benefits, costs, and net benefits for all years are annualized over a 15-year period from 2020 to 2034.

Table 2 illustrates the effects of the Entry Type 86 Test from 2025 through 2034 by presenting a distribution of the benefits, costs, cost savings, transfers, and net benefits experienced by each entity type. Administrative implementation activities produce an annualized net benefit of approximately $960 million (2 percent discount rate, 2023 dollars) and improvements in clearance time produce an annualized net benefit of approximately $420 million (2 percent discount rate, 2023 dollars). Changes in express fees and tariffs paid by consignees are considered to be transfers, producing $0 in net benefits. Importantly, impacts on social welfare and fiscal impacts are not additive; the former represents estimates of willingness to pay and opportunity costs, while the latter reflects changes in revenue.

TABLE 2—SUMMARY OF ENTRY TYPE 86 TEST ANNUALIZED IMPACTS BY ENTITY TYPE FROM 2025–2034

[2 Percent discount rate, in 2023 dollars]

Effect	U.S. Government	Trade/consumers	Net effect
Impacts on Social Welfare			
Administrative Implementation ...	$972,773,259	($7,813,546)	$964,959,714
Transmitting Data	0	(7,267,112)	(7,267,112)
Programming	(227,558)	(612,630)	(840,188)
Training	0	0	0
Collecting New Data Elements .	0	(360,180)	(360,180)
Time Savings	973,000,818	426,376	973,427,194
Improved Clearance Time	0	423,111,089	423,111,089
Total Increase in Social Welfare .	972,773,259	415,297,543	1,388,070,803
Fiscal Impacts (Transfers)			
Tariffs	(2,095,103,797)	2,095,103,797	0
Express Fees	(163,886,413)	163,886,413	0
Total Fiscal Impacts	(2,258,990,211)	2,258,990,211	0

Notes:

We present unrounded values in the table to facilitate replication of our analysis. For reporting purposes, and to reflect the uncertainty inherent in these estimates, we recommend rounding these estimates to two significant figures.

Costs are shown using parentheses.

[a] Present value calculations use 2025 as the base year.

[b] Impacts are annualized over 10 years from 2025 to 2034. We estimate the annualized impacts from the perspective of an individual in 2020, when entities started incurring costs or benefits related to the Entry Type 86 Test. This reflects the equal payment that would need to be made in each of the 10 years to equal the total present value of the costs and benefits.

The full regulatory impact analysis included in the docket of this rulemaking provides detailed discussions of key sources of uncertainty related to costs, benefits, and transfers of the Entry Type 86 Test. The full regulatory impact analysis also includes a quantitative

sensitivity analysis to highlight the importance of key assumptions and presents the results in appendix A.

5. Proposed Rule Benefits, Costs, and Transfers

This proposed rule updates the data elements currently required under the Entry Type 86 Test. We estimate impacts likely to be experienced by CBP, customs brokers, software providers, ECOs, and consignees due to the provision of these additional data elements. While the proposed rule is expected to produce security benefits, we are unable to quantify these benefits in this analysis due to data limitations.[68] As with our analysis of the Entry Type 86 Test, we estimate costs of the proposed rule using information obtained through discussions with CBP and interviews with the trade.[69] Key cost categories include administrative implementation activities, such as software reprogramming, staff training, and additional data collection. Incremental changes in tariff or fee revenue relative to Baseline 1 are not anticipated.

For the three regulatory alternatives considered by CBP, we estimate the anticipated benefits, costs, and transfers under two baseline scenarios. We first consider the incremental effects of the proposed rule relative to a baseline scenario where CBP continues to implement the Entry Type 86 Test. This scenario reflects the most likely forecast of available entry types absent the proposed rule. CBP is not currently equipped to handle the now-sizable low-value shipment volumes manually without any automated clearance process like entry type 86. Reverting to an entirely manual process would be infeasible and contrary to CBP's mission to facilitate the entry of legitimate goods into the United States.

We also present results considering an alternative baseline scenario regarding the future availability of an automated entry process in the absence of a new rule. This alternative baseline scenario assumes that, beginning in 2025, the technology and processes developed for electronic filing and automated clearance under the Entry Type 86 Test would no longer be available for low-value shipments and, effectively, are reinstated with this rulemaking. This baseline scenario is a counterfactual used to illustrate the cumulative effects of this rulemaking and not an announcement of a change to the existing Entry Type 86 Test. The practical result of applying this alternative baseline scenario is an estimate of the cumulative impacts of (1) continuing to leverage the advances made with the imple-

[68] Please see chapter 9 of the full regulatory impact analysis included in the docket of this rulemaking for additional information.

[69] Please see chapter 8 of the full regulatory impact analysis included in the docket of this rulemaking for additional information.

mentation of the Entry Type 86 Test, while also (2) making enhancements to the process via the proposed rule. CBP recognizes that the public may have an interest in understanding the combined effect of the program that is being codified in the rulemaking as well as the modifications to the program under consideration in the proposed rule and this baseline scenario allows the reader to do that—the effects, when measured against this baseline scenario, are the total prospective effects of the Entry Type 86 Test and this rulemaking. For the purposes of this analysis, CBP considers the second baseline to be the primary baseline for this rulemaking.

Where possible, we quantify and monetize these impacts over a 10-year period from 2025 to 2034. Table 3 provides a summary of the costs, benefits, and transfers resulting from each regulatory alternative, including relevant chapters where these impacts are presented.

TABLE 3—SUMMARY OF THE INCREMENTAL IMPACTS OF REGULATORY ALTERNATIVES UNDER ALTERNATIVE BASELINE SCENARIOS

Regulatory alternative [a]	Baseline scenario (2025–2034)	
	Baseline 1: Entry Type 86 Test continues	Baseline 2: No Entry Type 86 Test
1. Codify the Entry Type 86 Test	Costs, benefits, and transfers are zero	Costs, benefits, and transfers of the proposed rule are equivalent to the future impacts estimated for Entry Type 86 Test. [b]
2. (Preferred) Enhanced entry with HTSUS waiver available.	Costs, benefits, and transfers are presented in Chapters 7 to 9 of the full analysis.	Costs, benefits, and transfers of the proposed rule are equal to the sum of the Entry Type 86 Test future impacts and the proposed rule impacts. [b]
3. Enhanced entry with no HTSUS waiver available.	Costs, benefits, and transfers are presented in Chapters 7 to 9 of the full analysis, including unquantified costs associated with no waiver provision.	Costs, benefits, and transfers of the proposed rule are equal to the sum of the Entry Type 86 Test future impacts, the proposed rule impacts, and unquantified costs associated with no waiver provision. [b]

Notes:

[a] Detailed discussion of regulatory alternatives is available in Chapter 10 of the full analysis.

[b] Detailed discussion of future Entry Type 86 Test impacts and this proposed rule's impacts is available in Chapters 3 to 6 and Chapters 7 to 9 of the full analysis respectively.

a. Preferred Regulatory Alternative: Baseline 1 (Entry Type 86 Test Continues)

Table 4 presents total present value costs assuming a baseline where the Entry Type 86 Test were to continue in the absence of this new regulation. Because benefits are unquantified, we are unable to calculate the likely net benefits of the proposed rule. Total present value costs of the proposed rule over the 10-year period of analysis are estimated to be approximately $110 million (2023 dollars), assuming a discount rate of 2 percent.

TABLE 4—SUMMARY OF PROPOSED RULE BENEFITS AND COSTS—BASELINE 1: ENTRY TYPE 86 TEST CONTINUES

[In 2023 dollars]

Fiscal year	Benefits	Costs [c]	Net benefits [d]
2025	Positive Unquantified	$91,854,198	
2026	Positive Unquantified	2,139,656	
2027	Positive Unquantified	2,184,004	
2028	Positive Unquantified	2,228,352	
2029	Positive Unquantified	2,272,700	
2030	Positive Unquantified	2,317,048	
2031	Positive Unquantified	2,361,396	
2032	Positive Unquantified	2,405,744	
2033	Positive Unquantified	2,450,092	
2034	Positive Unquantified	2,494,440	
Total undiscounted	Positive Unquantified	112,707,628	
Total present value (2 percent) [a]	Positive Unquantified	110,718,728	
Annualized present value (2 percent) [b]	Positive Unquantified	12,084,247	

Notes:

[a] Present value calculations use 2025 as the base year.

[b] Costs are annualized over a 10-year period from 2025 to 2034.

[c] We present unrounded values in the table to facilitate replication of our analysis. For reporting purposes, and to reflect the uncertainty inherent in these estimates we recommend rounding these estimates to two significant figures.

[d] Net benefits are uncertain due to our inability to quantify the likely incremental security benefits of the proposed rule.

Table 5 presents the distribution of costs and benefits by entity type assuming a baseline where the Entry Type 86 Test exists. Affected entities include the U.S. Government (representing CBP, the Department of the Treasury, and PGAs) and trade/ consumers (including customs brokers, software providers, ECOs, importers, and other industry participants, including consumers). Administrative implementation activities are likely to cost approximately $12 million (2023 dollars) on an annualized basis, assuming a discount rate of 2 percent. Security-related effects, including providing the data needed

to help interdict fentanyl smuggling, result in positive benefits that we are unable to quantify due to data limitations. Improvements in clearance time, and changes in express fees and tariffs paid by trade participants, are unlikely to result from the proposed rule when compared to the baseline that includes the Entry Type 86 Test.

TABLE 5—SUMMARY OF PROPOSED RULE ANNUALIZED IMPACTS BY ENTITY TYPE—BASELINE 1: ENTRY TYPE 86 TEST CONTINUES

[2 Percent discount rate, in 2023 dollars]

Effect	U.S. Government	Trade/consumers	Subtotal
Impacts on Social Welfare			
Administrative Implementation ..	($680,248)	($11,403,999)	($12,084,247)
Transmitting Data	0	0	0
Programming	(680,248)	(10,657,045)	(11,337,293)
Training	0	(35,450)	(35,450)
Collecting New Data Elements .	0	(711,504)	(711,504)
Time Savings	0	0	0
Improved Clearance Time	0	0	0
Security	Positive Unquantified	Positive Unquantified	Positive Unquantified
Total Increase in Social Welfare .	(680,248)	(11,403,999)	(12,084,247).
Fiscal Impacts (Transfers)			
Tariffs	0	0	0
Express Fees	0	0	0
Total Fiscal Impacts	0	0	0

Notes:

We present unrounded values in the table to facilitate replication of our analysis. Costs are shown using parentheses.

[a] Present value calculations use 2025 as the base year.

[b] Costs are annualized over 10 years from 2025 to 2034.

The full regulatory impact analysis included in the docket of this rulemaking provides detailed discussions of key sources of uncertainty related to costs, benefits, and transfers of this proposed rule. The full regulatory impact analysis also includes a quantitative sensitivity analysis to highlight the importance of key assumptions and presents the results in appendix A.

b. Preferred Regulatory Alternative: Baseline 2 (No Entry Type 86 Test)

Table 6 presents total present value costs assuming a baseline where the Entry Type 86 Test does not exist. Because security benefits of the Entry Type 86 Test and the proposed rule are unquantified, the likely cumulative net benefits of these interventions are underestimated. Assuming a baseline without the Entry Type 86 Test, total present value net benefits over the 10- year period of analysis are estimated to be at least $14 billion (2023 dollars), assuming a discount rate of 2 percent.

TABLE 6—SUMMARY OF CUMULATIVE BENEFITS AND COSTS—BASELINE 2: NO ENTRY TYPE 86 TEST

[In 2023 dollars]

Fiscal year	Benefits [c] (A)	Costs (B)	Cost savings (C)	Net benefits [d] (= A – B + C)
2025	$340,874,571	$98,926,674	$784,230,396	$1,026,178,293
2026	369,991,920	9,737,021	851,218,997	1,211,473,897
2027	399,109,270	10,306,258	918,207,598	1,307,010,610
2028	428,226,620	10,875,495	985,196,199	1,402,547,323
2029	457,343,969	11,444,733	1,052,184,800	1,498,084,036
2030	486,461,319	12,013,970	1,119,173,401	1,593,620,750
2031	515,578,669	12,583,208	1,186,162,002	1,689,157,463
2032	544,696,018	13,152,445	1,253,150,603	1,784,694,176
2033	573,813,368	13,721,682	1,320,139,204	1,880,230,890
2034	602,930,718	14,290,920	1,387,127,805	1,975,767,603
Total undiscounted	4,719,026,442	207,052,405	10,856,791,003	15,368,765,040
Total present value (2 percent) [a]	4,280,128,169	196,374,484	9,847,043,148	13,930,796,832
Annualized (2 percent) [b]	423,111,089	20,551,727	973,427,194	1,375,986,556

Notes:

We present unrounded values in the table to facilitate replication of our analysis. For reporting purposes, and to reflect the uncertainty inherent in these estimates, we recommend rounding these estimates to two significant figures.

[a] Present value calculations use 2025 as the base year.

[b] Benefits, costs, and net benefits are annualized over a 10-year period from 2025 to 2034.

[c] Benefits are underestimated due to our inability to quantify the anticipated security-related benefits of the proposed rule. These values reflect only the quantified benefits of the Entry Type 86 Test. The total benefits associated with a baseline without the Entry Type 86 Test would be the values presented in this table as well as additional positive unquantified benefits.

[d] Net benefits are underestimated due to our inability to quantify the likely incremental security benefits of the proposed rule.

Table 7 presents the distribution of costs and benefits by entity type assuming a baseline where the Entry Type 86 Test does not exist. Administrative implementation activities are likely to produce a positive annualized net benefit of approximately $950 million (2 percent discount rate, 2023 dollars) and improvements in clearance time produce a positive annualized net benefit of approximately $420 million (2 percent discount rate, 2023 dollars). Security-related effects, including providing the data needed to help interdict illicit fentanyl, result in positive benefits that we are unable to quantify due to data limitations. Changes in express fees and tariffs paid by consignees are considered to be revenue transfers, producing $0 in net benefits. Importantly, impacts on social welfare and fiscal impacts are not additive; the former represents estimates of willingness to pay and opportunity costs, while the latter reflects changes in revenue.

TABLE 7—SUMMARY OF PROPOSED RULE ANNUALIZED IMPACTS BY ENTITY TYPE—BASELINE 2: NO ENTRY TYPE 86 TEST

[2 Percent discount rate, in 2023 dollars]

Effect	U.S. Government	Trade/consumers	Subtotal
Impacts on Social Welfare			
Administrative Implementation ..	$972,093,012	($19,217,545)	$952,875,467
Transmitting Data	0	(7,267,112)	(7,267,112)
Programming	(907,806)	(11,269,675)	(12,177,481)
Training	0	(35,450)	(35,450)
Collecting New Data Elements	0	(1,071,684)	(1,071,684)
Time Savings	973,000,818	426,376	973,427,194
Improved Clearance Time	0	423,111,089	423,111,089
Security	Positive Unquantified	Positive Unquantified	Positive Unquantified
Total Increase in Social Welfare	972,093,012	403,893,545	1,375,986,556
Fiscal Impacts (Transfers)			
Tariffs	(2,095,103,797)	2,095,103,797	0
Express Fees	(163,886,413)	163,886,413	0
Total Fiscal Impacts	(2,258,990,211)	2,258,990,211	0

Notes:

We present unrounded values in the table to facilitate replication of our analysis. Costs are shown using parentheses.

[a] Present value calculations use 2025 as the base year.

[b] Costs are annualized over 10 years from 2025 to 2034.

The full regulatory impact analysis included in the docket of this rulemaking provides detailed discussions of key sources of uncertainty related to costs, benefits, and transfers of this proposed rule. The full regulatory impact analysis also includes a quantitative sensitivity analysis to highlight the importance of key assumptions and presents the results in appendix A.

c. Summary of Regulatory Alternatives

Table 8 summarizes estimates of net benefits for each regulatory alternative relative to the two different baseline scenarios described earlier. Incremental effects estimated relative to Baseline 1 reflect the net benefits of the enhancements to the existing Entry Type 86 Test that will be codified if the proposed rule is finalized. Incremental effects estimated relative to Baseline 2 reflect the cumulative net benefits of continuing to leverage the systems and processes put in place to implement the Entry Type 86 Test in combination with the enhancements included in the proposed rule. To reflect the uncertainty inherent in the analysis presented in this report, we round our results to two significant figures.

TABLE 8—ANNUALIZED NET BENEFITS OF REGULATORY ALTERNATIVES
[2 Percent discount rate, in 2023 dollars] [a] [b] [c]

Regulatory alternative	Baseline scenario	
	Baseline 1: [d] Entry Type 86 Test continues	Baseline 2: [e] No Entry Type 86
1. Codify Entry Type 86 Test	$0	$1.4 billion + unquantified security benefits.
2. (Preferred) Enhanced entry with HTSUS waiver available.	–$12 million + unquantified security benefits associated with enhanced data elements (e.g., URL).	$1.4 billion + unquantified security benefits associated with HTSUS and enhanced data elements (e.g., URL).
3. Enhanced entry with no HTSUS waiver available.	–$12 million + unquantified security benefits associated with enhanced data elements (e.g., URL) –unquantified costs of obtaining HTSUS codes if no waiver is available.	$1.4 billion + unquantified security benefits associated with HTSUS and enhanced data elements (e.g., URL)–unquantified costs of obtaining HTSUS codes if no waiver is available.

Notes:

[a] To reflect the uncertainty inherent in these estimates, we round estimates to two significant figures.

[b] Net benefits are annualized over a 10-year period from 2025–2034.

[c] Implementation of the Entry Type 86 Test also results in substantive transfers between the U.S. Government and consumers in the form of reduced tariffs and fees. These transfers are summarized in Table 2. Because the transfers represent off-setting costs to the U.S. Government and benefits to consumers, their net benefit is $0. The enhancements considered in the proposed rule are unlikely to result in additional transfers.

[d] Incremental effects estimated relative to Baseline 1 reflect the net benefits of the enhancements to the existing Entry Type 86 Test that will be codified if the proposed rule is finalized.

[d] Incremental effects estimated relative to Baseline 1 reflect the net benefits of the enhancements to the existing Entry Type 86 Test that will be codified if the proposed rule is finalized.

[e] Incremental effects estimated relative to Baseline 2 reflect the cumulative net benefits of continuing to leverage the systems and processes put in place to implement the Entry Type 86 Test in combination with the enhancements included in the proposed rule.

B. Additional Requirements for Regulatory Analysis

Table 9 provides a cost accounting statement for the proposed rule where the baseline includes the Entry Type 86 Test. Table 10 provides the analogous information assuming the Entry Type 86 Test did not exist.

TABLE 9—A–4—ACCOUNTING STATEMENT FOR THE PROPOSED RULE—BASELINE 1

[Entry Type 86 Test continues]

Category	Annualized estimate (in 2023 dollars) [1]
Benefits:	
Monetized benefits	None.
Quantified, non-monetized benefits	None.
Qualitative (unquantified) benefits	Improved security resulting from more efficient targeting of inbound low-value shipments. Improved security includes the interdiction of fentanyl smuggling, among other things. Enforcement of customs regulations plays a critical role in protecting the American public, environment, and economy.
Costs:	
Monetized costs	$12 million.
Quantified, non-monetized costs	None.
Qualitative (unquantified) costs	None.
Transfers:	
Monetized budgetary transfers	None.
Other monetized transfers	None.
Distributional Effects:	
Effects on State, local, and/or tribal governments.	Which entities are affected by the proposed rule depends on whether the costs associated with transmitting shipments through the enhanced entry process are passed on to consumers in the form of higher prices. If customs brokers and express consignment operators (ECOs) bear the costs, then at least 314 small businesses may be affected; however, only some medium and large volume brokers are projected to incur costs that exceed 1 percent of their annual revenues. If consignees bear the costs through increased prices, then any small business, organization, or government jurisdiction importing low-value shipments has the potential to be affected. The increase in the cost per shipment is estimated to be $0.01, or 0.03% of the average value of low-value shipments.
Effects on small businesses	
Effects on wages	Not anticipated.
Effects on growth	Not anticipated.

Source: Calculations using data sources described throughout the main text.

[1] Present value calculations use 2025 as the base year. Costs are annualized over 10 years from 2025 to 2034 and reflect a 2 percent discount rate.

TABLE 10—A–4—ACCOUNTING STATEMENT FOR THE PROPOSED RULE—BASELINE 2

[No Entry Type 86 Test]

Category	Annualized estimate (in 2023 dollars)
Benefits:	
Monetized benefits	$420 million.
Quantified, non-monetized benefits	None.
Qualitative (unquantified) benefits	Improved security resulting from more efficient targeting of inbound low-value shipments. Improved security includes the interdiction of fentanyl smuggling, among other things. Enforcement of customs regulations plays a critical role in protecting the American public, environment, and economy.
Costs:	
Monetized costs	$21 million.
Quantified, non-monetized costs	None.
Qualitative (unquantified) costs	Costs to brokers of verifying and assigning HTSUS codes the first time a new product is shipped. Because this cost category only applies to new products, and given the potential economies of scale, the omission of this cost estimate may result in only a minor overstatement of net benefits.
Cost Savings:	
Monetized costs savings	$970 million.
Quantified, non-monetized costs savings	None.
Qualitative (unquantified) costs savings	None.
Transfers:	
Monetized budgetary transfers	$2.3 billion.
Other monetized transfers	None.
Distributional Effects:	
Effects on State, local, and/or tribal governments.	
Effects on small businesses	Which entities are affected by the proposed rule depends on whether the costs associated with transmitting entry information through the enhanced entry process are passed on to consumers in the form of higher prices. If customs brokers, ECOs, and software providers bear the costs, then at least 314 small businesses may be affected; however, only some medium and large volume brokers and software providers are projected to incur costs that exceed 1 percent of their annual revenues. If consignees bear the costs through increased prices, then any small business, organization, or government jurisdiction importing qualifying low-value goods has the potential to be affected. However, costs to consignees are offset by the value of time savings and reduced tariffs and fees. The net effect is a decrease in the cost per shipment of $2.86, or a savings equal to approximately 8.9% if the value of a shipment.
Effects on wages	Not anticipated.
Effects on growth	Not anticipated.

C. Regulatory Flexibility Act

This section examines the impact on small entities as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people). The following presents a summary of the small business analysis of the aforementioned regulatory impact analysis included in the docket of this rulemaking (docket number [USCBP–2025–0002]).

This rulemaking will have direct effects on consignees, brokers, ECOs, and software vendors, but it is not clear the extent to which effects are passed on from the brokers, ECOs, and software vendors to the consignees, so CBP conducted the threshold analysis under two scenarios—that all the costs are passed on and that none of the costs are passed on. The analysis demonstrates that under both scenarios, a substantial number of small businesses may be affected by the proposed rule. Assuming brokers, ECOs, and software providers fully bear the costs they incur (Scenario 1), we estimate that 75 percent of sampled entities qualify as small businesses. Extrapolating from a sample to the full population of affected brokers and software providers suggests that at least 314 affected entities are small businesses.[70] Under the alternate assumption that consignees bear the cost of the rule (Scenario 2), any small entity in the United States has the potential to be affected by the rule as a consignee. Analysis of a sample of consignees for one day in 2023 demonstrates that 92 percent of businesses in the sample qualify as small businesses. As such, we conclude that this rulemaking could affect a substantial number of small entities.

We next analyze whether the effects of the rule are significant. CBP considers effects of more than one percent of gross annual revenues to be significant. We find that under Scenario 1, low-volume brokers that are small businesses are unlikely to be significantly affected by the rule while medium- and high-volume brokers and software providers that are small businesses are likely to experience costs more than one percent of annual revenues. In Scenario 2 the impact on small entities is uncertain because we lack per consignee annual shipment volumes needed to calculate entity specific costs. In the

[70] (71 percent * 364 low-volume brokers) + 16 medium- and high-volume brokers + (86 percent * 46 software providers) = 314 small businesses among the affected industries included in Scenario 1.

"Entry Type 86 continues" baseline, comparing the potential increase in cost per shipment with the average value per shipment suggests the impact on consignees is unlikely to be significant. In the "no Entry Type 86 Test" baseline, consignees experience a significant net benefit given the clearance time savings, reduced tariff payments, and reduced express fees.[71]

Due to uncertainty regarding whether impacts to various small entities are significant and because CBP does not know the extent to which the costs will be passed on from brokers and software providers to the consignees, CBP does not certify that this rulemaking has a significant economic impact on a substantial number of small entities and instead we have prepared an Initial Regulatory Flexibility Analysis. CBP requests comment on this conclusion.

D. Initial Regulatory Flexibility Analysis (IRFA)

1. A Description of the Reasons Why Action by the Agency Is Being Considered

Section 321(a)(2) of the Tariff Act of 1930 (19 U.S.C. 1321(a)(2)), as amended by the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), section 901, Public Law 114–125, 130 Stat. 122, authorizes administrative exemptions from duty and tax for three categories of articles. These categories include: bona-fide gifts valued at $100 or less ($200, if the gift is from certain island possessions) sent from persons in foreign countries to persons in the United States; certain personal or household articles valued at $200 or less accompanying persons arriving in the United States; and other articles when the value of the article is $800 or less.[72] These exemptions are subject to the condition that the aggregate fair retail value in the country of shipment of articles imported by one person on one day and exempted from the payment of duty cannot exceed the authorized amounts. Also, these exemptions are not to be granted if merchandise covered by a single order or contract is forwarded in separate lots to secure the benefit of duty- and tax-free entry.

This proposed rulemaking primarily concerns shipments covered by the administrative exemption in 19 U.S.C. 1321(a)(2)(C), *i.e.,* shipments of merchandise (other than bona-fide gifts and certain personal and household goods accompanying travelers arriving from abroad) imported by one person on one day and having an aggregate fair retail value in the country of shipment of not more than $800.

[71] Please see chapter 11 of the full regulatory impact analysis included in the docket of this rulemaking for additional information.

[72] 19 U.S.C. 1321(a)(2).

In 2016, section 901(d) of TFTEA amended 19 U.S.C. 1321(a)(2)(C) by increasing the daily value limit for the administrative exemption from $200 to $800.[73] CBP published an interim final rule amending the regulations to implement the new statutory amount and to specify certain goods excluded from the administrative exemption.[74] Otherwise, CBP has not made any significant changes to the regulatory requirements by which such shipments are entered since 1995. In the nearly three decades since, however, there have been significant changes in the trade environment, substantial increases in the volume of shipments, and advancements to CBP's capabilities that necessitate the modernization of these regulations to better serve both CBP and the trade community.

Firstly, e-commerce is a growing segment of the U.S. economy and has been increasing significantly for the past several years.[75] Consumer habits are changing as the internet empowers individuals to make purchases online. These advances in economic activity have led to increasing volumes of imports of low-value shipments, creating inspection challenges for CBP. Low-value e-commerce shipments pose the same health, safety, and economic security risks as higher-value shipments. Transnational criminal organizations and other bad actors perceive low-value shipments as less likely to be interdicted because these types of shipments are not subject to the more extensive formal entry procedures. This has resulted in attempts to enter illicit goods, such as illicit fentanyl, into the country through these types of shipments. Furthermore, novel and complex e-commerce business models have complicated and added to the traditional array of parties involved in the import transaction. New or infrequent importers often possess less familiarity with U.S. customs laws and regulations, which can lead to the attempted importation of noncompliant goods. This rulemaking proposes data requirements that are tailored to capture the key parties in these modern trade transactions (*e.g.,* the seller, purchaser, final deliver-to party, and marketplace), thus strengthening CBP's enforcement posture.

Secondly, the volume of low-value shipments has increased dramatically in recent years. The statutory increase in the daily value limit for the administrative exemption from $200 to $800 in 2016, coupled with the boom in e-commerce, greatly increased the number of shipments qualifying for the exemption, resulted in new types of

[73] Section 901 did not change the administrative exemptions for bona-fide gifts and personal or household articles accompanying travelers under 19 U.S.C. 1321(a)(2)(A) and (B), respectively.

[74] 81 FR 58831 (Aug. 26, 2016).

[75] Although the administrative exemption is not limited to only e-commerce shipments, the reality is that e-commerce shipments comprise a significant portion of low-value shipments.

products becoming eligible for the exemption, and revived the trade community's interest in the exemption. In fiscal year (FY) 2015, prior to the passage of TFTEA, approximately 139 million shipments valued at $200 or less were imported into the United States. In FY 2017, after the TFTEA increase to $800 went into effect, low-value shipments numbered nearly 325 million. By the end of FY 2022, that number more than doubled to 685 million. Then in FY 2023, CBP cleared more than one billion low-value shipments. Currently, approximately 4 million shipments are released each day free of duty and tax pursuant to the administrative exemption. In fact, CBP estimates that over 90 percent of all shipments entering the United States are low-value shipments valued at $800 or less.[76] The information requirements for these shipments are less rigorous than those required for other entry types, *e.g.,* formal entries, and no longer provide sufficient detail for CBP to accurately identify the merchandise in the shipment and the parties involved in its sale and purchase. This overwhelming volume of low-value shipments and lack of actionable data collected pursuant to the current regulations inhibits CBP's ability to identify and interdict high-risk shipments that may contain illegal drugs such as illicit fentanyl, merchandise that poses a risk to public safety, counterfeits, or other contraband. The new enhanced entry process for low-value shipments proposed in this rulemaking would provide CBP with necessary information regarding the contents of shipments to accurately segment risk and determine eligibility for the administrative exemption in advance of a shipment's arrival in the United States. The receipt of advance electronic data would also reduce the burden for CBP officers who process these large volumes of shipments because better data would lead to more accurate targeting, which means CBP resources will be better focused on accurately identifying and interdicting violative shipments compared to today where the quality of the targeting is often impeded by the lack of information.

Last, both CBP and the trade community's technological capabilities have greatly advanced since 1995, and this proposed rule would adapt the regulations to current capabilities. As explained in previous sections, in the past, CBP cleared low-value shipments exclusively through a time-consuming and burdensome manual process, and staff at the ports of entry became unable to quickly and efficiently process the increasing volume of trade. Consequently, it was not unusual for clearance to take up to eight days. Over the last several years, CBP has collaborated with the trade community to obtain input regarding how to more accurately identify the nature, origin, and ultimate

[76] Email correspondence with the Office of Trade on Feb. 2, 2024.

destination of low-value shipments. This effort served as the foundation for two pilot programs, the Section 321 Data Pilot and the Entry Type 86 Test, which were implemented in 2019 to test CBP's capabilities to collect, and the trade's ability to provide, certain enhanced data through CBP-approved electronic systems.[77]

As illustrated above, the existing regulations do not account for the complex supply chains surrounding e-commerce transactions, today's volume of trade, or recent technological advancements. Consequently, this environment is plagued with various challenges, including, but not limited to, illicit substances like fentanyl and other narcotics, counterfeits and other goods violative of intellectual property rights, and goods made with forced labor. CBP's enforcement efforts have brought to light violations of the right to make entry, mismanifesting of cargo, misclassification, misdelivery (*e.g.,* delivery of goods prior to release from CBP custody), undervaluation, and incorrectly executed powers of attorney. Of particular concern is the threat posed by illicit fentanyl, fentanyl analogues, as well as precursor and other chemicals used in illicit drug production that are smuggled into the United States by transnational criminal organizations. CBP uses a multifaceted approach to prevent illegal drugs from entering the country, and one key facet is advance information and targeting. Advance electronic shipping information allows CBP to quickly identify, target, and deter the entry of dangerous illicit drugs in all operational environments. This rulemaking contributes to the effort to stop the flow of illegal drugs into the United States by expanding the collection of enhanced advance electronic data for low-value shipments.

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

In the proposed rule, CBP seeks to refine and codify an electronic entry process for qualifying low-value shipments seeking entry into the United States. This proposed new process is termed the "enhanced entry process." In order to file an enhanced entry, CBP will require the submission of additional electronic data elements, such as a product URL or picture, in addition to the data currently required under the Entry Type 86 Test. This additional information will enable CBP to more efficiently target high-risk shipments. The existing process of clearing shipments off the manifest will also remain available to the trade with some modification; however, it will now be referred to as the "basic entry process."

[77] Section 321 Data Pilot, 84 FR 35405 (July 23, 2019); Test Concerning Entry of Section 321 Low-Valued Shipments Through Automated Commercial Environment (ACE), 84 FR 40079 (Aug. 13, 2019).

The legal authority for the administrative exemption is provided in 19 U.S.C. 1321(a)(2)(C). The legal authority to prescribe special rules for the declaration and entry of low-value merchandise is provided in 19 U.S.C. 1498(a)(1)(A). This administrative exemption is implemented in the CBP regulations at 19 CFR 10.151 and 10.153, and the entry rules for the entry of merchandise qualifying for this exemption are provided in 19 CFR parts 128, 143, and 145.

3. A Description of, and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

As described in section 11.2 of the full analysis attached in the docket for this rule, the proposed rule does not directly regulate any one industry. Instead, it makes the enhanced entry process available to various actors who may wish to import low-value shipments. Enhanced entries may be filed by the owner or purchaser of the shipment, an ECO in possession of the shipment, or when appropriately designated by the owner, purchaser, or consignee of the shipment, a licensed customs broker. Generally, customs brokers will file the entries; however, it is unclear which entities will experience the incremental costs of the rule.

The threshold analysis presented in section 11.2.1 of the full analysis attached in the docket for this rule describes two possible alternate scenarios:

1. That brokers and ECOs experience costs directly and do not pass them on to their consumers; and

2. The total incremental cost of the rule is passed on to consignees (generally the final owner or purchaser) in the form of higher shipment costs.

No matter which category of entities bears the cost of this rule, this analysis demonstrates that a substantial number of small businesses may be affected by the proposed rule. Assuming that brokers and ECOs fully bear the costs they incur (Scenario 1), we find that 67 percent of sampled brokers and ECOs qualify as small businesses.[78] Extrapolating from the sample to the full population of brokers suggests that approximately 274 brokers are small businesses. This analysis does not identify small businesses among the affected ECOs. Under the alternate assumption that consignees bear the cost of the rule (Scenario 2), any small entity in the United States has the potential to be affected by the rule as a consignee. Analysis of a sample of consignees for one day in 2023 demonstrates that 92 percent of businesses in the sample qualify as small.

[78] This includes 71 percent of sampled small-volume brokers, 73 percent of all medium- and large-volume brokers, and none of the sampled major ECOs.

4. A Description of the Projected Reporting, Record-Keeping and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

This rule does not establish any new recordkeeping requirements outside of the additional data elements that will be sent to CBP. An enhanced entry may be filed for shipments which meet the requirements of 19 U.S.C. 1321(a)(2)(C) and 19 CFR 10.151, by transmitting to CBP, the individual bill of lading (house bill or equivalent) or other shipping document used to file or support entry, the data elements listed in previous sections for the basic entry process, and the following additional data:

1. Clearance tracing identification number (CTIN). "CTIN" means the individual bill of lading number or a unique identification number used to associate the merchandise on the individual bill of lading with the eligible imported merchandise for which entry is sought;

2. Country of shipment of the merchandise. "Country of shipment" means the country in which the goods were located when the shipment was created for exportation to the United States;

3. 10-digit classification for the merchandise in Chapters 1–97 (and any additional classification in Chapters 98–99, if applicable) of the Harmonized Tariff Schedule of the United States (HTSUS), unless the HTSUS waiver privilege has been obtained and asserted, and the merchandise is not subject to the requirements of other government agencies; and

a. HTSUS Waiver Privilege: Parties who will file enhanced entries may request from CBP a waiver of the requirement to transmit the 10-digit HTSUS classification unless the merchandise is subject to the requirements of other government agencies. Parties may obtain a waiver by demonstrating, at a minimum, the following:

i. The ability to properly classify merchandise to the 10-digit HTSUS classification;

ii. The ability to properly determine whether merchandise is subject to the requirements of other government agencies and the ability to properly segregate such shipments; and

iii. The ability to properly determine whether merchandise is otherwise precluded by law from eligibility for the administrative exemption under 19 U.S.C. 1321(a)(2)(C) and the ability to properly segregate such shipments.

4. One or more of the following:

a. The uniform resource locator (URL) to the marketplace's product listing;

b. Product picture;

c. Product identifier; and/or

d. Shipment x-ray or other security screening report number verifying completion of foreign security scanning of the shipment.

Conditional data elements for enhanced entry: In order for CBP to better assess the risks associated with low-value shipments, the enhanced entry process includes a set of conditional data elements which must be transmitted to CBP if the data elements are applicable to the merchandise in the shipment. (For example, if merchandise is subject to PGA requirements (for item 3 in the list below), then those documents must be submitted. If, however, PGA requirements are not applicable to the merchandise, then that data would not be provided.)

1. Seller name and address;
2. Purchaser name and address;
3. Any data or documents required by other government agencies;
4. Advertised retail product description; and
5. Marketplace name and website or phone number. "Marketplace" means the party that provides an internet (*e.g.,* online, website, application ("app"), electronic mail) or telephonic (*e.g.,* telephone, television, or catalog) means of offering products for sale. The marketplace may be a seller or a third party offering products on behalf of a seller.

The data elements required for an enhanced entry must be received by CBP on or before the deadline for receipt of advance cargo information, as specified below (varies by mode):

• *Vessel.* The filing must be received by CBP 24 hours before the cargo is laden aboard the vessel at the foreign port. 19 CFR 4.7 and 4.7a.

• *Air.* The filing must be received by CBP either: (1) no later than the time of the departure of the aircraft for the United States, in the case of aircraft that depart for the United States from any foreign port or place in North America, including locations in Mexico, Central America, South America (from north of the Equator only), the Caribbean, and Bermuda; or (2) no later than four hours prior to the arrival of the aircraft in the United States, in the case of aircraft that depart for the United States from any foreign area other than those specified in 19 CFR 122.48a(b)(1). 19 CFR 122.48a(b).

• *Rail.* The filing must be received by CBP no later than two hours prior to the cargo reaching the first port of arrival in the United States. 19 CFR 123.91.

• *Truck.* The filing must be received by CBP no later than either 30 minutes or one hour prior to the carrier's reaching the first port of

arrival in the United States, or such lesser time as authorized, based upon the CBP-approved system employed to present the information. 19 CFR 123.92.

5. An Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule

This rule does not duplicate, overlap, or conflict with any other Federal rule. CBP is considering an NPRM that would make goods subject to trade actions ineligible for the administrative exemption. If that NPRM is published and finalized, that rule would supplement this rule.

6. A Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize any Significant Economic Impact of the Proposed Rule on Small Entities

There are no significant alternatives that accomplish the stated objectives of the proposed rule. As the majority of the regulated parties are small businesses, this rule would not be effective if CBP limited the rule to other than small businesses. Further, we note that use of the enhanced entry process established by this rule is optional. If a small business does not wish to provide the information required under the enhanced entry process, it may use the basic entry process, which is nearly identical to the release from manifest process used historically, and incur no costs as a result of this rule.

E. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The collection of information contained in this proposed rule, will be submitted to OMB for review under section 3507(d) of the Paperwork Reduction Act (PRA). The public can direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Customs and Border Protection. Such comments can be submitted in the regulatory docket for this proposed rule.

This rule, if finalized, would formalize the Entry Type 86 Test and alter the information collection under OMB control number 1651–0024 (Entry/ Immediate Delivery Application and Simplified Entry). This NPRM announces the data elements required for enhanced entry submissions. Enhanced entry submissions, like entry

type 86 entries, are submitted for entries at the house bill level.[79] CBP does not anticipate a change in the number of annual submissions (621,828,643) or number of annual respondents (535) compared to those caused by the Entry Type 86 Test, but will result in an increase to the time per response to submit a master bill an enhanced submission compared to the entry type 86 submission. The collection will be adjusted to reflect the additional 2 minutes per master bill and the increase in total annual burden hours due to the change. The current entry type 86 entries will be converted to the new enhanced entry upon the finalization of this proposed rulemaking and formal OMB approval which will keep the number of submissions equal to the Entry Type 86 Test. The new estimated annual burden for this information collection following OMB approval is 3,843,763 hours.

Upon finalization of this proposed rule and OMB approval, the information collection under OMB control number 1651–0024 will be revised to reflect the increased burden hours as follows:

Paper Only Entry/Immediate Delivery Form 3461

Estimated Number of Respondents: 1,669.
Estimated Number of Total Annual Responses: 33,923.
Estimated Time per Response: 15 minutes.
Estimated Total Annual Burden Hours: 8,481.

ACE Cargo Release Electronic Submission

Form 3461 and 3461ALT Excluding Enhanced Entry

Estimated Number of Respondents: 6,580.
Estimated Number of Total Annual Responses: 22,970,239.
Estimated Time per Response: 10 minutes.
Estimated Total Annual Burden Hours: 3,828,373.

Enhanced Entry

Estimated Number of Respondents: 535.
Estimated Number of Total Annual Responses: 621,828,643.
Estimated Time per Response: 0.0007 minutes.
Estimated Total Annual Burden Hours: 6,909.

[79] The typical master bill contains approximately 6,000 house bills. Much of the information on the house bills is identical and the submission is largely automated. This results in a higher number of submissions with a lower time burden per submission for entry type 86 and enhanced entry submissions.

F. National Environmental Policy Act

DHS and its components analyze actions to determine whether the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. 4321 *et seq.,* applies to these actions and, if so, what level of NEPA review is required. 42 U.S.C. 4336. DHS's Directive 023–01, Revision 01 and Instruction Manual 023–01–001–01, Revision 01 ("Instruction Manual 023–01–001–01") establish the procedures that DHS uses to comply with NEPA and the Council on Environmental Quality ("CEQ") regulations for implementing NEPA, 40 CFR parts 1500 through 1508.[80]

Federal agencies may establish categorical exclusions for categories of actions they determine normally do not significantly affect the quality of the human environment and, therefore, do not require the preparation of an Environmental Assessment or Environmental Impact Statement. 42 U.S.C. 4336e(1); *see also* 40 CFR 1501.4, 1507.3(c)(8), 1508.1(e). DHS has established categorical exclusions, which are listed in appendix A of its Instruction Manual 023–01–001–01. Under DHS's NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.

DHS has analyzed this action under Directive 023–01 and Instruction Manual 023–01–001–01. DHS has made a determination that this rulemaking action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. First, this proposed rule clearly fits within the Categorical Exclusions A3(a) and A3(d) of DHS's Instruction Manual 023–01–001–01, Appendix A, for the promulgation of rules of a "strictly administrative or procedural nature" and rules that "interpret or amend an existing regulation without changing its environmental effect," respectively. The proposed rule would create a new process for entering low-value shipments, allowing CBP to target high-risk shipments more effectively. The proposed rule would also revise the current process for entering low-value shipments to require additional data elements that would assist CBP in verifying eligibility for duty- and tax-free entry of low-value shipments and bona-fide

[80] CBP is aware of the November 12, 2024 decision in *Marin Audubon Society* v. *Federal Aviation Administration,* No. 23–1067 (D.C. Cir. Nov. 12, 2024). To the extent that a court may conclude that CEQ regulations implementing NEPA are not judicially enforceable or binding on this agency action, CBP has nonetheless elected to follow those CEQ regulations, in addition to DHS's Directive and Instruction Manual, to meet the agency's obligations under NEPA, 42 U.S.C. 4321 *et seq.*

gift. Second, this NPRM is not part of a larger action. Third, this NPRM presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, a more detailed NEPA review is not necessary. DHS seeks any comments or information that may lead to the discovery of any significant environmental effects from this NPRM.

Signing Authority

In accordance with Treasury Order 100–20, the Secretary of the Treasury delegated to the Secretary of Homeland Security the authority related to the customs revenue functions vested in the Secretary of the Treasury as set forth in 6 U.S.C. 212 and 215, subject to certain exceptions. This regulation is being issued in accordance with DHS Directive 07010.3, Revision 03.2, which delegates to the Commissioner of CBP the authority to prescribe and approve/ sign regulations related to customs revenue functions.

Pete Flores, Senior Official Performing the Duties of the Commissioner, having reviewed and approved this document, has delegated the authority to electronically sign this document to the Director (or Acting Director, if applicable) of the Regulations and Disclosure Law Division of CBP, for purposes of publication in the **Federal Register**.

List of Subjects

19 CFR Part 10

Bonds, Exports, Imports, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 101

Harbors, Organization and functions (Government agencies), Seals and insignia, Vessels.

19 CFR Part 128

Administrative practice and procedure, Freight, Reporting and recordkeeping requirements.

19 CFR Part 143

Reporting and recordkeeping requirements.

19 CFR Part 145

Exports, Lotteries, Postal Service, Reporting and recordkeeping requirements.

Proposed Amendments to the CBP Regulations

For the reasons stated above in the preamble, CBP proposes to amend 19 CFR parts 10, 101, 128, 143, and 145 as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 4513.

* * * * *

■ 2. Amend the undesignated center heading preceding § 10.151 to read as follows:

Importations Not Over $800 and Bona-Fide Gifts

■ 3. Revise § 10.151 to read as follows:

§ 10.151 Importations not over $800.

Subject to the conditions in § 10.153, the port director may pass free of duty and tax any shipment of merchandise, as defined in § 101.1 of this chapter, imported by one person on one day having a fair retail value in the country of shipment not exceeding $800. When multiple shipments are imported by one person on one day under this section and the aggregate fair retail value of those shipments exceeds $800 in the country of shipment, then all such shipments imported on that day by that person become ineligible for the privilege of passing free of duty and tax under this section. This privilege will also be denied if a port director has reason to believe that a shipment is one of several lots covered by a single order or contract sent separately to secure free entry or avoid compliance with any pertinent law or regulation. For purposes of this section, the person whose shipment may be granted the privilege of passing free of duty and tax under 19 U.S.C. 1321(a)(2)(C) is the owner or purchaser of the merchandise imported on one day. Merchandise for which this privilege is claimed must be entered under informal entry procedures (see § 143.23(j), and §§ 128.24, 145.31, 148.12, and 148.62 of this chapter) by a party authorized to make entry under § 143.26(b) of this chapter.

■ 4. Revise § 10.152 to read as follows:

§ 10.152 Bona-fide gifts.

Subject to the conditions in § 10.153, the port director may pass free of duty and tax any article sent as a bona-fide gift from a person in a foreign country to a person in the United States, provided that the aggregate fair retail value in the country of shipment of such articles received by one person on one day does not exceed $100 or, in the case of articles sent from a person in the Virgin Islands, Guam, and American Samoa, $200. Articles for which this privilege is claimed must be entered under informal entry procedures (see § 143.23(j) and § 145.32 of this chapter). An article is "sent" for purposes of this section if it is conveyed in any manner other than on the person or in the accompanied or unaccompanied baggage of the donor or donee.

■ 5. Amend § 10.153 by:

■ a. In the introductory text, removing the word "Customs" and adding in its place the term "CBP";

■ b. In paragraphs (a) and (d) introductory text, adding a hyphen between the words "bona" and "fide"; and

■ c. Adding paragraph (i). The addition reads as follows:

§ 10.153 Conditions for exemption.

* * * * *

(i) The exemption provided for in § 10.151 is not to be allowed with respect to imported merchandise subject to any antidumping or countervailing duty determination, instruction, or order issued by the Department of Commerce; or any other merchandise otherwise precluded by law from eligibility.

PART 101—GENERAL PROVISIONS

■ 6. The general authority citation for part 101 continues to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 101, *et. seq.;* 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

* * * * *

§ 101.1 [Amended]

■ 7. Amend § 101.1, in the definition of "Shipment", by removing the words "the bill of lading" and adding in their place the words "an individual bill of lading (house bill or equivalent)".

PART 128—EXPRESS CONSIGNMENTS

■ 8. The authority citation for part 128 continues to read as follows:

Authority: 19 U.S.C. 58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

■ 9. Amend § 128.21 by:

■ a. Revising paragraph (a)(4)(ii); and

■ b. In paragraph (b), removing the word "Customs" and adding in its place the term "CBP".

The revision reads as follows:

§ 128.21 Manifest requirements.

(a) * * *

(4) * * *

(ii) If the merchandise is eligible for, and is entered under, the informal entry procedures as provided in § 128.24, except for merchandise eligible to pass free of duty and tax as provided in § 128.24(e) or § 128.24(f) and entered under § 143.23(k) of this chapter.

* * * * *

■ 10. Amend § 128.24 by revising paragraphs (d) and (e) and adding paragraph (f) to read as follows:

§ 128.24 Informal entry procedures.

* * * * *

(d) *Entry summary.* An entry summary (CBP Form 7501, or its electronic equivalent) must be presented in proper form, and estimated duties deposited within 10 days of the release of the merchandise under either the regular or alternative procedure described in this section, unless the shipment passes free of duty and tax under paragraph (e) or (f) of this section.

(e) *Shipments valued at $800 or less.* Shipments valued at $800 or less meeting the requirements of § 10.151 of this chapter may be passed free of duty and tax if entered under the procedures set forth in § 143.23(j) of this chapter by a party eligible to file entry under § 143.26(b) of this chapter.

(f) *Bona-fide gifts.* Shipments valued at $100 or less ($200, in the case of articles sent from persons in the Virgin Islands, Guam, and American Samoa) meeting the requirements of § 10.152 of this chapter may be passed free of duty and tax if entered under the procedures

set forth in § 143.23(k) of this chapter. Such shipments are not eligible for the procedures set forth in § 143.23(l) of this chapter.

PART 143—SPECIAL ENTRY PROCEDURES

■ 11. The authority citation for part 143 continues to read as follows:
Authority: 19 U.S.C. 66, 1321, 1414, 1481, 1484, 1498, 1624, 1641.

■ 12. Amend § 143.23 by revising paragraphs (j) and (k) and adding paragraphs (l) and (m) to read as follows:

§ 143.23 Form of entry.

* * * * *

(j) *Shipments not over $800 and bona-fide gifts.* Except in the case of personal written or oral declarations (see §§ 148.12, 148.13, and 148.62 of this chapter), a shipment of merchandise eligible for informal entry under 19 U.S.C. 1498 and meeting the requirements of § 10.151 or § 10.152 of this chapter may be entered by providing the individual bill of lading (house bill or equivalent), or other shipping document used to file or support entry, and by meeting the requirements under paragraph (k) or (l) of this section.

(1) *Requirements of other government agencies.* Shipments of merchandise may be subject to other legal requirements, including the requirements of other Federal, State, or local agencies, as applicable. Merchandise regulated by other Federal agencies may not be entered under paragraph (k) of this section, but may be entered under paragraph (l) of this section.

(2) *Mail importations.* Mail importations pursuant to § 145.31 may not be entered under paragraph (k) of this section, but may be entered under paragraph (l) of this section.

(3) *Bona-fide gifts.* Bona-fide gifts claiming the exemption in § 10.152 of this chapter must be entered under paragraph (k) of this section.

(k) *Basic entry process.* Shipments of merchandise meeting the requirements of 19 U.S.C. 1321(a)(2) and § 10.151 or § 10.152 of this chapter may be entered pursuant to paragraph (j) of this section by providing the individual bill of lading (house bill or equivalent) and the following information either electronically through a CBP-authorized electronic data interchange (EDI) system or in paper format:

(1) Country of origin of the merchandise;

(2) Shipper name, address, and country;

(3) Name and address of the person claiming the exemption from duty and tax under § 10.151 or § 10.152 of this chapter;

(4) Specific description of the merchandise;

(5) Manifested quantity of the merchandise;

(6) Shipment weight;

(7) Fair retail value in the country of shipment in U.S. dollars (for conversion of foreign currency, see subpart C, part 159 of this chapter); and

(8) Name and address of the final deliver-to party, meaning the final party in the United States to whom the merchandise is to be delivered, if distinct from the party identified in paragraph (k)(3) of this section.

(l) *Enhanced entry process.* Shipments of merchandise meeting the requirements of 19 U.S.C. 1321(a)(2)(C) and § 10.151 of this chapter may be entered pursuant to paragraph (j) of this section by transmitting to CBP, through a CBP-authorized EDI system, the individual bill of lading (house bill or equivalent) or other shipping document used to file or support entry, and the information required in paragraph (k) of this section and paragraphs (l)(1) and (2) of this section. All required documentation and information must be received by CBP on or before the deadline for receipt of cargo information (see §§ 4.7 and 4.7a (vessel), 122.48a(b) (air), 123.91 (rail), and 123.92 (truck) of this chapter), except for mail shipments (see § 145.31 of this chapter).

(1) For all shipments, the following must be transmitted:

(i) Clearance tracing identification number (CTIN). "CTIN" means the individual bill of lading number or other unique identification number used to associate the merchandise on the individual bill of lading with the eligible imported merchandise for which entry is sought;

(ii) Country of shipment of the merchandise. For purposes of this paragraph (l), "country of shipment" means the country where the goods were located when the shipment was created for exportation to the United States;

(iii) 10-digit classification of the merchandise in chapters 1–97 (and additionally in chapters 98–99, if applicable) of the Harmonized Tariff Schedule of the United States (HTSUS), unless the HTSUS waiver privilege has been obtained pursuant to paragraph (m) of this section and asserted for the entry, and the merchandise is not subject to requirements of other government agencies; and

(iv) One or more of the following:

(A) The uniform resource locator (URL) to the marketplace's product listing;

(B) Product picture;

(C) Product identifier; and/or

(D) Shipment x-ray or other security screening report number verifying completion of foreign security scanning of the shipment.

(2) For all shipments, the following information must be transmitted, if applicable:

(i) Seller name and address. For purposes of this paragraph (l), "seller" means the party that made, or offered or contracted to make, a sale of the merchandise;

(ii) Purchaser name and address. For purposes of this paragraph (l), "purchaser" means the last known party to whom the goods are sold or the party to whom the goods are contracted to be sold at the time of importation;

(iii) Any data or documents required by other government agencies;

(iv) Advertised retail product description; and

(v) Marketplace name and website or phone number. For purposes of this paragraph (l), "marketplace" means the party that provides an internet (*e.g.,* online, website, application ("app"), electronic mail) or telephonic (*e.g.*, telephone, television, or catalog) means of offering products for sale. The marketplace may be a seller or a third party offering products on behalf of a seller.

(m) *Application for HTSUS waiver privilege.* Under the provisions of this paragraph (m), a party may request a waiver of the requirement to transmit the 10-digit HTSUS classification of the merchandise pursuant to paragraph (l)(1)(iii) of this section. The HTSUS waiver privilege cannot be used when merchandise is subject to the requirements of other government agencies under paragraph (j)(1) of this section or where otherwise required by law. If subject to such requirements, the 10-digit HTSUS classification(s) must be submitted for all the merchandise in the shipment.

(1) *Who may apply.* Any party who is eligible to file entry under paragraph (l) of this section may apply for the HTSUS waiver privilege (see § 143.26(b) of this chapter regarding parties who may make such entries).

(2) *Contents of application.* An applicant for the HTSUS waiver privilege must submit an application via email to the Director, Cargo Security and Controls Division, Office of Field Operations, at *ecommerce@cbp.dhs.gov*. The application must include the following:

(i) Name and address of applicant, and an email address to be used for CBP correspondence regarding the application.

(ii) Information demonstrating the applicant has in place internal controls and procedures regarding, at a minimum, the following:

(A) The ability to properly classify merchandise under the HTSUS at the 10-digit classification;

(B) The ability to properly determine whether merchandise is subject to the requirements of other government agencies and the ability to properly segregate such shipments; and

(C) The ability to properly determine whether merchandise is otherwise precluded by law from eligibility for the administrative exemption under 19 U.S.C. 1321(a)(2)(C) and the ability to properly segregate such shipments.

(iii) The applicant must state whether a previous application for an HTSUS waiver privilege was denied, or if a previous approval of such an application was revoked.

(3) *Action on application*—(i) *CBP review.* CBP will review and verify all information submitted with the application. For this purpose, CBP may request additional information (including additional documents) and/or explanations of any of the information provided. The verification process may include on-site visits and demonstrations of the applicant's procedures. Based on its findings from the review and verification process, CBP will approve or deny the application.

(ii) *Notice to applicant.* CBP will notify the applicant, via email to the email address provided with the application, within 60 days of receipt of the application of its decision to approve or deny the application, or of CBP's inability to approve, deny, or act on the application and the reason therefor.

(iii) *Approval.* The approval of an application will be effective as of the date of CBP's notification of approval, unless CBP's notification provides a different effective date.

(iv) *Denial.* If an application is denied, the applicant will be notified specifying the reason therefor. A denial may be appealed in the manner prescribed in paragraph (m)(3)(vi) of this section. The applicant may not reapply for the HTSUS waiver privilege until the reason for the denial is resolved.

(v) *Revocation.* CBP may propose to revoke its approval of an application for good cause (such as, noncompliance with any applicable customs laws and/or regulations, failure to maintain internal controls at the standards set by CBP in paragraph (m)(2)(ii) of this section, or failure to participate in periodic compliance reviews conducted by CBP). In the case of a proposed revocation, CBP will provide notice, via email to the email address provided with the application, of the proposed revocation of the approval. The notice will specify the reasons for CBP's proposed action and the procedures for challenging CBP's proposed revocation, as described in paragraph (m)(3)(vi) of this section. The revocation will take effect 30 days after the date of the proposed revocation unless timely challenged under paragraph

(m)(3)(vi) of this section. If timely challenged, the revocation will take effect after completion of the challenge procedures in paragraph (m)(3)(vi) of this section unless the challenge is successful.

(vi) *Appeal of denial or challenge to proposed revocation.* An appeal of a denied application, or challenge to the proposed revocation of an approved application, may be made by email to the Executive Director, Trade Policy and Programs, Office of Trade, CBP Headquarters, at *ecommerce@cbp.dhs.gov*, and must be received within 30 days of the date of denial or proposed revocation. The 30-day period for appeal or challenge may be extended for good cause, upon written request by the applicant or privilege holder. The extension request must be made by email and received by the Executive Director, Trade Policy and Programs, Office of Trade, CBP Headquarters, at *ecommerce@cbp.dhs.gov,* within the 30-day period. The denial of an application or the revocation of a waiver, does not preclude a party from reapplying for the privilege in the future.

■ 13. Amend § 143.26 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 143.26 Party who may make informal entry of merchandise.

* * * * *

(b) *Shipments valued at $800 or less.* Except for merchandise subject to paragraph (c) of this section, a shipment of merchandise valued at $800 or less which qualifies for informal entry under 19 U.S.C. 1498 and meets the requirements in 19 U.S.C. 1321(a)(2) (see §§ 10.151, 10.152, 10.153, 143.23(k), 145.31, 145.32, 148.51, and 148.64 of this chapter) may be entered, using reasonable care, by the owner, purchaser, or consignee of the shipment or, when appropriately designated by one of these persons, a customs broker licensed under 19 U.S.C. 1641.

(c) *Exception for the enhanced entry process.* A shipment of merchandise valued at $800 or less, which qualifies for informal entry under 19 U.S.C. 1498 and the administrative exemption under 19 U.S.C. 1321(a)(2)(C), may be entered under § 143.23(l), using reasonable care, by the owner or purchaser of the shipment, an express consignment operator or carrier in possession of the shipment (see § 128.1(a) of this chapter), or when appropriately designated by the owner, purchaser, or consignee of the shipment, a customs broker licensed under 19 U.S.C. 1641 (see part 141, subpart C). When a party eligible to file the entry transmits the entry information required under §§ 143.23(l)(1)(iv)(A) through (D) and 143.23(l)(2)(iv) through (v) of this part, and receives any of that information from

another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the transmitting party acquired such information, and whether and how the transmitting party is able to verify this information. When the transmitting party is not reasonably able to verify such information, CBP will permit the party to transmit the information on the basis of what the party reasonably believes to be true.

PART 145—MAIL IMPORTATIONS

■ 14. The authority citation for part 145 and the specific authority citation for §§ 145.31 and 145.32 continue to read as follows:

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

* * * * *

Section 145.31 also issued under 19 U.S.C. 1321;
Section 145.32 also issued under 19 U.S.C. 1321, 1498;

* * * * *

■ 15. Revise § 145.31 to read as follows:

§ 145.31 Importations not over $800 in value.

The port director may pass free of duty and tax, without preparing an entry as provided for in § 145.12, packages containing merchandise having an aggregate fair retail value in the country of shipment of not over $800, subject to the requirements set forth in §§ 10.151 and 10.153 of this chapter. Such merchandise may alternatively be entered under § 143.23(l) of this chapter, in which case all required information must be transmitted to CBP no later than the date the merchandise departs from the country of posting.

§ 145.32 [Amended]

■ 16. Amend § 145.32 by removing the word "shall" and adding in its place the word "may".

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

AGENCY INFORMATION COLLECTION ACTIVITIES:

Extension; Foreign Trade Zones Annual Reconciliation and Recordkeeping Requirement

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

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than March 17, 2025) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0051 in the subject line and the agency name. Please submit written comments and/or suggestions in English. Please use the following method to submit comments:

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the

agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Foreign Trade Zones Annual Reconciliation and Recordkeeping Requirement.

OMB Number: 1651–0051.

Form Number: N/A.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours, the information collection, or to the record keeping requirements.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: In accordance with 19 CFR 146.4(a), the operator shall supervise all admissions, transfers, removals, recordkeeping, manipulations, manufacturing, destruction, exhibition, physical and procedural security, and conditions of storage in the zone as required by law and regulations.

Foreign Trade Zone (FTZ) operators must prepare a reconciliation report within 90 days after the end of the zone/ subzone year unless an extension is authorized and must retain the annual reconciliation report for a spot check or audit by CBP. In addition, within 10 working days after the annual reconciliation report, FTZ operators must submit to the CBP port director a letter signed by the operator certifying that the annual reconciliation has been prepared, is available for CBP review, and is accurate. See 19 CFR 146.25. The Foreign Trade Zones Act of 1934, as amended (19 U.S.C. 81a–81u), authorizes these requirements.

Type of Information Collection: Record Keeping Requirements (19 CFR 146.4(d)).

Estimated Number of Respondents: 276.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 276
Estimated Time per Response: 45 minutes
Estimated Total Annual Burden Hours: 207

Type of Information Collection: Certification Letter (19 CFR 146.25).

Estimated Number of Respondents: 276
Estimated Number of Annual Responses per Respondent: 1
Estimated Number of Total Annual Responses: 276
Estimated Time per Response: 20 minutes
Estimated Total Annual Burden Hours: 92

Dated: January 7, 2025.

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

AGENCY INFORMATION COLLECTION ACTIVITIES:

New Collection of Information; Global Interoperability Standards (GIS)

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

ACTION: 30-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than February 13, 2025) to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (89 FR 71381) on September 3, 2024, allowing for a 60-day comment period. This notice allows for an additional

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

Overview of This Information Collection

Title: Global Interoperability Standards (GIS)

OMB Number: 1651–0NEW.

Form Number: N/A.

Current Actions: New Collection of Information.

Type of Review: New Collection of Information.

Affected Public: Businesses.

Abstract: The Silicon Valley Innovation Program (SVIP), part of the Department of Homeland Security's Science and Technology Directorate, helps develop and find new technologies that strengthen national security with the goal of reshaping how government and industry work together to find cutting-edge solutions to problems such as those involved in pipeline-borne goods. Neoflow (a SVIP participant) has a platform (the Neoflow platform) to document the movement (including ownership changes) of crude oil. The Neoflow platform will monitor Canadian crude oil, a continuous flow commodity, using global interoperability standards (GIS) adopted by test participants who will supply and input the GIS data into the Neoflow platform where CBP will be able to view the data in near real time. GIS data utilizes decentralized identifiers (DIDs) and verifiable credentials (VCs) to help in identifying legitimate products and associated companies to build a transparent supply chain.

A transparent supply chain will be achieved in the Neoflow platform through the recordation of bi-lateral transaction data at each step in a supply chain, allowing for dynamic updates of ownership

and destination information, securing supply chains from disclosure to unauthorized parties, and making this data available to CBP in near real time while creating an immutable chain of custody from wellhead to refinery.

If successful, the test could result in the ability to potentially eliminate all port-level paper processes as well as create an automation environment in which pre-arrival data collection, in-bond tracking, and Free Trade Agreement compliance traceability no longer pose issues.

Therefore, the purpose of the test is to measure the usefulness and accuracy of the Neoflow platform's GIS with a view toward resolving any issues prior to determining next steps (which could include implementing new policies and regulations leading to the integration of GIS data with the Automated Commercial Environment (ACE) for Canadian crude oil and other pipeline commodities for entry purposes). The test will be limited to pipeline oil products coming from Canada but may be expanded in the future to other commodities upon successful implementation of the test.

This collection of information is authorized by 19 U.S.C. 1411 National Customs Automation Program.

Type of Information Collection: Non-Standard PDF.

Estimated Number of Respondents: 24.

Estimated Number of Annual Responses per Respondent: 12.

Estimated Number of Total Annual Responses: 288.

Estimated Time per Response: 4 hours.

Estimated Total Annual Burden Hours: 1,152.

Dated: January 7, 2025.

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

AGENCY INFORMATION COLLECTION ACTIVITIES:

Revision; Collection of Advance Information From Certain Individuals on the Land Border

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

ACTION: 30-day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than February 13, 2025) to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published as an extension without change in the **Federal Register** (89 FR 83030) on October 15, 2024, allowing for a 60-day comment period. This

notice includes a new change not mentioned in the previous notice and allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Collection of Advance Information from Certain Individuals on the Land Border.

OMB Number: 1651–0140.

Form Number: N/A.

Current Actions: This submission will revise the collection to include documented individuals and extend the expiration date of this information collection.

Type of Review: Revision.

Affected Public: Individuals.

Abstract: The Department of Homeland Security (DHS) and its component U.S. Customs and Border Protection (CBP) have established a process to streamline the processing of travelers under title 8 of the United States Code at ports of entry (POEs). This process involves the submission of certain biographic and biometric information to CBP, via the CBP One™ application, in advance of arrival at a POE.

Under this collection, CBP collects certain biographic and biometric information from travelers via the CBP One™ application, prior to their arrival at a POE, to streamline their processing at the POE. The requested information is that which CBP would otherwise collect from these individuals during primary and/or secondary processing. This information is provided directly by travelers. Providing this

information reduces the amount of data entered by CBP Officers (CBPOs) and the corresponding time required to process travelers at the POE.

The biographic and biometric information being collected in advance, that would otherwise be collected during primary and/or secondary processing at the POEs, includes descriptive information such as: Name, Date of Birth, Country of Birth, City of Birth, Country of Residence, Contact Information, Addresses, Nationality, Employment history (optional), Travel history, Emergency Contact (optional), U.S. and foreign addresses, Familial Information, Marital Status, Identity Document (not a Western Hemisphere Travel Initiative (WHTI) compliant document) (optional), Name and contact information for someone who assisted the user (Optional), Gender, Preferred Language, Height, Weight, Eye color and Photograph.

This collection may require the submission of a live facial photograph for all noncitizens who choose to provide advance information to CBP via CBP One™. The submission of a live photograph in advance provides CBPOs with a mechanism to match a noncitizen who arrives at the POE with the photograph submitted in advance, therefore identifying those individuals, and verifying their identity as well as conducting advance vetting. The live photograph is particularly important for identity verification if an NGO/IO is not assisting an individual in scheduling their presentation at a POE. In addition, the requirement for a live photo that contains latitude and longitude data points allows CBP to ensure the individual is physically located within the designated geofence areas. Creating designated areas allows an individual to secure an appointment without congregating in potentially dangerous conditions at the U.S. Southwest Border; and only traveling to or through Mexico for the intended purpose of presenting themselves to CBP for inspection. Documented travelers will be required to submit a photo but will not be required to utilize the liveness feature.

In addition, CBP allows individuals to request to present themselves for processing at a specific POE on a specific day or days, although such a request does not guarantee that an individual will be processed on a given date or at a given time. Individuals also have the opportunity to modify their requests within the CBP One™ application to an alternate day or time. The functionality to modify their request to an alternative date and time does not require the collection of new Personal Identification Information (PII) data elements.

Noncitizens who use CBP One are processed in a more streamlined manner at the POE, since their advance information is prepopulated into CBP systems, which reduces manual data entry during process-

ing. Travelers who did not submit information through CBP One may need to wait to be processed in a separate line from those who used CBP One (reserved for those who submitted their advance information and scheduled a presentation date).

CBP invites the public to comment on the previously approved Emergency Revision for Noncitizens only:

1. Change in CBP One Geofence Designated Areas:

In response to a request from the Government of Mexico, CBP is adjusting the specific boundaries from where individuals can request and confirm CBP One appointments.

Under the current process, individuals seeking appointments must be located within Central or Northern Mexico. The Government of Mexico has requested an adjustment to the geofence to assist in its efforts to influence where individuals congregate while they seek a CBP One appointment. CBP will be expanding the geofence for Mexican nationals to all of Mexico and CBP will be adding the Mexican states of Tabasco and Chiapas to the current boundaries for all other nationalities. By adjusting the boundaries, CBP will assist the Government of Mexico in its efforts to enforce its immigration laws and regulations and align resources to those areas where migrants are located. The Government of Mexico has the right to enforce their immigration laws and regulations and the current geofence boundaries hinder their migration enforcement approach. Further geofence adjustments may be made in the future in response to Government of Mexico requests.

2. *Validation Tool:*

Due to the volume of individuals traveling through Mexico to present at a POE at a designated date and time, the Government of Mexico is requesting assistance in validating appointments of individuals or groups of individuals it encounters transiting through Mexico. In response, CBP is deploying a validation mechanism to assist Mexican government officials when they encounter an individual or group who claim to have a CBP One appointment. The tool will require the Mexican government official to enter an individual's CBP One confirmation number and date of birth. Once submitted, the tool will return confirmation of any valid CBP One appointment with the appointment date, time, and location, as well as the total number of people in the group.

This Revision Submission:

In the previous 60-day FRN CBP announced no changes to the collection, however in this notice CBP has added a new change that enables documented travelers to utilize the CBP One application, previously a feature only available for undocumented travelers.

Type of Information Collection: Advance Information on Undocumented Travelers—Registration.

Estimated Number of Respondents: 500,000.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 500,000.
Estimated Time per Response: 12 minutes.
Estimated Total Annual Burden Hours: 100,000.

Type of Information Collection: Advance Information on Documented Travelers—Registration.

Estimated Number of Respondents: 20,000.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 20,000.
Estimated Time per Response: 5 minutes.
Estimated Total Annual Burden Hours: 1,666.

Type of Information Collection: Daily Appointment Request for Undocumented Travelers.

Estimated Number of Respondents: 500,000.
Estimated Number of Annual Responses per Respondent: 60.
Estimated Number of Total Annual Responses: 30,000,000.
Estimated Time per Response: 1 minute.
Estimated Total Annual Burden Hours: 500,000.

Type of Information Collection: Daily Appointment Request for Documented Travelers.

Estimated Number of Respondents: 20,000.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 20,000.
Estimated Time per Response: 1 minute.
Estimated Total Annual Burden Hours: 333.

Type of Information Collection: Confirmation of Appointment.

Estimated Number of Respondents: 529,250.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 529,250.
Estimated Time per Response: 3 minutes.
Estimated Total Annual Burden Hours: 26,463.

Dated: January 7, 2025.

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

AGENCY INFORMATION COLLECTION ACTIVITIES:

Revision; Entry/Immediate Delivery Application and Automated Commercial Environment (ACE) Cargo Release

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

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than March 17, 2025) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0024 in the subject line and the agency name. Please submit written comments and/or suggestions in English. Please use the following method to submit comments:

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the

agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Entry/Immediate Delivery Application and ACE Cargo Release.

OMB Number: 1651–0024.

Form Number: 3461 + 3461 ALT.

Current Actions: Revision.

Type of Review: Revision.

Affected Public: Businesses.

Abstract: All items imported into the United States are subject to examination before entering the commerce of the United States. There are two procedures available to affect the release of imported merchandise, including "entry" pursuant to 19 U.S.C. 1484, and "immediate delivery" pursuant to 19 U.S.C. 1448(b). Under both procedures, CBP Forms 3461, Entry/Immediate Delivery, and 3461 ALT are the source documents in the packages presented to Customs and Border Protection (CBP). The information collected on CBP Forms 3461 and 3461 ALT allow CBP officers to verify that the information regarding the consignee and shipment is correct and that a bond is on file with CBP. CBP also uses these forms to close out the manifest and to establish the obligation to pay estimated duties in the time period prescribed by law or regulation. CBP Form 3461 is also a delivery authorization document and is given to the importing carrier to authorize the release of the merchandise.

CBP Forms 3461 and 3461 ALT are provided for by 19 CFR 142.3, 142.16, 141.22, and 141.24. The forms and instructions for Form 3461 are accessible at:*https://www.cbp.gov/newsroom/publications/forms?title=3461&=Apply.*

Ace Cargo Release (formerly referred to as "Simplified Entry") is a program for ACE entry summary filers in which importers or brokers may file ACE Cargo Release data in lieu of filing the CBP Form 3461.

This data consists of 12 required elements: importer of record; buyer name and address; buyer employer identification number (consignee number), seller name and address; manufacturer/supplier name and address; Harmonized Tariff Schedule 10-digit number; country of origin; bill of lading; house air waybill number; bill of lading issuer code; entry number; entry type; and estimated shipment value. There are also four optional data elements: the container stuffing location, consolidator name and address, ship to party name and address. There are three Global Business Identifier (GBI) identifiers available to filers: 20-digit Legal Entity Identifier (LEI), 9-digit Data Universal Numbering System (DUNS), and 13-digit Global Location Number (GLN). The GBI Identifiers can be inputted for any of the following parties: manufacturer/ producer, seller shipper, exporter, distributor or packager. The GBI identifiers are new optional data elements that are being collected to better identify the legal entity that is interacting with CBP as well as explore opportunities to enhance supply chain traceability and visibility in response to the growing complexity of global trade. The data collected under the ACE Cargo Release program is intended to reduce transaction costs, expedite cargo release, and enhance cargo security. ACE Cargo Release filing minimizes the redundancy of data submitted by the filer to CBP through receiving carrier data from the carrier. This design allows the participants to file earlier in the transportation flow. Guidance on using ACE Cargo Release may be found at *https://www.cbp.gov/trade/ace/features.*

It should be noted that ACE Cargo Release was previously called Simplified Entry.

New Changes:

1. *Global Business Identifier (GBI):* Collectively, the updates proposed below aim to enhance upstream supply chain traceability and visibility while addressing the increasing complexity of global trade supply chains. All participation and data submitted is voluntary. Find more details about GBI in the 1651–0141 GBI information collection.

• The GBI Test is expanding the available supply chain entity party types from the original six optional parties (Manufacturer, Shipper, Seller, Exporter, Distributor, Packager), to include two new parties: "Intermediary" and "Source," along with optional free text fields that will allow filers to input additional descriptions and information about the specific party type. These party types would be made available in the GBI Enrollment database as well as the Automated Commercial Environment Cargo Release.

• A modification within the Global Business Identifiers (GBI) Enrollment database will allow the trade to submit one or more of the

unique GBI's (the Legal Entity Identifier (LEI), Global Location Number (GLN), and Data Universal Numbering System (DUNS)) for a supply chain entity, as opposed to all three as previously approved and announced. Furthermore, a related programming update will enable trade participants the ability to modify or change a previous enrollment, including updating or adding additional GBI numbers.

• CBP intends to expand the choices of identifiers available to filers over the duration of the Test, including those that at no cost to the government provide access to the underlying entity and product specific supply chain data associated with the identifier. This would enhance traceability for CBP which may translate to facilitation benefits and reduced industry costs. CBP has initiated programming requests in ACE to accommodate the intake of additional GBI identifier qualifiers. These changes are under development and there is no defined timeline for their completion. Specifically, CBP will begin by adding to the GBI Test the new Altana ID (ALTA) maintained by Altana Technologies, USG Inc. (Altana). The addition of the ALTA identifier alongside current and future GBI identifiers will widen participants' choices and allow CBP to continue to evaluate the breadth and veracity of entity and supply chain information embedded within different types of identifier solutions already being leveraged by trade industry traceability stewards. It will also contribute to CBP's ongoing exploration of how traced supply chain information may be ingested and operationalized for risk management and facilitation purposes. CBP will add any new identifiers into the collection and submit to OMB for approval as they are determined through a change request (Form 83–C).

2. Russian Sanctions Executive Order 14114:

• New Data Elements are being added to comply with the Russian sanctions outlined in Executive Order 14114 published on December 22, 2023. The data elements and burden are recorded in the supporting statement of the 1651–0NEW Russian Sanctions information collection package.

3. Update to Form 3461/3461ALT Instructions:

The instructions on the Form 3461/ 3461 ALT have been updated to include the new Russian sanctions data elements and text field boxes, as well as being updated to improve user experience and clarity of the form. Find a copy of the new form, with the changes outlined included with this package submission as supplementary documents.

Type of Information Collection: ACE Cargo Release/ABI.

Estimated Number of Respondents: 9,810.

Estimated Number of Annual Responses per Respondent: 3,041.

Estimated Number of Total Annual Responses: 29,832,210.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 4,972,035.

Type of Information Collection: Form 3461 Paper/Electronic.

Estimated Number of Respondents: 12,995.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 12,995.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 3,249.

Dated: January 8, 2025.

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

AGENCY INFORMATION COLLECTION ACTIVITIES:

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

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

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than March 17, 2025) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0111 in the subject line and the agency name. Please submit written comments and/or suggestions in English. Please use the following method to submit comments:

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the

agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Arrival and Departure Record and Electronic System for Travel Authorization (ESTA).

OMB Number: 1651–0111.

Form Number: I–94/I–94W.

Current Actions: Revision.

Type of Review: Revision.

Affected Public: Individuals.

Abstract: Travelers seeking to enter under the Visa Waiver Program (VWP) by air or sea, are required to receive a travel authorization through the Electronic System for Travel Authorization (ESTA) prior to travel to the United States. ESTA is a mobile and web-based application and screening system used to determine whether certain noncitizens are eligible to travel to the United States under the VWP in the air, sea, and land environments. Travelers who are not eligible to travel under VWP may apply for a visa at a U.S. Embassy or Consular Office.

ESTA was provided for by the Secure Travel and Counterterrorism Partnership Act of 2007 (section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007, also known as the "9/11 Act," Public Law 110–53) which requires that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement an electronic system which shall collect such biographical and other information as the Secretary of Homeland Security determines necessary to determine, in advance of travel, the eligibility of the noncitizen to travel to the United States and whether such travel poses a law enforcement or security risk.

The information collected on U.S. Customs and Border Protection (CBP) Forms I–94 (Arrival/Departure Record) and I–94W (Nonimmigrant Visa Waiver Arrival/Departure Record) are included in the

manifest requirements imposed by Section 231 of the Immigration and Nationality Act (INA). CBP previously required noncitizens to prepare these forms while enroute to the United States and presented upon arrival at a sea or air port of entry within the United States. It is the duty of the master or commanding officer, or authorized agent, owner, or consignee of the vessel or aircraft, having any noncitizen on board, to deliver lists or manifests of the persons on board such vessel or aircraft to CBP officers at the port of arrival. However, now CBP now gathers I–94 data from existing automated sources such as the Advance Passenger Information System (APIS) in lieu of requiring passengers arriving by air or sea to submit a paper I–94 upon arrival. Currently, CBP issues electronic I–94s to most nonimmigrants entering the United States at land border ports of entry. Travelers entering the United States at a land border may apply for a provisional electronic I–94 via the I–94 public website. Travelers can access and print their electronic I–94 record via the website *https://i94.cbp.dhs.gov/I94/#/home.* CBP is working to fully automate all I–94 processes. Travelers can access and print their electronic I–94 record via the website *www.cbp.gov/I94www.cbp.gov/I94.*

On December 18, 2015, the President signed into law the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 ("VWP Improvement Act") as part of the Consolidated Appropriations Act, 2016. To meet the requirements of this new Act, the Department of Homeland Security (DHS, or the Department) strengthened the security of the VWP through enhancements to the ESTA application and to the Form I–94W.[1] Many of the provisions of the new law became effective on the date of enactment of the VWP Improvement Act. The Act generally makes certain nationals of VWP countries ineligible (with some exceptions) to travel to the United States under the VWP, specifically, if the noncitizen is, at the time of applying for admission, also a national of or has been present at any time on or after March 1, 2022—in Iraq, Syria, a country that is designated a state sponsor of terrorism,[2] or any other country of

[1] Note that the Form I–94 is not affected by this change.

[2] Countries determined by the Secretary of State to have repeatedly provided support for acts of international terrorism are generally designated pursuant to three laws: section 1754(c) of the National Defense Authorization Act for Fiscal Year 2019 (50 U.S.C. 4813); section 40 of the Arms Export Control Act (22 U.S.C. 2780); and section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

concern as designated by the Secretary of Homeland Security.[3] INA section 217(a)(12)(A).

Previous Revision:

Visa Waiver Program Designation (VWP): Qatar

CBP received emergency approval to revise the collection to add Qatar into the VWP.

New Revision:

CBP has calculated the estimated burden for this information collection to account for additional countries added into the Visa Waiver Program over the next three years. Pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, the Secretary, in consultation with the Secretary of State, may designate certain countries as VWP countries if certain requirements are met.[4] Once a country has met the requirements and been designated by the Secretary as a program country, eligible citizens and nationals of a program country may apply for admission to the United States at U.S. ports of entry as nonimmigrant visitors for a period of ninety days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements. As an ESTA is required for any travel to the United States under the VWP, the collection is being updated to include travelers from current VWP designated countries and travelers from potentially added designated countries over the next three years.

Additionally, CBP intends to update the ESTA application website to require applicants to provide a photograph of their face, or "selfie", in addition to the photo of the passport biographical page. These photos would be used to better ensure that the applicant is the rightful possessor of the document being used to obtain an ESTA authorization.

Currently, applicants are allowed to have a third party apply for ESTA on their behalf. While this update would not remove that option, third parties, such as travel agents or family members, would be required to provide a photograph of the ESTA applicant.

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[3] The Act contains exceptions for individuals determined by the Secretary of Homeland Security to have been present in these countries, "(i) in order to perform military service in the armed forces of a [VWP] program country; or (ii) in order to carry out official duties as a full time employee of the government of a [VWP] program country." INA section 217(a)(12)(B).

[4] All references to "country" or "countries" in the laws authorizing the VWP are read to include Taiwan. *See* Taiwan Relations Act of 1979, Public Law 96–8, section 4(b)(1) (codified at 22 U.S.C. 3303(b)(1)) (providing that "[whenever the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan"). This is consistent with the United States' one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.

The ESTA Mobile application currently requires applicants to take a live photograph of their face, which is compared to the passport photo collected during the ESTA Mobile application process. This change will better align the application processes and requirements of ESTA website and ESTA Mobile applicants.

CBP invites the public to comment on both the previously approved emergency revision and new proposed revisions.

Type of Information Collection: Paper I–94.

Estimated Number of Respondents: 1,782,564.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 1,782,564.
Estimated Time per Response: 8 minutes.
Estimated Total Annual Burden Hours: 237,616.

Type of Information Collection: I–94 website.

Estimated Number of Respondents: 91,411.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 91,411.
Estimated Time per Response: 4 minutes.
Estimated Total Annual Burden Hours: 6,094.

Type of Information Collection: I–94W.

Estimated Number of Respondents: 1,138,644.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 1,138,644.
Estimated Time per Response: 16 minutes.
Estimated Total Annual Burden Hours: 368,438.

Type of Information Collection: ESTA Mobile Application.

Estimated Number of Respondents: 2,172,611.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 2,172,611.
Estimated Time per Response: 22 minutes.
Estimated Total Annual Burden Hours: 796,696.

Type of Information Collection: ESTA website.

Estimated Number of Respondents: 12,311,462.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 12,311,462.

Estimated Time per Response: 18 minutes.

Estimated Total Annual Burden Hours: 3,899,040.

Dated: January 8, 2025.

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

U.S. Court of International Trade

Slip Op. 24–137

ZHEJIANG SANMEI CHEMICAL IND. CO., LTD., Plaintiff, v. UNITED STATES, Defendant, and HONEYWELL INTERNATIONAL INC., Defendant-Intervenor.

Before: Richard K. Eaton, Judge
Court No. 22–00103
PUBLIC VERSION

[U.S. Department of Commerce's final determination is sustained.]

Dated: December 13, 2024

Lizbeth R. Levinson, Fox Rothschild LLP, of Washington, D.C., for Plaintiff Zhejiang Sanmei Chemical Ind. Co., Ltd. With her on the brief were *Ronald M. Wisla* and *Brittney R. Powell*.

Kelly M. Geddes, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for Defendant the United States. With her on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, and *L. Misha Preheim*, Assistant Director. Of counsel on the brief was *Jesus N. Saenz*.

Daniel J. Cannistra, Crowell & Moring LLP, of Washington, D.C., for Defendant-Intervenor Honeywell International Inc. With him on the brief was *Michael K. Bowen*.

OPINION

Eaton, Judge:

The subject merchandise in this case is pentafluoroethane ("R-125") from the People's Republic of China ("China"). R-125 is a colorless, odorless gas used in refrigerants.[1]

Following the filing of a petition by Defendant-Intervenor Honeywell International Inc. ("Honeywell"), the U.S. Department of Commerce ("Commerce" or the "Department") investigated imports of R-125 from China and found that the subject gas was sold in the United States at less than fair value during the period from July 1, 2020, to December 31, 2020. *See Pentafluoroethane (R-125) From the People's Republic of China*, 87 Fed. Reg. 1,117 (Dep't of Commerce Jan. 10, 2022) ("Final Determination") and accompanying Issues and Decision Mem. (Dec. 30, 2021) ("Final IDM"), PR 272; *see also Pentafluoroethane (R-125) From the People's Republic of China*, 87 Fed. Reg. 12,081 (Dep't of Commerce Mar. 3, 2022) (orders).

[1] *See* Pet. for the Imposition of Antidumping and Countervailing Duties on Behalf of Honeywell International Inc., Crowell & Moring LLP, Vol. I at 6 (Jan. 11, 2021), PR 4.

Before the court is the motion for judgment on the agency record of Zhejiang Sanmei Chemical Industry Co., Ltd. ("Sanmei"), Shandong Dongyue Chemical Co., Ltd., and Huantai Dongyue International Trade Co., Ltd.[2] (collectively, "Plaintiffs"). *See* Pls.' Mem. Supp. J. Agency R. (Oct. 25, 2022) ("Pls.' Br."), ECF No. 29; Pls.' Reply Br. (Apr. 3, 2023), ECF No. 41.

Sanmei, a producer and exporter of R-125 from China, was the sole mandatory respondent[3] in Commerce's investigation. As will be seen, Sanmei's affiliated toller,[4] Fujian Qingliu Dongying Chemical Ind. Co., Ltd. ("Qingliu"), produced the only subject R-125 sold in the United States during the period of investigation. *See* Final IDM at 30 (noting that Qingliu's "sales are the only reviewable sales in the [period of investigation]").

Neither Shandong Dongyue Chemical Co., Ltd. nor Huantai Dongyue International Trade Co., Ltd. was selected for individual examination, but both were found eligible for the all-others rate.[5] *See* Compl. ¶¶ 8, 11, ECF No. 8.

By their motion, Plaintiffs challenge Commerce's determination of the final estimated weighted-average dumping margin of 277.95% for Sanmei, and its use of this margin as the all-others rate. *See* Pls.' Br. at 2. Specifically, Plaintiffs argue that substantial evidence does not support Commerce's (1) employment of the "intermediate-input method," i.e., the use of the value of an intermediate input when constructing the normal value of the subject R-125, i.e., anhydrous hydrofluoric acid ("AHF"), instead of the value of the upstream raw

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[2] After the filing of the motion for judgment on the agency record, Shandong Dongyue Chemical Co., Ltd. and Huantai Dongyue International Trade Co., Ltd. were voluntarily dismissed from this action, leaving Sanmei as the sole plaintiff. *See* Order (Sept. 3, 2024), ECF No. 51. For purposes of consistency with the motion and other filings made prior to dismissal, the court will retain the reference to "Plaintiffs," which shall mean Sanmei.

[3] Commerce initially selected two mandatory respondents, but Zhejiang Quzhou Juxin Fluorine Chemical Co., Ltd. withdrew from the investigation, leaving only Sanmei. The statute permits Commerce to limit its examination to a "reasonable number of exporters or producers" when there is a "large number of exporters or producers involved in the investigation or review." 19 U.S.C. § 1677f-1(c)(2). Though the number of mandatory respondents has not been challenged in this case, the court observes that under the statute a "'reasonable number' is generally more than one." *YC Rubber Co. (N. Am.) LLC v. United States*, No. 21–1489, 2022 WL 3711377, at *4 (Fed. Cir. Aug. 29, 2022).

"'Toll manufacturing,' also called 'toll processing,' is '[a]n arrangement under which a customer provides the materials for a manufacturing process and receives the finished goods from the manufacturer . . . . The same party owns both the input and the output of the manufacturing process. This is a specialized form of contract manufacturing.'" *Wind Tower Trade Coal. v. United States*, 46 CIT __, __, 569 F. Supp. 3d 1221, 1226 n.3 (2022) (quoting *Toll Manufacturing*, BLACK'S LAW DICTIONARY (11th ed. 2019)).

[5] The "all-others" rate is the rate assigned to all exporters and producers of the subject merchandise in an investigation who were granted separate rate status, but which Commerce did not select for individual investigation. *See Shanxi Hairui Trade Co. v. United States*, 39 F.4th 1357, 1360 (Fed. Cir. 2022).

materials that went into making AHF; (2) denial of offsets for the by-products that were generated in the production of the subject R-125, and (3) calculation of the surrogate inland freight rate. *See id.* at 5–24.

Defendant the United States ("Defendant"), on behalf of Commerce, opposes Plaintiffs' motion and asks the court to sustain the Final Determination. *See* Def.'s Resp. Br. (Feb. 21, 2023) ("Def.'s Br."), ECF No. 38. Defendant-Intervenor Honeywell, a U.S. producer of R-125, also asks the court to sustain Commerce's Final Determination. *See* Def.-Int.'s Resp. Br. (Feb. 21, 2023), ECF No. 36.

Jurisdiction lies under 28 U.S.C. § 1581(c) and 19 U.S.C. § 1516a(a)(2)(B)(i). For the following reasons, the court sustains Commerce's direct valuation of the intermediate input AHF, its denial of Sanmei's claimed by-product offsets, and its calculation of the surrogate inland freight rate.

BACKGROUND

On February 1, 2021, Commerce initiated an antidumping duty investigation of R-125 from China, covering the period from July 1, 2020, to December 31, 2020. *See Pentafluoroethane (R-125) From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 86 Fed. Reg. 8,583 (Dep't of Commerce Feb. 8, 2021). Commerce selected the Russian Federation ("Russia") as the surrogate country.[6] Preliminary Surrogate Value Mem. (Aug. 10, 2021) at 1, PR 223.

I. Antidumping Questionnaires

As a part of its investigation, between March and July 2021, Commerce issued initial and supplemental antidumping questionnaires to Sanmei. *See, e.g.*, Initial Quest. Secs. A, B, C, and D (Mar. 12, 2021) ("Initial Quest."), PR 94; Suppl. Secs. A, C, and D Quest. (July 6, 2021), PR 177. Sanmei filed timely responses on behalf of itself and its affiliated toller, Qingliu. *See, e.g.*, Sanmei's Sec. D Resp. (May 11, 2021), PR 149, CR 102; Sanmei's Suppl. Sec. D. Resp. (July 26, 2021), PR 198, CR 127.

As it turned out, only R-125 that was produced by Qingliu was sold in the United States during the period of investigation. *See* Final IDM at 30 (noting that Qingliu's "sales are the only reviewable sales in the [period of investigation]").

Sanmei's initial and supplemental Section D questionnaire responses included factors of production information for Qingliu. As

[6] The selection of Russia as the surrogate country is not in dispute. *See* Preliminary Decision Mem. (Aug. 10, 2021) at 7, PR 220 ("Sanmei and the petitioner both agree that the Russian Federation (Russia) is suitable to serve as the primary surrogate country.").

Commerce would later find, however, some information for Qingliu was missing. Specifically, "information regarding Qingliu's production process and its consumption of water as a direct input [was] missing from the record." *Id.* at 35. To fill in the missing information, Commerce found that it would "rely on Sanmei's production process and reported consumption of water as a direct input as neutral [facts available]." *Id.*; *see also* 19 U.S.C. § 1677e(a)(1) (providing that if "necessary information is not available on the record" Commerce must use "facts otherwise available"). Notably, Qingliu's water consumption data was not available because the company "used water pumped from the nearby river for production," and its "water usage was not measured." Sanmei's Sec. D Resp. at 16.

As described in Sanmei's questionnaire responses, the production process used to make R-125 is comprised of two stages. In the first stage, the intermediate input AHF is either self-produced by the R-125 manufacturer or procured from a supplier. *See id.* at 12. Here, Sanmei reported that "Qingliu used their self-produced AHF . . . to produce R-125." *Id.* at 3. The upstream raw materials that Qingliu used to produce AHF in-house included purchased materials, i.e., fluorite powder, 105% sulfuric acid, and 98% sulfuric acid. *Id.* at 12 ("For the first processing stage, [Sanmei] . . . and [Qingliu] produce AHF with purchased materials such as fluorite powder, 105% sulfuric acid and 98% sulfuric acid.").

In the second stage, AHF is combined with another input, perchloroethylene ("PCE"), resulting in R-125. *Id.* Sanmei reported that it purchased the PCE (and reported the purchase price), from market economy suppliers, which was then provided to Qingliu. *See id.* at 8, Ex. D-8. Qingliu then combined the AHF that it produced in-house and the PCE purchased by Sanmei to produce the R-125 covered by the investigation.

Regarding water consumption, neither Qingliu nor Sanmei reported water as a direct input in the production of the intermediate input AHF and subject R-125. For its part, Qingliu did not track its water consumption. As to Sanmei, the company tracked its water consumption, but only reported water as an input for energy production, not as a direct input used to produce AHF and R-125. *See* Sanmei's Sec. D Resp. Ex. D-7 (reporting 98% sulfuric acid, 105% sulfuric acid, and fluorite powder as material inputs, but reporting water under "Energy") and Ex. D-8 (list of inputs). That is, Sanmei only reported water in response to the "Energy Inputs" section of Commerce's questionnaire. *See id.* Ex. D-8. Sanmei later argued in its administrative case brief, however, that "[w]ater is an important

factor in the production of both AHF and R-125 and has a tremendous impact on yield loss and by-product production." Sanmei's Case Br. (Oct. 19, 2021) at 12, PR 268; *see also* Final IDM at 23 (quoting case brief).

Sanmei, as the mandatory respondent, claimed offsets for each of four by-products that were generated during Qingliu's in-house production of the intermediate input AHF and subject R-125: (1) the fluosilicic acid and (2) fluorine gypsum that were by-products generated in the production of AHF, and in addition (3) the hydrochloric acid and (4) R-134a that were by-products generated in the production of R-125. *See* Sanmei's Sec. D Resp. at 17, Ex. D-12.

Regarding freight expenses within China, Commerce's questionnaire asked for the "distance in kilometers from the plant to the nearest port where the plant can receive supplies shipped in international containers." Sanmei's Sec. D Resp. at 19. Sanmei reported that "[t]he distance[] from the Respondent [Sanmei] to Wenzhou port, the nearest seaport, is 187.2 kilometers." *Id.*

II. Preliminary Determination

On August 10, 2021, Commerce issued its preliminary determination that imports of R-125 from China were sold in the United States at less than fair value during the period of investigation. *See Pentafluoroethane (R-125) From the People's Republic of China*, 86 Fed. Reg. 45,959 (Dep't of Commerce Aug. 17, 2021) ("Preliminary Determination") and accompanying Preliminary Decision Mem. (Aug. 10, 2021) ("PDM"), PR 220.

Importantly, in the Preliminary Determination, Commerce found that the information on the record was inadequate to value the upstream raw materials used to make the intermediate input AHF. Thus, Commerce preliminarily found that it would value AHF directly, using the intermediate-input method, i.e., the use of the value of AHF when constructing the normal value of the subject R-125, instead of the value of the upstream raw materials that went into making AHF. *See* PDM at 34–35.

In addition, Commerce found that the information on the record was inadequate to support Sanmei's claims for offsets, either for by-products generated during Qingliu's in-house production of AHF, i.e., fluosilicic acid and fluorine gypsum, or for by-products generated during Qingliu's production of subject R-125, i.e., hydrochloric acid and R-134a. *See id.* at 35.

To value freight expenses within China, Commerce used data from the World Bank's publication, *Doing Business 2020: Russian Federa-*

tion. *See* PDM at 31. Commerce calculated a U.S. dollars per metric ton per kilometer (USD/MT/KM) rate for transport within Russia using export and import data for two cities, Moscow and St. Petersburg. *See* Preliminary Surrogate Value Mem. at 10 (stating that the *Doing Business* report "gathers information concerning the distances and costs to transport products in a container for export [from Moscow and the city of St. Petersburg] to the border crossing at the St. Petersburg Port and import from the border crossings at Krasnaya Gorka . . . [to Moscow], and [from] St. Petersburg Port [to the city of St. Petersburg].").

Following issuance of the Preliminary Determination, Commerce verified Sanmei's reported information. In lieu of on-site, in-person verification,[7] Commerce issued a verification questionnaire to which Sanmei timely responded. *See* Sanmei's Verification Resp. (Sept. 20, 2021), PR 255.

III. Final Determination

On December 30, 2021, Commerce issued the Final Determination. As it had in the Preliminary Determination, Commerce valued the intermediate input AHF directly (instead of valuing the upstream raw materials) based on two main findings: (1) "Sanmei failed to demonstrate that it accurately reported or substantiated the consumption of the upstream material inputs used in the production of AHF," and (2) "Sanmei failed to provide sufficient evidence to support its claim that it can differentiate between self-produced AHF and AHF purchased from other sources." Final IDM at 21.

Commerce also denied Sanmei's claimed offsets for the by-products generated in the production of the intermediate input AHF and the subject R-125. Commerce found that, though "[t]he evidence on the record demonstrates that Sanmei and Qingliu sold fluosilicic acid, fluorine gypsum [by-products of the intermediate input, AHF], hydrochloric acid, and R-134a [by-products of the subject R-125]" during the period of investigation, which demonstrated that the by-products had commercial value, "there [was] insufficient evidence to corroborate [1] the volume of by-products generated in the production of subject merchandise and [2] whether the sales of by-products included quantities generated in the production of non-subject merchandise or from other purchases." *Id.* at 29.

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[7] On-site verification by Commerce officials was suspended during the COVID-19 global pandemic. *See* Preliminary Determination, 86 Fed. Reg. at 45,961 ("Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification."). In lieu of on-site verification, Commerce issued a verification questionnaire. *See* Sanmei Verification Questionnaire (Sept. 9, 2021), PR 247.

As to freight expenses, Commerce left its surrogate inland freight calculation unchanged from the Preliminary Determination. *Id.* at 42–43.

Commerce calculated a final estimated weighted-average dumping margin of 277.95% for Sanmei, which it assigned as the all-others rate to the eligible non-individually examined companies. *See* Final Determination, 87 Fed. Reg. at 1,118. This action followed.

STANDARD OF REVIEW

The court will sustain a determination by Commerce unless it is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B)(i).

LEGAL FRAMEWORK

In an antidumping case, Commerce must determine whether goods are being sold, or are likely to be sold, in the United States at less than fair value. *See* 19 U.S.C. § 1673. Commerce generally makes this determination by comparing export price and normal value, as adjusted. *See id.* §§ 1677a, 1677b.

Export price, or U.S. price, is "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States." *Id.* § 1677a(a).

Normal value is "the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country." *Id.* § 1677b(a)(1)(B)(i). Where the exporting country is a nonmarket economy, such as China, the statute directs Commerce to determine normal value using surrogate values for the factors of production used to make the subject merchandise and for general expenses and profit. *See id.* § 1677b(c)(1); *Fujian Yinfeng Imp. & Exp. Trading Co. v. United States*, 46 CIT __, __, 607 F. Supp. 3d 1301, 1307 (2022).

I. Determining Normal Value in the Nonmarket Economy Context

Where, as here, the exporting country is a nonmarket economy, Commerce determines the value of each of the factors of production using surrogate data from a market economy country. Factors of production include, but are not limited to, the "hours of labor required," the "quantities of raw materials employed," and "amounts of energy and other utilities consumed." 19 U.S.C. § 1677b(c)(3)(A)-(C). The statute directs Commerce to use the "best available information"

to value the factors of production. *Id.* § 1677b(c)(1). When valuing these factors, Commerce must "utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—(A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise." *Id.* § 1677b(c)(4). Additionally, Commerce considers and "selects . . . surrogate values that are publicly available, are product-specific, reflect a broad market average, and are contemporaneous with the period of review." *Qingdao Sea-line Trading Co. v. United States*, 766 F.3d 1378, 1386 (Fed. Cir. 2014) (citation omitted). To determine what constitutes the best available information, Commerce must act according to the statute's purpose: "to obtain the most accurate dumping margins possible." *Shandong Huarong Gen. Grp. Corp. v. United States*, 25 CIT 834, 838, 159 F. Supp. 2d 714, 719 (2001) (citation omitted), *aff'd*, 60 F. App'x 797 (Fed. Cir. 2003).

II. Direct Valuation of Intermediate Input Instead of Upstream Raw Materials

An "intermediate input" is an input made from upstream raw materials. Where a respondent in a nonmarket economy country self-produces an intermediate input and uses the intermediate input to produce the subject merchandise, Commerce has developed a practice, under certain circumstances, of valuing the intermediate input directly, instead of the upstream raw materials. *See Anshan Iron & Steel Co. v. United States*, 28 CIT 1728, 1730, 358 F. Supp. 2d 1236, 1238 (2004) (stating that intermediate inputs were "produced [by a respondent] from various purchased materials" and were used "[i]n the process of producing [subject merchandise]").

The method of directly valuing an input is called the "intermediate-input method." *See CP Kelco US, Inc. v. United States*, No. 13–00288, 2015 WL 1544714, at *10 (Ct. Int'l Trade Mar. 31, 2015) ("Under the intermediate-input method, Commerce will occasionally treat a self-produced product as an input even though it has been made in house."). Commerce will apply the intermediate-input method, for example, under circumstances where "it is clear that attempting to value the factors used in a production process yielding an intermediate product would lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup." *Jining Yongjia Trade Co. v. United States*, 34 CIT 1510, 1516 (2010) (not reported in the Federal Supplement); *see also* Final IDM at 21 (stating circumstances where intermediate-input method is employed). Generally, Commerce does not apply the

intermediate-input method "unless there are questions about the accuracy and validity of reported factors of production," i.e., the upstream raw materials. *Linyi Chengen Imp. & Exp. Co. v. United States*, 44 CIT __, __, 487 F. Supp. 3d 1349, 1355 (2020).

In addition to valuing directly any inputs that are self-produced (again, under certain circumstances, Commerce will employ the intermediate-input method), Commerce will also value directly any inputs that are purchased. *See CP Kelco US, Inc.*, 2015 WL 1544714, at *10 ("[I]f a producer buys a necessary product readymade, then Commerce will value the product itself as an input.").

III. Adjusting Normal Value Through By-Product Offsets

Neither the antidumping statute nor Commerce's regulations address by-product offsets.[8] Commerce has a practice, however, of adjusting[9] normal value by providing offsets for by-products generated during the production of subject merchandise when not all raw materials are included in the final product. *NTSF Seafoods Joint Stock Co. v. United States*, 44 CIT __, __, 487 F. Supp. 3d 1310, 1322 (2020) ("As not all raw materials are incorporated into the final product, Commerce provides offsets for byproducts generated during the production process." (citations omitted)).

"Generally, . . . the Department's practice has been to grant an offset to normal value, for sales of by-products generated during the production of subject merchandise, if the respondent [i.e., producer] can demonstrate that the by-product is either resold or has commercial value and re-enters the respondent's production process." *Arch Chems.*, 33 CIT at 956 (footnote omitted); *see also NTSF Seafoods*, 44 CIT at __, 487 F. Supp. 3d at 1322.

When deciding whether to grant a respondent producer's claim for a by-product offset, Commerce looks at "whether the respondent's production process for subject merchandise actually generated the amount of [by-product] claimed as a by-product offset." *Arch Chems., Inc. v. United States*, 35 CIT 424, 428 (2011) (not reported in the

[8] It is worth noting that, from as far back as 2006, this Court has observed that, in the absence of any statutory law on the treatment of by-product offsets, "Commerce has not filled the statutory gap with a regulation." *Arch Chems., Inc. v. United States*, 33 CIT 954, 956 (2009) (not reported in the Federal Supplement) (citing *Guangdong Chems. Imp. & Exp. Corp. v. United States*, 30 CIT 1412, 1422, 460 F. Supp. 2d 1365, 1373 (2006)). This remains the case today.

[9] The antidumping statute provides for the adjustment of both export price and normal value. *See, e.g.*, 19 U.S.C. § 1677a(c); *id.* § 1677b(a)(6)-(7); *see also* 19 C.F.R. § 351.401(b)(1)-(2) (2021) ("In making adjustments to export price, constructed export price, or normal value, the Secretary will adhere to the following principles: (1) The interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment; and (2) The Secretary will not double-count adjustments.").

Federal Supplement) (citation omitted). Thus, the information on the record regarding the quantity of the inputs used, and the by-products generated, is important to the Department's decision of whether to grant an offset. "Commerce values byproduct offsets based on the best available information." *NTSF Seafoods*, 44 CIT at __, 487 F. Supp. 3d at 1322 (citation omitted). The party claiming the by-product offset bears the burden of substantiating the offset and "must present Commerce with sufficient information to support its claims." *Id.* (citing *Arch Chems.*, 33 CIT at 956).

DISCUSSION

I. Commerce's Direct Valuation of the Intermediate Input AHF Is Supported by Substantial Evidence and Otherwise in Accordance with Law

In the Final Determination, Commerce applied the intermediate-input method to determine the value of one input, i.e., AHF, directly instead of valuing the upstream raw materials reportedly used to make it (including fluorite powder, 105% sulfuric acid, and 98% sulfuric acid). The Department's decision to use the value of the intermediate input AHF (when constructing normal value) was based on several factual findings.

First, Commerce found that it could not accurately value the upstream raw materials because the record lacked any information regarding how Sanmei and Qingliu accounted for yield loss, i.e., the amounts of raw materials consumed but not incorporated into the intermediate input AHF or R-125, since neither company tracked yield loss. *See* Final IDM at 23 ("[W]e continue to find that Sanmei did not provide adequate evidence for how it accounts for the yield loss from the fluorite powder, 105 percent sulfuric acid, and 98 percent sulfuric acid inputs in the consolidated [factors of production] database.").

Next, Commerce found that the record lacked sufficient information on water consumption for either Sanmei or Qingliu, so it could not accurately value water as an upstream raw material. That is, Sanmei failed to report water as a direct input, and Qingliu did not measure its water consumption. *See* PDM at 34 ("Water is . . . a significant input in the production of AHF and R-125, but Sanmei failed to report water as a direct material input . . . ."); *see* Final IDM at 23 ("Qingliu does not measure its water consumption . . . .").

As noted, Commerce filled the gap in the record regarding water consumption, when producing the subject R-125, using Sanmei's

reported consumption of water as an energy input[10] as neutral facts available in the Final Determination. Final IDM at 35 (finding "that information regarding Qingliu's production process and its consumption of water as a direct input [for R-125] is missing from the record. Accordingly, we continue to rely on Sanmei's production process and reported consumption of water as a direct input [for R-125] as neutral [facts available] for the final determination."). Commerce found that this same data was "insufficient to justify valuing the upstream inputs of AHF." *Id.* (finding that "while [Commerce] will use Sanmei's reported water consumption as [facts available] for the final determination, we continue find that the reported water consumption is insufficient to justify valuing the upstream inputs of AHF or granting a by-product offset" as discussed in earlier comments). In other words, Commerce found Sanmei's reported water consumption data usable as a direct input to construct the normal value of R-125, but not to value the upstream raw materials used to make AHF.

Commerce's stated reason for not using Sanmei's water consumption data for purposes other than constructing the normal value of R-125 was a concern for accuracy, i.e., to "avoid using inaccurate data stemming from the fact that Qingliu does not measure its water consumption." *Id.* at 23–24 (finding that "by valuing AHF directly, we are avoiding a burdensome analysis that would require more information, which the record does not contain, and we avoid using inaccurate data stemming from the fact that Qingliu does not measure its water consumption, which is a significant cost element with a tremendous impact on yield loss and by-product production").

Finally, Commerce found it could not accurately value the upstream raw materials used to make AHF because the record was unclear regarding the extent to which different types (self-produced or purchased) of AHF were used in the workshops that produced subject and non-subject merchandise. Commerce found that though Sanmei and Qingliu reported that they both self-produced and purchased AHF, "there is no record evidence demonstrating how Sanmei differentiates between the production of AHF and purchases of AHF." Final IDM at 22. In so finding, Commerce rejected Sanmei's claim that there was

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[10] In the Preliminary Surrogate Value Memorandum, Commerce stated:

> Although Sanmei reported water as an energy input, we are treating it as a direct material because *it appears that it is actually incorporated into the by-products produced during the manufacture of R-125.* To the extent that Sanmei may have also used water for energy purposes, because it is impossible to break out the water used as a direct material from the reported quantities, we are treating the entirety of Sanmei's water input as a direct material input.

Preliminary Surrogate Value Mem. at 6 (emphasis added).

sufficient evidence to show that only self-produced AHF was used in subject merchandise workshops: "We disagree that a simple comparison of production, consumption, and warehouse-out quantities of AHF is conclusive on its own merits." *Id.* Commerce found that the lack of record evidence documenting the extent of the use of self-produced and purchased AHF was relevant to its analysis, stating by way of explanation:

> Sanmei reported that it produces and purchases AHF from affiliated and unaffiliated Chinese suppliers and that this AHF is either resold and shipped directly to customers or is used in the production of non-subject merchandise. However, the record remains unclear as to how Sanmei is able to distinguish whether self-produced AHF or purchased AHF is used in the various subject and non-subject merchandise producing workshops. Therefore, even if Sanmei produced more AHF than it consumed in the production of R-125, the record still indicates that there were other types of AHF available and used on Sanmei's premises, but the extent of their use is not documented.

Id. In other words, for Commerce, the lack of clarity in the record regarding the extent of the use of self-produced and purchased AHF to make subject and non-subject merchandise justified using the value of AHF (instead of the value of upstream raw materials) when constructing normal value.

Plaintiffs argue that substantial evidence does not support Commerce's finding that it could not accurately value the upstream raw materials that Qingliu used to make AHF. First, Plaintiffs argue that the record contained enough information to calculate yield loss for AHF. While Plaintiffs acknowledge that "neither [Sanmei] nor [Qingliu] tracked loss yields in the ordinary course of business during the period of investigation," they insist that Sanmei "submitt[ed] accurate unit consumption rates and output rates for the[] inputs" used to make AHF (fluorite powder, 105% sulfuric acid, and 98% sulfuric acid), and so it was possible to calculate yield loss regarding Qingliu's

production of AHF using the formula they had proposed to Commerce.[11] Pls.' Br. at 17–18.

Next, Plaintiffs insist that Sanmei did, in fact, report its water consumption as a direct material input: "Sanmei reported the water factor of production in Field 5.3 [for ("Energy")] of its [factors of production] databases, which included the entirety of its water usage, including both water consumed as a raw material input and water consumed as an energy component." *Id.* at 22. Plaintiffs further argue that Sanmei properly "reported its own water consumption factor as . . . Qingliu's per unit water consumption in the [factors of production] calculations" because Qingliu did not track its water usage.[12] *Id.* at 23.

Finally, Plaintiffs insist that whether the record shows how Sanmei differentiated between self-produced or purchased AHF was not relevant to Commerce's normal value determination because Qingliu reported that it consumed only self-produced AHF when producing the subject R-125. *Id.* at 16–17.

Based on the record here, in particular in the absence of yield loss data, Commerce's use of the intermediate-input method was justified. This Court has sustained Commerce's use of the intermediate-input method when "it could not achieve an accurate result in constructing normal value if it used the [upstream factors of production] reported by respondent." *Jining Yongjia Trade Co.*, 34 CIT at 1517 (sustaining Commerce's direct valuation of the intermediate input).

The parties do not dispute that yield loss information is required to calculate the amounts of raw materials, including fluorite powder, 105% sulfuric acid, and 98% sulfuric acid, that ultimately were not incorporated into the AHF that was used by Qingliu to make subject

[11] Plaintiffs have proposed the following calculation, or formula, to derive yield loss for AHF in the absence of actual yield loss information maintained in the ordinary course of business:

> The administrative record confirms that the total inputs for AHF were equal to 250,046 MT, including 92,273.976 MT of fluorite powder, 73,111.711 MT of 98% sulfuric acid, 40,049.549 MT of 105% sulfuric acid, 16,492.35 MT of water at . . . Sanmei, and 28,118 MT of calculated water at . . . Qingliu. The total reported output was equal to 217,730 MT, including 44,089.461 MT of AHF, 6,272.37 MT of fluosilicic acid by product and 167,367.8 MT of fluorine gypsum by-product. The total yield loss [for AHF] was thus 250,046 – 217,730 = 32,316, or about 13%.

Pls.' Br. at 18.

[12] It is worth noting that, contrary to Commerce's Section D questionnaire instructions, Sanmei did not contact Commerce regarding its decision to calculate a water consumption amount for Qingliu. *See* Final IDM at 23 ("In an attempt to rectify the record, Sanmei reported its own water usage as a surrogate value for Qingliu's water consumption without contacting Commerce per the initial questionnaire."); *see also* Initial Quest. at D-1 ("If you have any questions regarding how to compute the factors of the merchandise under consideration, please contact the official in charge *before* preparing your response to this section of the questionnaire.").

R-125.[13] *Zhejiang Sanhua Co. v. United States*, 39 CIT __, __, 61 F. Supp. 3d 1350, 1353 (2015) (stating that yield loss is "the percentage of inputs neither incorporated into the final product nor recovered and sold as scrap"). Nor is there any dispute that neither Sanmei nor Qingliu measured yield loss in the ordinary course of business. In the absence of actual yield loss data, it was reasonable for Commerce to find that it could not determine, with accuracy, the amounts of raw materials (including fluorite powder, 105% sulfuric acid, and 98%sulfuric acid) consumed in the production of AHF and that, thus, directly valuing the intermediate input AHF would lead to a more accurate result.

The court cannot credit Plaintiffs' counterarguments. First, it was not unreasonable for Commerce to decline to use the formula proposed by Sanmei to derive yield loss, when the formula itself requires information that is not found on the record—the amount of water consumed as a direct input in the production of AHF. *See* Pls.' Br. at 18 (including in the proposed yield loss formula an amount for "*calculated* water at . . . Qingliu" (emphasis added)). As Sanmei acknowledged in its administrative case brief, water is an important cost element in the production of AHF, but neither Sanmei nor Qingliu reported it as a direct input. Moreover, without yield loss information Commerce could not calculate the amounts of raw materials, including fluorite powder, 105% sulfuric acid, and 98% sulfuric acid, that ultimately were not incorporated into the AHF that was used by Qingliu to make subject R-125.

Next, the court is not convinced, as Plaintiffs now argue, that the amount of water reported in Field 5.3 ("Energy") of Sanmei's Section D factors of production database "included the entirety of its water usage, including both water consumed as a raw material input and water consumed as an energy component." Pls.' Br. at 22. A review of the record supports Commerce's finding that Sanmei did not report water as a direct material input. *See, e.g.*, Sanmei's Sec. D Resp. Ex. D-7 (reporting 98% sulfuric acid, 105% sulfuric acid, and fluorite powder as material inputs, but reporting water under "Energy") and Ex. D-8 (same list of inputs). Rather, Sanmei only reported water in response to the "Energy Inputs" section of Commerce's questionnaire.

[13] While yield loss includes the quantity of a raw material lost during production, it also includes the weight of a raw material lost during production. *See An Giang Fisheries Imp. & Ex. Joint Stock Co. v. United States*, 41 CIT __, __, 203 F. Supp. 3d 1256, 1277 (2017) (stating that, where fingerlings (small fish) were a factor of production for frozen fish fillets, the yield loss was the number of fingerlings that died during a certain period); *Jining Yongjia Trade Co.*, 34 CIT at 1515, 1519 (indicating that, in the production of fresh garlic, yield loss was the amount the garlic shrunk during production, occurring when garlic lost water weight).

See id. Ex. D-8. In Sanmei's calculation worksheets of energy, including water, it did not specify that water was a direct material input. *See id.* Ex. D-11 (providing a "[calculation] worksheet of [Sanmei]'s water," including "[a]llocation of water for cooling" and "[w]ater of each workshop"). Thus, it is hardly clear that, on this record, using Plaintiffs' proposed formula would lead to an accurate calculation of yield loss particularly with respect to upstream production of AHF. *See Jining Yongjia Trade Co.*, 34 CIT at 1520 (sustaining application of intermediate-input method where reliance on the respondent's reported factors of production "would lead to an inaccurate result because the Department would not be able to account for a significant element of cost" (citation omitted)).

Finally, the absence of information on the record regarding how self-produced AHF was differentiated from purchased AHF is not, as Plaintiffs argue, irrelevant to Commerce's decision whether to value AHF directly. The lack of clarity in the record as to the extent self-produced AHF and purchased AHF were used in warehouses where subject merchandise and non-subject merchandise were made provided reasonable grounds for Commerce to question (1) how much of any chemical was used to make the AHF that was ultimately used to make R-125 (rather than non-subject merchandise), and (2) whether only self-produced AHF was used to make subject R-125. Commerce considered the record evidence, including "production, consumption, and warehouse-out quantities of AHF," as advocated by Sanmei, and reasonably found that the absence of record evidence as to where the purchased AHF was used (subject or non-subject workshops) favored valuing AHF directly under the intermediate-input method. Accordingly, Commerce's direct valuation of the intermediate input AHF is sustained.

II. Commerce's Denial of Sanmei's Claimed By-Product Offsets Is Supported by Substantial Evidence and Otherwise in Accordance with Law

The court next turns to Commerce's denial of Sanmei's claimed offsets for by-products generated during the production of AHF (i.e., fluosilicic acid and fluorine gypsum) and R-125 (i.e., hydrochloric acid and R-134a).

In the Final Determination, Commerce found:

> Consistent with our practice, we continue to deny Sanmei's claims for a by-product offset for its production of AHF, which produces fluosilicic acid and fluorine gypsum, and R-125, which produces hydrochloric acid and R-134a, because Sanmei has not provided sufficient evidence to substantiate the quantity of fluo-

> silicic acid, fluorine gypsum, hydrochloric acid, and R-134a generated from the production of subject merchandise during the [period of investigation].

Final IDM at 28. Commerce stated, by way of explanation, that "providing the production quantity is important because, in considering a by-product offset, Commerce examines whether the by-product was produced from the quantity of the [factors of production] reported and whether the respondent's production process for the merchandise under consideration actually generated the amount of the by-product claimed as an offset." *Id.* For Commerce, the evidence on the record was insufficient to (1) establish "the volume of by-products generated in the production of subject merchandise," and (2) show "whether the sales of by-products included quantities generated in the production of non-subject merchandise or from other purchases." *Id.* at 29.

Plaintiffs insist that Sanmei's reporting of the by-products produced and sold by Sanmei and Qingliu provided sufficient information to grant the claimed offsets:

> [Sanmei] first reported the monthly quantities of each of the four by-products produced separately by both [Sanmei] and [Qingliu], and separately reported the monthly quantity of each of the four by-products sold by both [Sanmei] and [Qingliu], respectively. Further, in separate worksheets, [Sanmei] further provided the inventory-in records for [Sanmei] and [Qingliu], respectively, that identified which of the four by-products . . . entered into inventory and specified the workshop that generated the entered by-product. Finally, these figures reconciled to the production reports that included the By-Products produced during the production of AHF and the subject merchandise.

Pls.' Br. at 20. In other words, Plaintiffs maintain that they have provided Commerce with sufficient data to track the quantity of by-products, by simple addition and subtraction, through the different production stages and that denying the claimed offsets was unreasonable on this record.

Additionally, to address apparent inaccuracies in Sanmei's reported data, namely that two by-products (fluorine gypsum and hydrochloric acid) weighed more than their respective "main products," Plaintiffs provided to Commerce, by way of explanation, certain chemical

formulas.[14] By "main product" Plaintiffs appear to refer to the product whose manufacture generated each by-product: AHF in the case of the by-product fluorine gypsum and R-125 in the case of the by-product hydrochloric acid.

For Plaintiffs, "[t]he large volume of documentation regarding the production, inventory and sales records of the by-products resulting from the production of AHF and the subject merchandise demonstrate[s] that Sanmei's reported by-product quantities are accurate and that Commerce's denial of the claimed by-product offsets should be reversed." Pls.' Br. at 20.

For the following reasons, the court finds that Commerce's denial of each of the claimed offsets is supported by the record.

A. AHF By-Product Offsets: Fluosilicic Acid and Fluorine Gypsum

First, Commerce found that some of the same record shortcomings that prevented it from valuing the upstream raw materials that went into making AHF, also justified its decision to deny the claimed offsets for fluosilicic acid and fluorine gypsum. Significantly, Commerce found that the absence from the record of actual yield loss data meant that Commerce could not accurately determine the volume of by-products generated. Final IDM at 29 ("Sanmei and Qingliu do not track yield loss at each stage of production.").

The absence from the record of yield loss data provided reasonable grounds for Commerce to find that it could not determine, with accuracy, the volume of by-products generated during production of AHF. That is, because there was no actual data on the record regarding yield loss for each of the raw materials that went into making AHF (including fluorite powder, 105% sulfuric acid, and 98% sulfuric acid), Commerce reasonably found that it could not determine whether the quantities of the claimed by-product offsets were accurate and, thus, could provide the basis for an accurate adjustment to normal value. *See Arch Chems.*, 35 CIT at 428–30 (noting that the question when determining whether to grant a by-product offset is "whether the respondent's production process for subject merchandise actually generated the amount of [by-product] claimed as a

[14] In their brief, Plaintiffs state:

> Further, [Sanmei] introduced two chemical reaction formulae to explain why certain by-products out-weighted the main product. During the production process, the actual weight ratio of by-product to the main product for fluorine gypsum was 3.7931, a deviation of 0.3931 or 11% from the theoretical ratio and the actual weight ratio of by-product to the main product for hydrochloric acid was 4.0667, a deviation of 0.0067 or 0.2%. The fact that two of the by-products had weights greater than the main product does not detract from the accuracy of the provided by-product offset information.

Pls.' Br. at 20.

by-product offset" (citation omitted); *see also* 19 C.F.R. § 351.401(b)(1) (2021) (when seeking to adjust normal value, "[t]he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment").

The presence on the record of Plaintiffs' proposed chemical formulas fails to convince the court that Commerce's denial of the offset was unreasonable. Plaintiffs acknowledge that the record information they urge Commerce to rely on, in the absence of actual by-product data, contained apparent inaccuracies that had to be accounted for. For Plaintiffs these inaccuracies could be explained through the use of formulas they proposed. Commerce disagreed:

> [T]he chemical formulas that Sanmei provided may indeed be the standard equations for AHF and R-125, but, as Sanmei is aware, the output is a function of the input. Therefore, while Sanmei and Qingliu can demonstrate the amount of AHF and R-125 produced, *both formulas remain unsubstantiated regarding the by-products*. Specifically, for AHF, Sanmei has not demonstrated that it can adequately separate the production of AHF from sales [i.e., purchases] of AHF.

Final IDM at 29 (emphasis added). In other words, even taking into account these formulas, Commerce found that Sanmei's failure to adequately differentiate self-produced AHF from purchased AHF in its records meant that Commerce could not accurately determine the amounts of by-products generated from the self-production of AHF.

So, because it was not possible, using record evidence, to determine if the amount of each of the two principal inputs, i.e., AHF and PCE, consumed in the production process resulted in (1) the production of subject R-125, (2) the generation of by-products, or (3) yield loss, it was not actually possible to calculate a by-product offset.

In addition, other factors that led Commerce to deny the offsets for fluosilicic acid and fluorine gypsum were (1) the lack of data regarding the consumption of water as a direct input; and (2) lack of clarity in the record as to how self-produced AHF and purchased AHF were differentiated in workshops that produced subject and non-subject merchandise. *See* Final IDM at 35, 29. These record deficiencies also reasonably support Commerce's decision to deny the claimed offsets because, as Sanmei acknowledged in its administrative case brief, "[w]ater is an important factor in the production of both AHF and R-125 and has a tremendous impact on yield loss and by-product production." Sanmei's Case Br. at 12; *see also* Final IDM at 29–30. It seems generous for Commerce to allow all of the water reported as

energy to be used as an input in making R-125; asking Commerce to make an assumption that an exact proportion of the water was used to make AHF seems to be overreach. Moreover, as the court noted in Section I, the lack of clarity in the record as to what extent self-produced AHF and purchased AHF were used in workshops where subject merchandise and non-subject merchandise were made provided reasonable grounds for Commerce to question whether only self-produced AHF was used to make the subject R-125. That being the case, Commerce could not be sure that the claimed offsets for fluosilicic acid and fluorine gypsum were, in fact, generated from the production of subject merchandise during the period of investigation. Accordingly, the court finds Commerce's denial of offsets for fluosilicic acid and fluorine gypsum reasonable.

B. R-125 By-Product Offsets: Hydrochloric Acid and R-134a

The court next turns to Commerce's denial of offsets for by-products generated during Qingliu's production of subject R-125, i.e., hydrochloric acid and R-134a.

1. Hydrochloric Acid

Unlike other by-products for which Sanmei claimed offsets, hydrochloric acid is generated during the production of both subject R-125 itself and non-subject merchandise. Pls.' Br. at 22 ("The hydrochloric acid by-product is the exception [among the other by-products fluosilicic acid, fluorine gypsum, and R-134a] because it is a by-product that is generated from both the production of R-125, the subject merchandise, and non-subject merchandise.").

In the Final Determination, Commerce found that Sanmei's reporting failed to "adequately track production and sales of hydrochloric acid" that was generated during Qingliu's production of subject R-125:

> Sanmei states that "the generation of hydrochloric acid from different workshops is recorded in the production reports and the inventory records," but the information provided in the warehouse-in records and the screen shots of the warehouse management system do not appear to account for and demonstratively show a difference between production records in the R-125 and non-subject merchandise workshops, and there is no supporting documentation for distinguishing warehouse-out records for hydrochloric acid. Given that the "hydrochloric acid by-product is just mixed together without distinction of source,"

> [as reported by Sanmei] we find Sanmei's arguments fail to demonstrate that it can adequately track production and sales of hydrochloric acid.

Final IDM at 30. As with the AHF by-product fluorine gypsum, Plaintiffs claim that a formula that Sanmei provided to Commerce, adequately accounted for the amount of hydrochloric acid generated by the production of R-125. Commerce was unconvinced:

> Sanmei's argument that the chemical formula is sufficient to demonstrate weight ratios is incongruous with the fact that water, a significant input in the production of R-125 that Qingliu does not measure, may comprise as much as 70 percent of hydrochloric acid. This fact introduces an element of variability, which Sanmei recognizes in its statement that "taking account of water and impurities contained in [the] by-product as well as any possible variance in reaction conditions and facility environment, a deviation to [a] certain extent from the theoretical ratio may also take place in the actual industrial production process." *Without adequate tracking of water at Qingliu, whose sales are the only reviewable sales in the [period of investigation], a theoretical calculation without adequate supporting documentation does not produce an accurate result in the production of hydrochloric acid*.

Id. (emphasis added).

The court finds Commerce's denial of the claimed offset for hydrochloric acid reasonable based on this record. Commerce addressed the shortcomings it found in the record evidence: "information provided in the warehouse-in records and the screen shots of the warehouse management system do not appear to account for and demonstratively show a difference between production records in the R-125 and non-subject merchandise workshops, and there is no supporting documentation for distinguishing warehouse-out records for hydrochloric acid." Final IDM at 30. Without clear production records distinguishing the amount of hydrochloric acid generated in the subject R-125 workshops from that generated in non-subject workshops, Commerce reasonably found it could not "substantiate the quantity of . . . hydrochloric acid . . . generated [by Qingliu] from the production of subject merchandise during the [period of investigation]." *Id.* at 28. In other words, for Commerce, Sanmei failed to adequately distinguish between hydrochloric acid generated in the production of subject R-125 and that generated in the production of non-subject merchandise. As a result, Sanmei could track neither the volume nor the value

of self-generated hydrochloric acid and hydrochloric acid generated from the manufacture of non-subject merchandise because apparently the acid from each source was mixed together.

Additionally, missing information regarding Qingliu's consumption of water as a direct input in the production of subject R-125 further supports Commerce's decision to deny the offset for hydrochloric acid. Water "may comprise as much as 70 percent of hydrochloric acid." Final IDM at 30 (observing that the fact that water may comprise as much as 70% of hydrochloric acid "introduces an element of variability . . . . Without adequate tracking of water at Qingliu, whose sales are the only reviewable sales in the [period of investigation], a theoretical calculation without adequate supporting documentation does not produce an accurate result in the production of hydrochloric acid"). So, without water consumption data, it was not unreasonable for Commerce to find that it could not calculate accurately the quantity of the hydrochloric acid generated as a by-product of subject R-125. Thus, the court finds that the record supports Commerce's decision to deny the claimed offset for hydrochloric acid.

2. R-134a

R-134a is also a by-product generated in the production of R-125. With respect to R-134a, Commerce found that "Sanmei has not justified a by-product offset," stating, by way of explanation, certain flaws in the record evidence:

> First, the record remains unclear as to the processing that R-134a undergoes prior to introduction in non-subject merchandise or when it is sold. Second, Sanmei failed to provide adequate records for tracking production and sales of R-134a. We note that, while there are warehouse-out records, there are no supporting documents for warehouse-in records. Third, Sanmei notes that it purchases R-134a from Qingliu and sells R-134a to affiliated and unaffiliated parties. However, without proper warehouse-in documentation, it is unclear if Sanmei or Qingliu are able to distinguish R-134a resulting from the production of R-125 or purchases from affiliated or unaffiliated parties.

Final IDM at 30–31. Thus, for these reasons, Commerce denied the claimed offset for R-134a.

Plaintiffs do not make any specific argument with respect to Commerce's denial of the offset for R-134a, except to repeat that, as with the other claimed by-product offsets, Sanmei's reporting was sufficient to grant the offset. Pls.' Br. at 19–20. In other words, Plaintiffs do not demonstrate that Commerce's cited reasons for denying the

offset lack the support of record evidence, but rather they claim that other evidence on the record supports granting it. The evidence relied upon by Plaintiffs, however, is lacking because, as Commerce stated: "while there are warehouse-out records, there are no supporting documents for warehouse-in records." Final IDM at 30. "[W]ithout proper warehouse-in documentation, it is unclear if Sanmei or Qingliu are able to distinguish R-134a resulting from the production of R-125 or purchases from affiliated or unaffiliated parties." *Id.* at 31. Thus, Plaintiffs have not convinced the court that Commerce's finding that Sanmei did not satisfy its "burden to demonstrate [the respondent's] eligibility for a requested by-product offset" was unreasonable. *Id.*

III. Commerce's Calculation of the Surrogate Freight Rate Is Supported by Substantial Evidence and Otherwise in Accordance with Law

Finally, the court turns to Commerce's calculation of a surrogate freight rate. In the Final Determination, Commerce relied on data from the *Doing Business* report for Russia to calculate the surrogate freight rate. *See* Final IDM at 43. The report was included as an exhibit to the petition and in Sanmei's surrogate value submission. *See* Pet. for the Imposition of Antidumping and Countervailing Duties on Behalf of Honeywell International Inc., Crowell & Moring LLP, Vol. II Ex. II-9a (Jan. 11, 2021), PR 9; *see also* Sanmei's Initial Surrogate Value Submission Ex. 3 (June 14, 2021), PR 170.

Commerce stated how it determined the surrogate freight rate using a simple average:

> The *Doing Business Russia* report provides costs to both import and export a standardized cargo of 15 MT in a 20-foot container in Russia by truck for two locations, Moscow and St. Petersburg. Specifically, *Doing Business Russia* provides two distances for export: (1) from [the city of] St. Petersburg to St. Petersburg Port of 8 km; and (2) from Moscow to the port in St. Petersburg of 724 km. *Doing Business Russia* also provides two distances for import: (1) from [the city of] St. Petersburg to St. Petersburg Port of 8 km; and (2) from Moscow to the Krasnaya Gorka border crossing in Smolenskaya Oblast of 500 km. Using these data, we calculated a USD/MT/KM [U.S. dollars per metric ton per kilometer] rate for each transaction and then used the simple average of those two rates to calculate an average USD/MT/KM inland freight rate. Then, because the data used are not contemporaneous with the [period of investigation], we adjusted the simple-average rate using the Russian producer price index

> (PPI) to find the average USD/MT/KM inland freight [surrogate value]s for import and export. The resultant truck freight rates were $1.039/MT/KM for export and $1.038/MT/KM for import.

Final IDM at 43.[15] All cost data related to domestic transport included the cost of loading and unloading. *See* Sanmei's Initial Surrogate Value Submission Ex. 3 at 82 (according to the *Doing Business* report, the indicators in the report measure "[l]oading or unloading of the shipment at the warehouse or port/border").

For its part, Sanmei reported that the distance between its factory and the nearest port was 187.2 kilometers. *See* Sanmei's Sec. D Resp. at 19. Plaintiffs contest (1) Commerce's inclusion of the St. Petersburg export and import freight data in its inland freight calculation, and (2) Commerce's use of a simple average of the Moscow and St. Petersburg freight data.

For the following reasons, the court finds that substantial evidence supports Commerce's calculation of the surrogate freight rate. It should be noted that Sanmei would benefit from the exclusion of the St. Petersburg data because it would lower Sanmei's calculated antidumping duty margin. Pls.' Br. at 8 ("Inclusion of the short-distance intra-city freight data not only vastly overstated [Sanmei's] calculated antidumping duty margin, but failed to reflect [Sanmei's] actual freight experience during the period of investigation.").

A. Commerce Reasonably Included St. Petersburg Data in Its Freight Calculation

In the Final Determination, Commerce found that the *Doing Business* report, and in particular, the Moscow and St. Petersburg data, were the best available information:

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[15] Commerce did not change its method for valuing inland freight charges between the Preliminary Determination and the Final Determination. As stated in the surrogate value memorandum:

> We valued foreign inland freight charges using the World Bank's *Doing Business 2020: Russia*. This report gathers information concerning the distances and costs to transport products in a container for export to the border crossing at the St. Petersburg Port and import from the border crossings at Krasnaya Gorka, Smolenskaya Oblast, and St. Petersburg Port. We calculated a per-MT, per-km inland freight rate for export of 1.069 USD, using the 15,000 kg weight provided in *Doing Business 2020: Russia*. We calculated a per-MT, per-km inland freight rate for import of 1.068 USD, using the 15,000 kg weight provided in *Doing Business 2020: Russia*. Because the data being used pre-dates the [period of investigation] (*i.e.*, it is recent as of May 2019), we adjusted the values using the Russian [producer price index], which resulted in a surrogate inland freight rate for export of 1.039 USD per-MT per-km and a surrogate inland freight rate for import of 1.038 USD per-MT per-km.

Preliminary Surrogate Value Mem. at 10.

> The broad market average provided by both the short- [St. Petersburg] and long-haul [Moscow] freight distances in *Doing Business Russia* continues to be the "best available information" on the record of this investigation. Therefore, we continue to rely upon all the data for truck freight found in *Doing Business Russia* to calculate the import/export truck freight [surrogate value]s for purposes of this final determination.

Final IDM at 45. In other words, Commerce found that both the long-distance Moscow freight data and the short-distance St. Petersburg freight data were the best available information because they represented broad market averages.

Plaintiffs contest Commerce's inclusion of the St. Petersburg (short haul) data in the surrogate freight rate calculation. As noted, Sanmei reported that the distance between its factory and the nearest port was 187.2 kilometers, which it claims is a "long-distance." For Plaintiffs, "[i]nclusion of the short- distance intra-city St. Petersburg import and export data points in the simple-averaged freight calculations severely distorted the surrogate USD/MT/KM freight rate." Pls.' Br. at 8. Plaintiffs insist that the St. Petersburg data is aberrational and does not reflect Sanmei's experience:

> Due to the great disparity between 8 KM distance travelled in the in the [sic] intra city datapoint [i.e., St. Petersburg] compared to the 724 KM or 500 KM distance travelled in the long-distance data points [i.e., Moscow], the calculated St. Petersburg intra-city freight rate is aberrational when applied to a to [sic] [Sanmei]'s long-distance freight factor. The intra-city freight rate was more than 23 times greater than either of the two calculated Moscow long-distance freight rates. Given the great disparity between the intra-city and long-distance freight rates evidence in the World Bank data, for purposes of the final determination Commerce should calculate the surrogate freight rate using only the long-distance data points that reflect the manner in which [Sanmei]'s [sic] incurred its trucking freight costs. Inclusion of the short-distance intra-city freight data not only vastly overstated [Sanmei]'s calculated antidumping duty margin, but failed to reflect [Sanmei]'s actual freight experience during the period of investigation.

Id. As a result, although Sanmei placed on the record the *Doing Business* report (and no party contests that it is the best available information), Plaintiffs argue that the use of the St. Petersburg data from the report is unsupported by substantial evidence because the

actual distance Sanmei's product traveled between its factory and the nearest port is much longer than the 8-kilometer figure used as a part of the average when determining the freight rate to and from the city of St. Petersburg.

The court finds that Commerce reasonably included, in its surrogate, the value calculations of truck freight data for the import and export of merchandise to and from Moscow (long-haul) and St. Peterburg (short-haul) to approximate a broad market average of freight prices. *See Qingdao Sea-line Trading Co.*, 766 F.3d at 1386; *see also Jacobi Carbons AB v. United States*, 38 CIT 932, 940, 992 F. Supp. 2d 1360, 1368 (2014) ("When making a 'best available information' finding, this Court, among other things, has repeatedly confirmed the importance that the information used to value the factors of production (1) represents a broad market average of prices for the input in question, and (2) be exclusive of taxes and duties.").

Here, for freight costs related to the importation of merchandise, Commerce calculated (1) a short-haul freight rate of $2.050 per kilogram per kilometer, and (2) a long-haul truck freight rate of $0.087 per kilogram per kilometer. *See* Preliminary Surrogate Value Mem. Ex. 8. The simple average of these two rates was $1.068 per metric ton per kilometer (USD/MT/KM). *Id.* After applying an inflator, the surrogate inland freight rate for import was 1.038 USD USD/MT/KM. *Id.* For freight costs related to the exportation of merchandise, Commerce calculated (1) a short-haul truck freight rate of $2.050 per kilogram per kilometer, and (2) a long-haul truck freight rate of $0.088 per kilogram per kilometer. *Id.* The simple average of these two rates was $1.069 per metric ton per kilometer (USD/MT/KM). *Id.* After applying an inflator, the surrogate inland freight rate for import was 1.039 USD USD/MT/KM. *Id.*

The short-haul freight rate ($2.050 per kilogram per kilometer), that Plaintiffs would have Commerce exclude from its calculation, is higher than the long-haul freight rate ($0.087 per kilogram per kilometer, and $0.088 per kilogram per kilometer) because each trip includes loading and unloading that increases the cost per kilometer. Under the facts here, the inclusion of the short-haul freight rates was not unreasonable. Sanmei's reported distance between its factory and the nearest port (187.2 kilometers) exceeds the distance between the city of St. Peterburg and the port (8 kilometers) and is shorter than the distance between Moscow and the border (500- and 724-kilometers) that Sanmei argues Commerce should rely on to make its freight calculation. Commerce reasonably found that using both the Moscow and St. Petersburg data more closely represents a broad market average than only using the Moscow freight data. Based on

the available record information, substantial evidence supports Commerce's inclusion of the St. Petersburg freight data in its calculation of the inland freight surrogate values.

Plaintiffs' arguments to the contrary are unconvincing. For Plaintiffs, the "short-distance intra-city" St. Petersburg freight data is aberrational because (1) the distances for St. Petersburg are much smaller than those for Moscow, and (2) the St. Petersburg data does not reflect the "long-distance" freight expenses Sanmei incurred during the period of investigation—only the "long-distance" Moscow data does. The problem with Plaintiffs' argument is that its proposal of using only the long-haul rate would undoubtedly end up being aberrational.

In the Final Determination, Commerce stated why the "short-distance" St. Petersburg rate is higher than the "long-distance" Moscow rate: "[I]t is the fixed costs related to loading, unloading, and traveling within the urban environment that increase the cost per kilometer of short-haul trucking." Final IDM at 45 (quotation marks and citation omitted). Thus, for Commerce, neither the short distance nor long distance values are necessarily aberrational. *Id.* Rather, Commerce found, "they are representative of the separate experiences they reflect." *Id.* (quotation marks and citation omitted). In other words, the freight rate for long distances is lower than for short distances on a per kilometer basis because on a long-haul trip the expense of loading and unloading is spread over a longer distance than is the case for short distances. Plaintiffs have failed to demonstrate that this finding lacks record support or that their argument that the long-haul rate alone would be reasonable when Sanmei's actual distances were far shorter than the *Doing Business* long-haul rates.

Plaintiffs have failed to show that using the St. Petersburg freight data resulted in an inaccurate surrogate value for Sanmei's freight expenses. Plaintiffs assume that Sanmei incurred "long-distance" expenses for shipping freight and thus that St. Petersburg's "short-distance intra-city" freight was unrepresentative. *See* Pls.' Br. at 8. Commerce considered, and rejected, this argument in the Final IDM, finding that "[t]he record evidence does not demonstrate that the inclusion of a short freight distance is unrepresentative." Final IDM at 45. As support for its finding, Commerce noted: "The record shows that the distance between Sanmei and Wenzhou port (*i.e.*, the nearest seaport to Sanmei) is 187.2 km." *Id.* at 45 n.296. This distance is closer to the distance of the St. Petersburg freight (8 kilometers) than it is to that of the Moscow freight (500 kilometers for import or 724 kilometers for export). Excluding the St. Petersburg data, then,

would tend to produce a less accurate result than including data from both cities (and using the simple average of this data). Commerce reasonably concluded that using data from both cities results in a freight rate that most accurately represents Sanmei's freight factor of production. *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1379 (Fed. Cir. 2013) ("An overriding purpose of Commerce's administration of antidumping laws is to calculate dumping margins as accurately as possible." (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990))).

Commerce reasonably concluded that the shorter St. Petersburg data is not aberrational or unrepresentative of Sanmei's freight expenses when averaged with the Moscow data. Commerce's inclusion of the St. Petersburg data in its surrogate freight calculation for Sanmei is supported by substantial evidence. Had Plaintiffs proposed something other than the use of the long-haul rate alone, the court might have reached a different conclusion, but given the record evidence, Commerce's simple average is reasonable.

B. Substantial Evidence Supports Commerce's Use of a Simple Average to Calculate Freight Rate

Plaintiffs also challenge Commerce's use of a simple average to calculate a surrogate freight rate for Sanmei. *See* Pls.' Br. at 12.

Instead of a simple average, Plaintiffs propose a method that involves making two "weighted-average" calculations to determine the surrogate freight rate: one using the export freight data for Moscow and St. Petersburg, and the other using import freight data for Moscow and St. Petersburg. For each calculation, Plaintiffs insist, Commerce should have averaged each individual component of the Moscow and St. Petersburg data (i.e., cost, weight, and distance) and divided the average cost by the average weight. Then, Commerce should have divided the result by the average distance.[16] In other words, Plaintiffs propose averaging the components of the freight rates (cost, weight, and distance), instead of averaging the St. Peters-

[16] In Plaintiffs' words:

> To properly calculate an average [U.S. dollars per metric ton per kilometer (USD/MT/KM)] freight rate from two transactions that incorporate three distinct variables, it is necessary to first calculate the average cost of the two transactions, the average weight of the two transactions, and the average distance of the two transactions. Then the averaged dollar cost of the two transactions should be divided by the averaged weight of the two transactions and then divided by the averaged distance of the two transactions.

Pls.' Br. at 12. The "two transactions" that Plaintiffs refer to are the Moscow and St. Petersburg freight rates, used for calculating the average export freight rate and the average import freight rate.

burg and Moscow export and import U.S. dollars per metric ton per kilometer freight rates to reach an average export freight rate and an average import freight rate.

Plaintiffs claim that a simple average is an "incorrect mathematical formula" because it "is not equal to the 'average USD per MT per KM[']freight rates for import and export transactions." Pls.' Br. at 11–12. In other words, for Plaintiffs, a simple average does not result in an average U.S. dollars per metric ton per kilometer freight rate. Plaintiffs insist that "[o]nly [their proposed] weight averaging methodology, will result in the intended 'average USD per MT per KM' freight rate (i.e., a weighted average of the three variables that are incorporated into the calculation of the freight factor)." *Id.* at 12.

In the Final Determination, Commerce found that Plaintiffs had failed to demonstrate that their proposed method would increase the accuracy of the surrogate freight rates (and, thus, the dumping margin):

> Sanmei fails to explain why the simple-average methodology is logically or mathematically incorrect, other than to point out that the freight rates and dumping margins are higher than if we were to use Sanmei's preferred methodology. We do not find this argument convincing. . . . [T]he fact that [a surrogate value] is larger or smaller than others on the record does not render it distorted or aberrational. By the same logic, a methodology is not mathematically incorrect simply because it produces a larger or smaller result. Instead, it must be demonstrated to be incorrect on logical or mathematical principles, which Sanmei has not done. In addition, just because the end result using Commerce's preferred simple-average methodology leads to a higher margin for Sanmei, and a higher portion of the margin attributable to truck freight, does not render Commerce's calculation improper. [Normal value] and U.S. price are necessarily a function of their parts. In an NME context, when certain [surrogate value]s (such as truck freight) are high and are used on both sides of the dumping calculations (*i.e.*, truck freight is frequently incorporated in the buildup of [normal value] when calculating the per-unit value of inputs and deducted from U.S. price), the effect on the margin may be significant. However, this does not mean that the [surrogate value]s are distorted, nor does it mean [the] resultant dumping margin is overstated. It only indicates that Sanmei's dumping of subject merchandise is more

> attributable to the costs incurred for transportation of materials and finished merchandise than to the direct material costs incurred to produce the merchandise.

Final IDM at 46–47. Thus, Commerce found that the rate that resulted from using a simple average was not aberrational just because it was less advantageous to Sanmei.

In addition, Commerce points out that the addition of weight as a factor when calculating the freight rate may have the effect of understating the cost of loading and unloading. As Commerce stated, each freight shipment carried certain fixed costs for loading, unloading, and traveling. *See id.* at 46. Thus, by including cost, weight, and distance all together for the Moscow shipments, and then again for the St. Petersburg shipments (i.e., calculating surrogate freight rates in USD/MT/KM for both Moscow and St. Petersburg), Commerce retained the fixed costs of loading, unloading, and traveling that are tied to each freight shipment. For Commerce, it would be unreasonable to separately average the cost, then the weight, and then the distance of the shipments for Moscow and St. Petersburg, as Plaintiffs propose, because these fixed costs would be discounted in each shipment, and therefore would not be accurately accounted for. *Id.* ("While the calculation of the truck freight [surrogate value]s is not capable of taking into account every variable affecting truck freight based on the record information, when averaging the component parts fixed costs (*i.e.*, related to loading, unloading, and traveling) are disproportionally spread out over longer average distances rather than being taken into account in their respective transactions, such as with the simple-average methodology.").

Because Plaintiffs neither explain why Commerce's use of a simple average was unreasonable, nor show how using their proposed method would lead to a more accurate calculation than Commerce's chosen method (particularly when the undervaluation of loading and unloading costs is taken into account), the court is not persuaded that

Commerce has erred in its calculations. Plaintiffs' other arguments are similarly unpersuasive.[17]

CONCLUSION

Based on the foregoing, the court denies Plaintiffs' motion for judgment on the agency record and sustains the Final Determination. Judgment will be entered accordingly.

Dated: December 13, 2024
New York, New York

/*s*/ *Richard K. Eaton*
JUDGE

[17] Plaintiffs additionally argue that Commerce acted arbitrarily by using in its initiation notice the weighted average method set forth in the petition, but then using a simple average for its Final Determination. *See* Pls.' Br. at 13 (arguing that "[i]t was arbitrary for Commerce to use different methodologies to calculate the same surrogate freight rates at different points in the same investigation."). When Commerce issues an initiation notice, however, it is simply announcing its decision to initiate an investigation. *See* 19 C.F.R. § 351.203(c)(1). Commerce issues this notice when it determines that "the petition alleges the elements necessary for the imposition of a duty under [19 U.S.C. § 1673] and contains information reasonably available to the petitioner supporting the allegations." 19 U.S.C. § 1673a(c)(1)(A)(i). To make this determination, Commerce examines the "accuracy and adequacy of the evidence provided in the petition," based on "sources readily available to [Commerce]." *Id.*; *see also* 19 C.F.R. § 351.202(b)(7)(i)(B) (requiring a petition requesting the imposition of antidumping duties to contain "[a]ll factual information (particularly documentary evidence) relevant to the calculation of the export price and the constructed export price of the subject merchandise and the normal value of the foreign like product . . ."). Thus, Plaintiffs' argument cannot be credited because all Commerce did in its initiation notice was determine, based on the information available to it in the petition, that a formal investigation was warranted. 19 U.S.C. § 1673a(a)(1). The Final Determination, on the other hand, was based on the record developed after the investigation had been initiated.

Slip Op. 25–04

KAPTAN DEMIR CELIK ENDUSTRISI VE TICARET A.S., Plaintiff, ICDAS CELIK ENERJI TERSANE VE ULASIM SANAYI, A.S., Plaintiff-Intervenor, v. UNITED STATES, Defendant, REBAR TRADE ACTION COALITION, Defendant-Intervenor.

Before: Jane A. Restani, Judge
Court No. 24–00018

[The court sustains the Department of Commerce's date of sale determination, its DIFMER analysis, and the resulting antidumping rate in its Final Result of the Periodic Review and denies Plaintiff's Motion for Judgment on the Agency Record.]

Dated: January 15, 2025

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Joshua Wilson Moore, U.S. Department of Justice, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, argued for defendant. With him on the brief was *David W. Richardson*, U.S. Department of Commerce, Office of Chief Counsel for Trade Enforcement and Compliance of Washington, DC.

Maureen E. Thorson, Wiley Rein, LLP, of Washington, DC, argued for defendant-intervenor, Rebar Trade Action Coalition. With her on the brief were *Alan H. Price*, *Jeffrey O. Frank*, *John R. Shane*, and *Stephen A. Morrison*.

OPINION AND ORDER

Restani, Judge:

Before the court is a motion for judgment on the agency record pursuant to USCIT Rule 56.2 challenging the final results of the United States Department of Commerce ("Commerce"). Pl.'s Final Mot. for J. on the Agency Record, ECF No. 42 (July 23, 2024) ("Pl. Mot."). The final results at issue stem from Commerce's administrative review into allegations that domestic sales of certain Steel Concrete Reinforcing Bar ("Rebar") from the Republic of Turkey were made at less-than-fair-market-value between July 1, 2021, and June 30, 2022. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 Fed. Reg. 54463 (Dep't Commerce Sept. 6, 2022) ("*Initiation of Investigation*"); *Steel Concrete Reinforcing Bar From the Republic of Turkey: Final Results of the Antidumping Duty Administrative Review; 2021–2022*, 88 Fed. Reg. 89663 (Dec. 28, 2023) ("*Final Results*"); *Steel Concrete Reinforcing Bar From the Republic of Turkey and Japan: Amended Final Affirmative Antidumping Duty Determination for the Republic of Turkey and Antidumping Duty Orders*, 82 Fed. Reg. 32532 (Dep't Commerce July 14, 2017) ("*Antidumping Order*").

Plaintiff, Kaptan Demir Celik Endustrisi ve Ticaret A.S. ("Kaptan") and Plaintiff-Intervenor, Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.S. ("Icdas"), request the court hold that Commerce's decision to use the invoice date as the date of sale for sales of subject merchandise to the U.S. market is unsupported by substantial evidence. They also challenge Commerce's calculation of the differences in merchandise ("DIFMER") adjustment as impermissibly distortive. Defendant, the United States ("Government") and defendant-intervenor, the Rebar Trade Action Coalition, ask that the court sustain the Final Results.

BACKGROUND

On July 14, 2017, Commerce published in the Federal Register the Antidumping Order on steel concrete reinforcing bar from the Republic of Turkey ("Turkey"). *Antidumping Order*, 82 Fed. Reg. 32532. On September 6, 2022, Commerce published the initiation notice for the 2021–2022 administrative review of the Antidumping Order covering steel rebar from Turkey. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 Fed. Reg. 54463, 54473 (Dep't Commerce Sept. 6, 2022). Commerce selected Kaptan as a mandatory respondent for individual examination. *See Memorandum from R. Copyak to S. Thomson re: Respondent Selection Memorandum for Administrative Review of the Antidumping Duty Order on Steel Concrete Reinforcing Bar from the Republic of Turkey; 2021–2022* at 1, C.R. 5, P.R. 29 (Oct. 7, 2022). On July 27, 2022, Plaintiff filed a request for administrative review. *Kaptan's Request for Antidumping Administrative Review*, P.R. 4 (July 27, 2022). Plaintiff-Intervenor Icdas also filed a request for an administrative review on July 28, 2022. *Turkish Parties' Request for Antidumping Administrative Review*, P.R. 6 (July 28, 2022).

On August 1, 2023, Commerce issued its preliminary results for Period of Review ("POR") of July 1, 2021, through June 30, 2022, in which it found that Kaptan's sales of the subject merchandise to the United States were below normal value. *Steel Concrete Reinforcing Bar From the Republic of Turkey*, 88 Fed. Reg. 50100–02, 50100–01 (Dep't Commerce Aug. 1, 2023) ("*Preliminary Results*"), and accompanying Preliminary Decision Memorandum, *Memorandum from J. Maeder to A. Elouaradia, re: Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from the Republic of Turkey; 2021–2022*, P.R. 120 (July 26, 2023) ("*PDM*"). Commerce assigned Kaptan a

dumping margin of 29.30 percent. *Memorandum from B. Ballesteros to The File, re: Preliminary Results Analysis Memorandum for Kaptan Demir Celik Endustrisi Ve Ticaret A.S./Kaptan Metal Dis Ticaret Ve Nakliyat A.S.* at 1, P.R. 121 (July 6, 2023) ("*PAM*"). In its analysis, Commerce relied on the invoice date rather than the contract date as the date of sale. *PDM* at 9. Kaptan submitted a case brief to Commerce on August 31, 2023, contesting Commerce's choice of the invoice date as the date of sale. *See Kaptan's Admin. Case Brief*, C.R. 377, P.R. 136 (Aug. 31, 2023) ("*Case Br.*"). To support its factual contention that the contract date was the date of sale, Kaptan cited the lack of any changes to the material terms of the contract at issue, its business practices for its U.S. exports, and a Board Resolution barring changes to price and quantity terms of a contract without Board approval. *Case Br.* at 16–27. Kaptan also contested Commerce's DIFMER adjustment methodology as distorting the calculation of the dumping margin.[1] *Id.* at 31.

On December 20, 2023, Commerce issued the Final Results of the administrative review. The results were published in the Federal Register on December 28, 2023. *See Final Results*, 88 Fed. Reg. 89663. In the Final Results, Commerce maintained its use of the invoice date as the date of sale and its DIFMER adjustment methodology. *See Memorandum from S. Fullerton to J. Maeder, re: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review Antidumping; 2021–2022* at 13–21, P.R. 150 (Dec. 20, 2023) ("*IDM*"). It assigned Kaptan a 25.86 percent dumping rate. *Memorandum from B. Ballesteros to The File, re: Final Results Analysis Memorandum for Kaptan Demir Celik Endustrisi Ve Ticaret A.S./Kaptan Metal Dis Ticaret Ve Nakliyat A.S.* at 1, P.R. 151 (Dec. 20, 2023). During the POR for this antidumping analysis, Turkey experienced an annual inflation rate of greater than twenty-five percent. *Letter from Colakoglu & Kaptan to U.S. Dep't of Commerce, re: Notice of Inflation Rate Above 25 Percent* at 1, Attachment 1, P.R. 37 (Oct. 21, 2022); *see also PDM*.

Commerce primarily relied on three factors to make its determination that the invoice date was the proper date of sale. First, Kaptan's response in its section A questionnaire indicated that the parties could amend the shipment date, size breakdown, and potentially the

[1] The DIFMER analysis is part of Commerce's calculation of the normal value of the subject merchandise. When the exact product being exported into the United States is not also sold in the home market, Commerce selects a similar merchandise and calculates the normal value of that merchandise as a stand-in. Commerce then conducts the DIFMER analysis to adjust the normal value so that it does not improperly reflect production cost discrepancies that arise from physical differences in the products. *See* 19 C.F.R. § 351.411; 19 U.S.C. § 1677b(a)(6)(C)(ii). This process will be discussed in further detail.

quantity until the goods are shipped or invoiced. *IDM* at 15. Second, one version of the contract left the size breakdown open until a later date. *Id.* at 16. Third, Kaptan's contracts allowed for changes to be made to material terms after the contract date. *Id*. Based on these considerations, Commerce concluded that the material terms of the sale were established on the invoice date and that its calculation of the dumping rate should reflect the invoice date, not the contract date.

On January 29, 2024, Kaptan commenced the instant action against the Government pursuant to 19 U.S.C. § 1516a(a)(2)(A)(i)(II). Summons, ECF No. 1 (Jan. 29, 2024). In its Complaint, Kaptan claims that the Antidumping Order is unsupported by substantial evidence or is otherwise contrary to law because Commerce incorrectly determined Kaptan's date of sale and that Commerce's calculation of Kaptan's duty rate using an inflation-adjusted DIFMER calculation improperly caused distortions based on time differences rather than differences between the product characteristics. Compl. at 7–8, ECF No. 9 (Feb. 26, 2024).

For the reasons set out below, the court sustains the Department of Commerce's Final Results and denies Plaintiff's Motion for Judgment on the Agency Record.

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction pursuant to 28 U.S.C. § 1581(c) and section 516A of the Tariff Act of 1930 (the "Act"), *codified as amended*, 19 U.S.C. § 1516(a)(2) (2012). The court sustains Commerce's results in an AD investigation unless they are "unsupported by substantial evidence on the record, or otherwise not in accordance with law[.]" 19 U.S.C. § 1516a(b)(1)(B)(i); *see also Fujitsu Gen. Ltd. v. United States*, 88 F.3d 1034, 1038 (Fed. Cir. 1996).

DISCUSSION

I. Legal Framework

In an antidumping analysis, Commerce determines whether the subject merchandise is being sold or likely to be sold at a less than fair value price in the United States. 19 U.S.C. § 1673. Thus, Commerce must conduct a "fair comparison" of the prices for a good sold in the respondent company's home market ("normal value") with the prices that they charge for the same or similar good in the U.S. market ("export price")[2] to determine whether the good is being, or is likely to

[2] The court will use "export price" to mean export price or constructed export price.

be, sold at less than fair value. *See* 19 U.S.C. §§ 1677a; 1677b(a); *see also Smith-Corona Grp. v. United States*, 713 F.2d 1568, 1577–78 (Fed Cir. 1983).

To determine the normal value of the subject merchandise, after eliminating below cost sales, Commerce considers the price for goods sold in the home market during the relevant POR. The normal value must be from "a time reasonably corresponding to the time of sale used to determine the export price," leading Commerce to identify a specific date on which the sale occurred (the "date of sale"). 19 U.S.C. § 1677b(a)(1)(A). The date of sale is the date on which "the exporter or producer establishes the material terms of the sale." 19 C.F.R. § 351.401(i) (2020). The date of sale becomes an important variable at this stage of the process because, while it affects the price comparison, it also establishes which sales are within the POR and thus subject to that POR's administrative review. Commerce's regulations provide that:

> In identifying the date of sale of the subject merchandise or foreign like product, [Commerce] normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, [Commerce] may use a date other than the date of invoice if [Commerce] is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

Id. Thus, under normal circumstances, the date of sale regulation "establishes a 'rebuttable presumption' in favor of the invoice date unless the proponent of a different date produces satisfactory evidence that the material terms of sale were established on that alternate date." *Eregli Demir ve Celik Fabrikalari T.A.S. v. United States*, 308 F. Supp. 3d 1297, 1306 (CIT 2018) (citations omitted). The material terms generally include the terms of price, quantity, payment, and delivery. *Id.* at 1307 (citing *Sahaviriya Steel Indus. Pub. Co. v. United States*, 34 CIT 709, 727, 714 F. Supp. 2d 1263, 1280 (2010), *aff'd*, 649 F.3d 1371 (Fed. Cir. 2011)).

To determine which sales to use for the price comparison, Commerce calculates the Cost of Production ("COP") during a time period that would permit production of the product in the ordinary course of business. 19 U.S.C. § 1677b(b)(3)(A). Once Commerce determines the COP, it then calculates the weighted average COP for each individual

product model, also called "CONNUMs,"[3] across the POR with production quantity as the weighting factor. *IDM* at 23. When, as here, the home market experienced high inflation, Commerce calculates the COP on a monthly basis rather than across the entire POR to minimize the impact of inflation on the analysis. *Id.* at 23. Once Commerce has calculated the COP, it then compares the COP to the price of home market sales to determine which sales were made below cost and excludes these sales from the home market sales database. 19 U.S.C. § 1677b(b)(1). Ordinarily, Commerce then compares the normal value to the export price to determine whether and how much dumping has occurred. 19 U.S.C. §§ 1673; 1677a; 1677b.

Commerce, however, employs an additional step in the analysis when the exporter does not sell the same merchandise in the home market. In such a scenario, Commerce picks similar merchandise being sold in the home market as the merchandise being exported. Commerce conducts a DIFMER analysis to determine what production cost differences arise from physical differences in the products and adjusts the normal value accordingly. In high inflation contexts, similar to its COP process described above, Commerce conducts the DIFMER analysis on a monthly-indexed basis rather than across the entire POR to minimize the impact of inflation on the analysis. *See* 19 C.F.R. § 351.411; 19 U.S.C. § 1677b(a)(6)(C)(ii); *IDM* at 22–24.

II. Commerce's use of the invoice date for the date of sale is supported by substantial evidence

Kaptan argues that Commerce improperly used the invoice date to determine the date of sale. Kaptan asserts that instead, Commerce should have used the contract date because the material terms of the sale were established on the contract date and did not change during the POR. Pl. Mot. at 9. Kaptan contends that the material terms were set at the time of the contract because of Kaptan's sales practices for its exports to the United States, along with an internal resolution of Kaptan's Board of Directors that required that all contracts be approved by the Board and once approved, could not be altered. *Id.* at 5. Commerce argues that its use of the invoice date as the date of sale was supported by substantial evidence because the initial questionnaire response indicated that the material terms of sale were not set

[3] Commerce uses the term "CONNUM" to refer to an individual product model. *See, e.g.*, *Memorandum from S. Fullerton to J. Maeder, re: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review Antidumping; 2021–2022*, at 2, P.R. 150, (Dec. 20, 2023) ("*IDM*"). This is an abbreviation of "control number." *Id.* A "control number" is assigned to each distinct model of subject merchandise sold in the home and U.S. markets based on relevant product characteristics. *See, e.g.*, *Kaptan's Response to the Department's Section C Questionnaire* at C-10, C.R. 48–70, P.R. 61 (Dec. 8, 2022). The court uses "CONNUM," "product," and "merchandise" interchangeably.

on the date of contract. Def.'s Resp. to Pl.'s Mot. for J. on the Agency Record at 27, ECF No. 53 (Sept. 20, 2024) ("Gov. Resp."). Further, Commerce points to ambiguity as to when the contracts were actually signed, along with language in the contract indicating that the parties could revise and modify the contract after the contract date, to argue that the material terms were not set on the contract date. Oral Argument at 41:20; Gov. Resp. at 26.

The governing statute does not specify the method by which Commerce must determine the date of sale for the purposes of determining the normal value of the subject merchandise.[4] The Statement of Administrative Action accompanying the Uruguay Round Agreements Act defines "date of sale" as "a date when the material terms of sale are established." Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Rep. No 103–316, vol. 1, at 810 (1994), *reprinted in* 1994 U.S.C.C.A.N. 4040, 4153. Congress designated the Statement of Administrative Action as "an authoritative expression by the United States concerning the interpretation of the Uruguay Round Agreements and this Act . . ." 19 U.S.C. § 3512(d). The material terms of sale may include price, quantity, delivery and payment terms, and quantity tolerance level. *See, e.g.*, *Sahaviriya Steel Indus.*, 34 CIT at 727, 714 F. Supp. 2d at 1280.

[4] The parties dedicate much of their briefing to the issue of the deference owed to Commerce's antidumping determination in the wake of the *Loper Bright* decision due to the statute's silence regarding the proper method to determine the date of sale. *See* Pl.'s Final Mot. for J. on the Agency Record at 10–20, ECF No. 42 (July 23, 2024) ("Pl. Mot."); Def.'s Resp. to Pl.'s Mot. for J. on the Agency Record at 15–24, ECF No. 53 (Sept. 20, 2024) ("Gov. Resp."); Rebar Trade Coalition Resp. to Pl. Mot. for J. on the Agency Record at 19–27, ECF No. 51 (Sept. 20, 2024) ("Rebar Resp."); Pl. Reply Br. at 3–11, ECF No. 57 (Nov. 1, 2024) ("Pl. Reply"). Commerce contends that *Loper Bright* is not applicable here because *Loper Bright* only concerns step two of the *Chevron* analysis, which occurs when a statute is ambiguous. Gov. Resp. at 17. Commerce argues that the term "date of sale" in the statute is not ambiguous because it simply means the "date on which the material terms of sale are established." Gov. Resp. at 18 (citing *Allied Tube & Conduit Corp. v. United States*, 24 CIT 1357, 1368, 127 F. Supp. 2d 207, 217 (2000)); *see also* Rebar Resp. at 20. Kaptan argues that the statute is ambiguous because it does not define "date of sale," meaning the court must independently interpret the statute's best meaning. Pl. Mot. at 10 (citing *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 399 (2024)). Kaptan does not dispute, however, that "date of sale" in the statute means the date at which the material terms of the sale were established. Pl. Mot. at 10–11. Rather, Kaptan disputes Commerce's methodology for determining when the material terms of the sale are established. Under step two of *Chevron*, when a statute was silent or ambiguous with respect to the specific issue at hand, the court evaluated whether Commerce's interpretation was "based on a permissible construction of the statute" and then inquired into "the reasonableness of Commerce's interpretation." *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984). Now, generally courts exercise their independent judgment in deciding statutory meaning when the statute is silent or ambiguous regarding Commerce's authority. *See Loper Bright*, 603 U.S. at 393. The court need not resolve this issue, however, because both parties agree that "date of sale" in the statute means the date when the material terms of sale were established. There is therefore no real dispute about the ambiguity or meaning of the statute. The court looks only to whether Commerce's date of sale analysis was supported by substantial evidence as required by 19 U.S.C. § 1516a(b)(1)(B)(i).

As discussed above, Commerce's regulations create a rebuttable presumption that Commerce will use the invoice date as the date of sale, but that Commerce may use another date if it better reflects the date on which the material terms of the sale were established. *See* 19 C.F.R. § 351.401(i); *see also Eregli*, 308 F. Supp. 3d at 1306. This presumption is meant to be flexible and is not irrefutable. For example, the Preamble to Commerce's regulation states that "[i]n some cases, it may be inappropriate to rely on the date of invoice as the date of sale, because the evidence may indicate that, for a particular respondent, the material terms of sale usually are established on some date other than the date of invoice." *Preamble*, 62 Fed. Reg. 27296, 27349 (Dep't Commerce May 19, 1997) ("*Preamble*"); *see also* 19 C.F.R. § 351.401(i). Commerce has a "'well-established and long-standing practice' of looking beyond the invoice date to the parties' actual course of conduct, as well as the parties' expectations concerning the transaction, to determine whether an earlier date—such as the contract date—represents the point at which the parties reached a meeting of the minds on the material terms of sale."[5] *Nucor Corp. v. United States*, 33 CIT 207, 259–260, 612 F. Supp. 2d 1264, 1308 (2009).

A party proposing a date other than the invoice date must show that the administrative record as a whole demonstrates that the material terms were "finally" and "firmly" established on that date and that the agreement was not merely a preliminary agreement in an industry where renegotiation is common. *See Preamble* at 27348–49; *see also Yieh Phui Enterprise Co. v. United States*, 35 CIT 1122, 1125–28, 791 F. Supp. 2d 1319, 1322–25 (2011). Accordingly, the question here is whether Kaptan has pointed to sufficient evidence in the administrative record to show that Commerce's decision to use the invoice date as the date of sale was not supported by substantial evidence.

Kaptan reported in its initial questionnaires that the material terms of sale were established on the contract date. *Kaptan's Response to the Department's Section A Questionnaire* at A-20, C.R.

[5] In its brief, Kaptan argues that Commerce has been inconsistent in its approach to the date of sale determination, meaning that it has not applied the "single, best meaning" of the statute as required by *Loper Bright*. Pl. Mot. at 17 (citing *Loper Bright*, 603 U.S. at 400). Kaptan argues that Commerce has been contradictory in its definition of what is a "material" term of sale and what constitutes a material change to those terms. Pl. Mot. at 15–16. Kaptan does not allege, however, that Commerce misidentified a material term in the contract at issue. Rather, this dispute centers on whether the material terms themselves were set at the time of the contract. The court therefore does not address whether Commerce has been inconsistent in what it considers to be a "material" term of sale or a material change to those terms.

7–18, P.R. 45 (Nov. 7, 2022) ("*Kaptan's Sec. A*"). In its Final Results, Commerce, however, found that the administrative record as a whole did not rebut the presumption in favor of using the invoice date and that the material terms were not established until the invoice date. *IDM* at 13, 20–21. To make this determination, Commerce relied on several pieces of evidence. First, in its response to Commerce's Anti-Dumping Questionnaire, Kaptan stated that "[f]or U.S. sales, the parties may amend the latest shipment date, size breakdown, and, to a lesser extent, quantity until the goods are shipped/invoiced." *Kaptan's Sec. A* at A-23; *IDM* at 15. Second, one of the signed versions of the contract states that the size breakdown "will be advise[d] latest by 15.02.2022" but contradictorily has a size breakdown attached. *Kaptan's Sec. A* Ex. A-7 at 67; *see IDM* at 16; *PAM* at 3. Third, a provision of the contract states that "any revision and/or modification to the present contract are [sic] valid only if made in writing and duly signed by both parties." *Kaptan's Response to the Department's Section C Questionnaire* Ex. C-6.b at 138, C.R. 48–70, P.R. 61 (Dec. 8, 2022) ("*Kaptan's Sec. C*"); *see IDM* at 16. Presumably, this indicated to Commerce that amendments to the contract were possible. The court addresses each of these considerations in turn.

a. Kaptan's questionnaire response suggests that the material terms were not established on the contract date.

Commerce argues that Kaptan's section A questionnaire response indicates that the material terms of sale were not established at the date of contract. Gov. Resp. at 24. Kaptan contends that this response was merely a general answer that was clarified by Kaptan's subsequent questionnaire responses which shows that there were no changes to the material terms of the contract. Oral Argument at 7:19. Kaptan argues that Commerce's reliance on this initial questionnaire fails to properly consider other evidence that Kaptan submitted throughout the review. Pl. Reply at 12–13.

As indicated, the response at issue states that "[f]or U.S. sales, the parties may amend the latest shipment date, size breakdown, and, to a lesser extent, quantity until the goods are shipped/invoiced." *Kaptan's Sec. A* at A-23; *IDM* at 15. In the questionnaire response, Kaptan also notes that "Kaptan continues to review its books and records and will provide further data in support of its date of sale reporting in the Section C questionnaire response." *Kaptan's Sec. A* at A-20.

Kaptan's section A questionnaire response suggests that the material terms were not established on the contract date because they could be amended by the contracting parties up until the shipment or invoice date. Even if the court were to accept Kaptan's contention that

the response was either improperly included or was merely an imprecise initial response that was clarified by the later questionnaire responses, Kaptan has cited no evidence of record that it explicitly alerted Commerce to such a mistake. Oral Argument at 9:55. Commerce therefore properly relied on this general description as part of its date of sale analysis. Commerce however should ground its date of sale analysis primarily on the facts of the sale in question, as well as the practice of the relevant industry. *See Preamble* at 27348–49; *see also Yieh Phui Enterprise*, 35 CIT at 1123–1127, 791 F. Supp. 2d at 1322–25. Accordingly, the court turns to the other pieces of evidence on which Commerce relied as those considerations focus on the actual sale at issue.

b. The versions of the sales contract provided do not establish when the material terms were set.

Commerce argues that the material terms of the sale were not established on the contract date because one of the two signed versions of the contract did not establish the size breakdown. Gov. Resp. at 31. Kaptan contends that the version of the contract Commerce references was merely a prior draft of the contract and that the first page of the draft contract was removed and replaced with the updated version when the contract was finalized and signed. Pl. Mot. at 30 (citing *Kaptan's Response to the Department's Supplemental Sections A-C Questionnaire* at 29, C.R. 180–246, P.R. 89–90 (June 1, 2023) ("Kaptan's Supp. A-C")).

The version of the contract on which Commerce relies states that the size breakdown "will be advise[d] latest by 15.02.2022." *Kaptan's Sec. A* Ex. A-7 at 67. A size breakdown is attached to this version of the contract. *Id.* at 73–74. This version has the date printed on the top of the page and is signed and initialed. *Id.* at 67–74. Every page of both the contract and the size breakdown attachment is initialed. *Id.* None of the signatures or initials, however, are dated. *Id.* The other version of the same contract specifies that the size breakdown is "as per attached sheet" and has the same date printed on the top of the page. *Kaptan's Sec. C* Ex. C-6.b at 199. This version of the contract also attaches the same size breakdown, and every page of the contract and size breakdown is signed or initialed. *Id.* at 199–206. The pagination on both versions of the contract and the size breakdown is identical. *Kaptan's Sec. A* Ex. A-7 at 67–74; *Kaptan's Sec. C* Ex. C-6.b at 199–206.

The fact that a prior version of the contract states that the size breakdown "will be advise[d] latest by 15.02.2022" has little bearing on whether the material terms were established on the contract date. Even if the court were, arguendo, to agree with Commerce that this

version of the contract was more than a rough draft, the version of the contract with the size breakdown "as per attached sheet" is dated with the same date. This would mean that the contract is the same regardless of which version the court considers. Instead, the court notes the lack of record evidence that the final contract was actually signed after the size breakdown was attached, as Commerce points out in the Preliminary Analysis Memorandum. *PAM* at 3. While the contract is signed and initialed, none of the signatures are dated or have any kind of time stamp. Similarly, the size breakdown attachment is not dated. As noted above, Kaptan has the burden of showing that the record demonstrates that the material terms were firmly and finally established on the contract date rather than the invoice date. *See Preamble* at 27348–49; *see also Yieh Phui Enterprise*, 35 CIT at 1125–28, 791 F. Supp. at 1322–25. Kaptan has not provided any evidence to suggest that the contract with size breakdowns was actually signed on the date printed on either of the two versions of the contract.[6] As the contract date is ambiguous in the two documents, Commerce reasonably found that it was not determinative evidence of the date of sale.

c. The terms of the contract and the Board Resolution allow for deviation in the material terms of the sale.

Commerce argues that the material terms of the sale were not established on the contract date because the contract itself required the parties to agree to any revisions to the contract terms in signed writing. From this provision, Commerce extrapolates that the material terms were not established on the contract date because it was possible for the parties to amend the contract. *See* Gov. Resp. at 25. Kaptan contends that this contract language is boilerplate, and that the language actually suggests that the material terms of the contract were established on the contract date because any revision to the terms requires a formal modification process. Pl. Reply at 14. Kaptan argues that this contract provision, along with the Board Resolution barring changes to price and quantity terms of a contract without board approval, suggests that the contract date was the proper date of sale. Pl. Mot. at 29; Case Br. at 16–27.

Prior case law focuses on the issue of whether the presence of quantity tolerances in the contract mean that the material terms

[6] The first page of the "rough draft" and the "final" version of the contract submitted are identical except for the phrase regarding provision of the size breakdown. Tellingly, the initials on both pages are identical in both form and placement. That the initials are identical suggests to the court that an incomplete version of this page was initialed, and the terms were amended later. This inference is consistent with Commerce's statement in the Preliminary Analysis Memorandum that the pages were signed before the size breakdown was provided. *PAM* at 3.

were not established in the contract. *See Kaptan Demir Celik Endustrisi ve Ticaret A.S. v. United States*, 693 F. Supp. 3d 1368 (CIT 2024) (citing *Nakornthai Strip Mill Co. Ltd. v. United States*, 33 CIT 326, 614 F. Supp. 2d 1323 (2009); *Eregli*, 308 F. Supp. 3d at 1297; *Certain Cut-to-Length Carbon Steel Plate from Romania*, 72 Fed. Reg. 6522 (Dep't Commerce Feb. 12, 2007)). Apparently, tolerances were within normal minimal levels and the parties do not raise this issue. Instead, they dispute the rigidity of the contract language required for a material term to be set. As discussed previously, the relevant standard for the point in time at which the material terms of sale are set is the date at which there was a "meeting of the minds" as to the terms. *See Nucor Corp.*, 33 CIT at 259–260, 612 F. Supp. 2d at 1308; *Eregli*, 308 F. Supp. 3d at 1306–07 (citations omitted). The material terms generally include the terms of price, quantity, payment, and delivery. *Eregli*, 308 F. Supp. 3d at 1306–07 (citing *Sahaviriya Steel Indus.*, 34 CIT at 727, 714 F. Supp. 2d at 1280). A party proposing a date other than the invoice date must show that the administrative record as a whole demonstrates that the material terms were "finally" and "firmly" established on that date and that the agreement was not merely a preliminary agreement in an industry where renegotiation is common. *See Preamble* at 27348–49; *see also Yieh Phui Enterprise Co.*, 35 CIT at 1125–28, 791 F. Supp. 2d at 1323–26.

The provision in question appears in Section 10 of the contract which lists "special provisions." The provision states that "any revision and/or modification to the present contract are [sic] valid only if made in writing and duly signed by both parties." *Kaptan's Sec. C* Ex. C-6.b at 202. The Board Resolution states that "[N]o changes related to price and quantity (except for changes within quantity tolerance) will be accepted under any circumstances." *Kaptan's Supp. A-C* Ex. S1–40 at 315.

Kaptan contends that the contract provision indicates that the parties could not change the material terms of the contract. Yet, Kaptan itself notes that historically, parties often made changes to the material terms of the contract (specifically the price and quantity) after contracting, and this was the very reason why Kaptan adopted the Board Resolution. Oral Argument at 16:24. Further, Commerce notes, and Kaptan does not contest, that the Board Resolution did not result in amendment to the terms of Kaptan's sales contracts. This means that prior contracts had the same provision, even in the period

prior to the Board Resolution when renegotiation was common.[7] *IDM* at 16; *see* Pl. Reply at 14–15. Accordingly, the presence of this provision in the contract alone would not lead the contracting parties to believe that the material terms were being "firmly" and "finally" set.

This leaves the Board Resolution as the only evidence that the material terms were set on the contract date.[8] While Kaptan argues that the Board Resolution prohibits parties without Board approval from modifying all material terms of the sale, the Board Resolution only speaks to price and quantity. Pl. Mot. at 28; *Kaptan's Supp. A-C* Ex. S1–40 at 315; Oral Argument at 1:18:44. Kaptan itself notes that the Board Resolution was not prepared with all material terms in mind. Oral Argument at 1:20:16. In particular, the Resolution makes no mention of other material terms such as size breakdowns, payment, and delivery dates.[9] Given that the language of the contracts has not been historically binding on contracting parties and that the Board Resolution does not bar changes to all material terms, this factor does not favor plaintiff. Overall, the court concludes that substantial evidence on this record supports Commerce's use of the invoice date rather than the contract date as the date of sale.

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[7] One such contract was provided in the record. The contract is dated before the Board Resolution and contained the exact same provision. *Kaptan's Response to the Department's Section C Questionnaire* Ex. C-6.b at 138, C.R. 48–70, P.R. 61 (Dec. 8, 2022) ("*Kaptan's Sec. C*"). This suggests that the "boilerplate" language of the contracts did not change after the Board adopted the Resolution.

[8] Kaptan also points to evidence of its sales practice for its U.S. exports along with the fact that the material terms of this contract did not change to support its argument that the material terms were established in the contract. This argument is not convincing. Kaptan describes its sales practice for its U.S. exports as requiring the contract terms to be particularly rigid given the long lead time of its U.S. orders along with fluctuations in the price of scrap metal. Pl. Mot. at 22–24. This dynamic led Kaptan's Board to adopt the Resolution. Yet, the Resolution only speaks to price and quantity terms, not other material terms. *Kaptan's Response to the Department's Supplemental Sections A-C Questionnaire* Ex. S1–40 at 315, C.R. 180–246, P.R. 89–90 (June 1, 2023) ("Kaptan's Supp. A-C")). Given that renegotiation of contracts was common prior to the Board Resolution, Kaptan has not pointed to record evidence showing that the market dynamics necessarily show that parties may not renegotiate other material terms. Further, that the material terms of this particular contract did not change between the contract and invoice date has little bearing on whether the material terms were set in the contract. The proper analysis is a prospective rather than retrospective one to establish whether there was a meeting of the minds regarding the material terms on the contract date. *See Nucor Corp. v. United States*, 33 CIT 207, 259–260, 612 F. Supp. 2d 1264, 1308 (2009). That the material terms did not change after the contract date is not sufficient evidence to show that the contracting parties intended the material terms to be firmly and finally set at the time of contracting.

[9] Kaptan does not dispute that the size breakdown is a material term. In its brief, Kaptan notes that Commerce alleges that not all the material terms were established in the contract because the size breakdown was not specified. Rather than arguing that size breakdown is not a material term, Kaptan only disputes whether the size breakdown was provided in the contract. Pl. Mot. at 30–31; Pl. Reply at 16–17.

III. Commerce's DIFMER adjustment methodology is supported by substantial evidence

Kaptan also argues that Commerce's differences-in-merchandise DIFMER calculation was distorted because of the way it accounted for inflation. Pl. Mot. at 33. Commerce contends that it conducted its DIFMER analysis using monthly indexes that control for inflation, meaning that its DIFMER analysis was not distorted by time-based variables. Gov. Resp. at 33–34. Commerce notes that it used monthly-indexed costs to calculate the cost of production to even out swings in the production costs over short periods of time experienced by Kaptan due to inflation. *Id.* at 34–35. It argues that this process therefore mitigated the impact of inflation on the analysis because Commerce could compare the export price of the CONNUM sold in the United States to the CONNUM sold in the home market on a month-to-month basis, making inflation a more stable variable in the comparison. *Id.* at 36.

As discussed above, when Commerce calculates the dumping margin, it compares the export price of the subject merchandise (the price at which it is sold in the U.S.) to its normal value (the price at which it is sold in its home market). *See* 19 U.S.C. § 1677b(a). When the exact product is not sold in the home market, Commerce must use a CONNUM with similar physical characteristics sold in the home market to calculate the normal value. *See* 19 C.F.R. § 351.411; 19 U.S.C. § 1677b(a)(6)(C)(ii). This requires an adjustment to account for the costs related to the physical differences (DIFMER).

In a high inflation context, Commerce instructs respondents to report monthly rather than annual costs. *IDM* at 23. Commerce then restates every month's variable costs in the final period of review month's dollar value. *Id.*; Oral Argument at 45:20. Once these costs are restated, Commerce follows its normal practice of calculating the annual weighted average cost of production for each CONNUM across the period of review with production quantity as the weighting factor. *IDM* at 23; *see* Oral Argument at 45:42, 50:56. Commerce then deflates the adjusted weighted average cost of production back to the original dollar value of each month in the period of review. Oral Argument at 45:54; 52:31. Commerce then conducts a month-to-month comparison of those variable costs of the home market and exported goods to account for the cost related to the physical differences in the products. Oral Argument at 45:55, 52:38; *see* 19 C.F.R. § 351.411; 19 U.S.C. § 1677b(a)(6)(C)(ii). This adjustment in the calculation of normal value is the DIFMER adjustment and is the step of the process with which Kaptan takes issue. *See* Pl. Reply at 19.

Kaptan argues that before this monthly indexing, the DIFMER was negative, which would call for a decrease of the normal values of sales of the home-market CONNUMS. Pl. Mot. at 34. After such monthly indexing, the DIFMER turned positive, which means the normal values determined for sales of the home-market CONNUMS were increased. *Id.* at 34–35. Kaptan does not explain why such an impermissible distortion only occurs in the DIFMER adjustment and not the corresponding cost of production calculation beyond arguing that they are "different calculations that are used by Commerce in different ways." Pl. Reply at 19. As Commerce notes, an analysis that uses this methodology at one stage of the analysis but not the other would be inconsistent and would distort the analysis as it would control for inflation at one stage while virtually ignoring inflation at the other. *See* Gov. Resp. at 34–35.

Kaptan does not make clear that the impact of the monthly indexing for the DIFMER calculation is distortive. Kaptan notes only that the monthly indexing caused a large change in the DIFMER but does not point to any evidence that this change was a distortion. *See* Pl. Mot. at 34–35. If anything, it could be the case that an unindexed DIFMER calculation would be inaccurate and improperly allow inflation to influence the analysis, whereas Commerce's indexing method produces the proper result. Kaptan has not presented sufficient evidence for the court to conclude that Commerce's approach to the DIFMER analysis in inflationary contexts is unreasonable, particularly given that the monthly indexing process as conducted seems to the court to be a reasonable way to minimize the impact of inflation on the DIFMER analysis. The court therefore concludes that Commerce's DIFMER calculation methodology is supported by substantial evidence and is in accordance with law.

CONCLUSION

For the foregoing reasons, the court sustains Commerce's date of sale determination, its DIFMER analysis, and the resulting dumping rate in its Final Results and denies Plaintiff's Motion for Judgment on the Agency Record.

Dated: January 15, 2025
New York, New York

/*s*/*Jane A. Restani*
JANE A. RESTANI, JUDGE

Slip Op. 25–05

WHEATLAND TUBE, Plaintiff, v. UNITED STATES, Defendant, and HYUNDAI STEEL COMPANY; HUSTEEL CO., LTD.; SEAH STEEL CORPORATION; NEXTEEL CO., LTD., Defendant-Intervenors.

Before: Timothy M. Reif, Judge
Court No. 22–00160

[Sustaining Commerce's final remand redetermination.]

Dated: January 15, 2025

Nicholas J. Birch, Schagrin Associates, of Washington, D.C., argued for plaintiff Wheatland Tube. With him on the briefs were *Roger B. Schagrin* and *Elizabeth J. Drake*.

Robert R. Kiepura, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., argued for defendant United States. With him on the briefs were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director and *Franklin E. White, Jr.*, Assistant Director. Of counsel was *JonZachary Forbes*, Attorney, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, D.C.

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Kang Woo Lee, Arnold & Porter Kaye Scholer LLP, of Washington, D.C., argued for defendant-intervenor NEXTEEL Co., Ltd. With him on the briefs were *J. David Park, Daniel R. Wilson* and *Henry D. Almond*.

Eugene Degnan, Morris, Manning & Martin LLP, of Washington, D.C., argued for defendant-intervenor Husteel Co., Ltd. With him on the briefs were *Donald B. Cameron*, *Julie C. Mendoza*, *R. Will Planert*, *Brady W. Mills*, *Mary S. Hodgins*, *Jordan L. Fleischer*, *Nicholas C. Duffey* and *Edward J. Thomas III*.

OPINION

* * *

Reif, Judge:

Before the court are the remand results of the U.S. Department of Commerce ("Commerce") pursuant to the Court's order in *Wheatland Tube v. United States* ("*Wheatland Tube I*" or the "Remand Order"), 47 CIT __, __, 650 F. Supp. 3d 1379 (2023). *See* Final Results of Redetermination Pursuant to Court Remand ("Remand Results"), ECF No. 61.

In *Wheatland Tube I*, the Court remanded for reconsideration Commerce's determination to grant a constructed export price ("CEP") offset to Hyundai Steel Company ("Hyundai") and Husteel Co., Ltd. ("Husteel") (collectively, the "mandatory respondents") in Commerce's 2019–2020 administrative review of the antidumping duty ("AD") order on circular welded non-alloy steel pipe from the Republic of Korea. *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*

and Final Determination of No Shipments; 2019–2020 ("Final Results"), 87 Fed. Reg. 26,343 (Dep't of Commerce May 4, 2022) and accompanying Issues and Decision Memorandum ("IDM") (Dep't of Commerce Apr. 26, 2022).

The Court ordered Commerce to comply with its "obligations set forth in 19 U.S.C. § 1677m(d) — namely, to provide the mandatory respondents with: (1) notice of the 'nature' of any deficiencies that Commerce identified in their respective submissions; and (2) 'to the extent practicable . . . an opportunity to remedy or explain the deficienc[ies].'" *Wheatland Tube I*, 47 CIT at __, 650 F. Supp. 3d at 1383.

On remand, Commerce found that neither mandatory respondent demonstrated adequately that home market sales during the period of review ("POR") were at a more advanced level of trade ("LOT") than the CEP LOT. Remand Results at 6. Therefore, Commerce recalculated the weighted-average dumping margins for respondents without a CEP offset. *Id.* at 15.

For the reasons discussed below, the court sustains the Remand Results.

BACKGROUND

The court presumes familiarity with the facts, as set out in *Wheatland Tube I*, and recounts only those facts relevant to the issues before the court on remand. In its decision of August 3, 2023, the Court addressed whether Commerce had complied with its obligations set forth in 19 U.S.C. § 1677m(d) to notify the mandatory respondents of deficiencies in their submissions and to provide respondents with an opportunity to remedy any deficiency by submitting a supplemental questionnaire response. *See Wheatland Tube I*, 47 CIT at __, 650 F. Supp. 3d at 1382–83.

In the Final Results, Commerce conceded that it had failed to comply with 19 U.S.C. § 1677m(d) and therefore granted each respondent a requested CEP offset, despite finding that neither respondent had provided an adequate quantitative analysis supporting an offset. *Id.* at __, 650 F. Supp. 3d at 1380–81. The Court remanded Commerce's decision in the Final Results to grant a CEP offset to the mandatory respondents and ordered Commerce on remand to comply with 19 U.S.C. § 1677m(d), "namely, to provide the mandatory respondents with: (1) notice of the 'nature' of any deficiencies that Commerce identified in their respective submissions; and (2) 'to the extent practicable . . . an opportunity to remedy or explain the deficienc[ies].'" *Id.* at __, 650 F. Supp. 3d at 1383.

On August 24, 2023, Commerce issued a supplemental questionnaire to each mandatory respondent, identifying deficiencies in their respective original questionnaires and requesting further information regarding their respective LOT analyses. *See* Commerce Supplemental Questionnaire to Husteel (Aug. 24, 2023) ("Husteel Supp. Quest."), REM-PR 1; Commerce Supplemental Questionnaire to Hyundai Steel (Aug. 24, 2023) ("Hyundai Supp. Quest."), REM-PR 2.

Respondents then submitted timely supplemental responses to Commerce. *See* Hyundai Steel's Remand Supplemental Questionnaire Response (Sept. 7, 2023) ("Hyundai SQR"), REM-CR 2, REM-PR 7; Husteel's Remand Supplemental Questionnaire Response (Sept. 8, 2023) ("Husteel SQR"), REM-CR 4, REM-PR 8.

On October 31, 2023, Commerce issued its Remand Results, denying CEP offsets to both respondents. Remand Results at 15.

On December 11, 2023, the mandatory respondents filed comments in opposition to the Remand Results. *See* Husteel Comments on Commerce's Final Remand Results ("Husteel Br."), ECF Nos. 68–69; Hyundai Comments on Commerce's Final Remand Results ("Hyundai Br."), ECF Nos. 70–71.

On January 22, 2024, defendant United States (the "Government") and plaintiff Wheatland Tube filed comments in support of the Remand Results. *See* Def. Comments Supporting Remand Results ("Def. Br."), ECF No. 73; Pl. Comments Supporting Remand Results ("Pl. Br."), ECF No. 74.

On November 14, 2024, the court heard oral argument. *See* Oral Arg. Tr., ECF No. 82.

JURISDICTION AND STANDARD OF REVIEW

The court exercises subject matter jurisdiction pursuant to 28 U.S.C. § 1581(c).

On remand, the Court will sustain Commerce's determinations "if they are in accordance with the remand order, are supported by substantial evidence, and are otherwise in accordance with law." *MacLean-Fogg Co. v. United States*, 39 CIT __, __, 100 F. Supp. 3d 1349, 1355 (2015) (citing 19 U.S.C. § 1516a(b)(1)(B)(i)); *see Prime Time Com. LLC v. United States*, 45 CIT __, __, 495 F. Supp. 3d 1308, 1313 (2021) ("The results of a redetermination pursuant to court remand are also reviewed 'for compliance with the court's remand order.'") (quoting *Xinjiamei Furniture (Zhangzhou) Co. v. United States*, 38 CIT 189, 190, 968 F. Supp. 2d 1255, 1259 (2014)), *aff'd*, 2022 WL 2313968 (Fed. Cir. June 28, 2022); *see also Jiangsu Zhongji Lamination Materials Co., (HK) v. United States*, 44 CIT __, __, 435 F.

Supp. 3d 1273, 1276 (2020) (quoting *Xinjiamei Furniture*, 38 CIT at 190, 968 F. Supp. 2d at 1259).

Substantial evidence constitutes "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion," but it requires "more than a mere scintilla." *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951) (quoting *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938)). Moreover, "[t]he substantiality of evidence must take into account whatever in the record fairly detracts from its weight." *Id.* at 488.

For a reviewing court to "fulfill [its] obligation" to decide whether a determination of Commerce is supported by substantial evidence and in accordance with law, Commerce is required to "examine the record and articulate a *satisfactory explanation* for its action." *CS Wind Viet. Co. v. United States*, 832 F.3d 1367, 1376 (Fed. Cir. 2016) (emphasis supplied) (quoting *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1378 (Fed. Cir. 2013)).

Further, "the Court will not disturb an agency determination if its factual findings are reasonable and supported by the record as a whole, even if there is some evidence that detracts from the agency's conclusion." *Shandong Huarong Gen. Corp. v. United States*, 25 CIT 834, 837, 159 F. Supp. 2d 714, 718 (2001) (citing *Heveafil Sdn. Bhd. v. United States*, 25 CIT 147, 149 (2001)), *aff'd sub nom. Shandong Huarong Gen. Grp. Corp. v. United States*, 60 F. App'x 797 (Fed. Cir. 2003).

"[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Altx, Inc. v. United States*, 370 F.3d 1108, 1116 (Fed. Cir. 2004) (quoting *Matsushita Elec. Indus. Co. v. United States*, 750 F.2d 927, 933 (Fed. Cir. 1984)).

LEGAL FRAMEWORK

Pursuant to 19 U.S.C. § 1673, Commerce is required to impose antidumping duties on foreign merchandise if: (1) Commerce determines that such merchandise "is being, or is likely to be, sold in the United States at less than its fair value" and (2) the U.S. International Trade Commission determines that the sale of such merchandise at less than fair value "materially injures, threatens, or impedes the establishment of an industry in the United States." *Diamond Sawblades Mfrs. Coal. v. United States*, 866 F.3d 1304, 1306 (Fed. Cir. 2017) (citing 19 U.S.C. § 1673).

The Federal Circuit has stated that merchandise is sold at "less than fair value" if "the normal value (the price a producer charges in its home market)" of such merchandise exceeds "the export price (the

price of the product in the United States) or *constructed export price*" for the merchandise. *Union Steel v. United States*, 713 F.3d 1101, 1103 (Fed. Cir. 2013) (emphasis supplied) (quoting *U.S. Steel Corp. v. United States*, 621 F.3d 1351, 1353 (Fed. Cir. 2010)) (internal quotation marks omitted); *see* 19 U.S.C. § 1673.

19 U.S.C. § 1677a(b) provides that "[t]he term 'constructed export price' means the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter." Further, "where a sale is made by a foreign producer or exporter to an *affiliated* purchaser in the United States, the statute provides for use of [the] CEP as the [U.S.] price for purposes of the comparison" with normal value. *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1303 (Fed. Cir. 2001).

19 U.S.C. § 1677b(a) provides that "[i]n determining . . . whether subject merchandise is being, or is likely to be, sold at less than fair value, *a fair comparison* shall be made between the [CEP] and normal value." (emphasis supplied). To conduct a "fair comparison," Commerce is required in its LOT analysis to determine whether to apply one of "two types of adjustments to normal value based on differences in the level of trade." *Dong-A Steel Co. v. United States*, 42 CIT __, __, 337 F. Supp. 3d 1356, 1374 (2018). "The first type is a [LOT] adjustment . . . and the second type is a [CEP] offset." Id. (first citing 19 U.S.C. § 1677b(a)(7)(A); and then citing § 1677b(a)(7)(B)).

Commerce regulations provide that "[i]n comparing United States sales with foreign market sales, [Commerce] may determine that sales in the two markets were not made at the same level of trade, and that the difference has an effect on the comparability of the prices. [Commerce] is authorized to adjust normal value to account for such a difference." 19 C.F.R. § 351.412(a). Further, "sales are made at different levels of trade if they are made at different marketing stages (or their equivalent)," and "[s]ubstantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing." *Id.* § 351.412(c)(2).

Pursuant to 19 U.S.C. § 1677b(a)(7)(A), Commerce is required to "make due allowance for any difference (or lack thereof) between the [CEP] and [normal value] that is shown to be wholly or partly due to a difference in level of trade between the [CEP] and normal value, if the difference in level of trade — (i) involves the performance of different selling activities; and (ii) is demonstrated to affect price

comparability, based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined."

Pursuant to § 1677b(a)(7)(B), Commerce is required to grant a CEP offset "[w]hen normal value is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the [CEP], but the data available do not provide an appropriate basis" to grant a LOT adjustment. *See Dong-A Steel Co. v. United States*, 44 CIT __, __, 475 F. Supp. 3d 1317, 1325 (2020). In granting a CEP offset, Commerce reduces the normal value of the subject merchandise "by the amount of indirect selling expenses [("ISE")] incurred in the country in which normal value is determined on sales of the foreign like product but not more than the amount of such expenses for which a deduction is made." 19 U.S.C. § 1677b(a)(7)(B).

With respect to the decision to grant a CEP offset, "it is the responsibility of the respondent requesting the CEP offset to procure and present the relevant evidence to Commerce." *Ad Hoc Shrimp Trade Action Comm. v. United States*, 33 CIT 533, 556, 616 F. Supp. 2d 1354, 1374 (2009); *see* Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103–316, vol. 1, at 829–30 (1994), *reprinted in* 1994 U.S.C.C.A.N. 4040, 4167–68 ("[I]f a respondent claims an adjustment to decrease normal value, as with all adjustments which benefit a responding firm, the respondent must demonstrate the appropriateness of such adjustment.").

Further, the decision to grant a CEP offset is not "automatic," and the "burden of proof is upon the claimant to prove entitlement" to such an offset. *Corus Eng'g Steels Ltd. v. United States*, 27 CIT 1286, 1290 (2003) (citing *Micron Tech.*, 243 F.3d at 1315–16); *see also* 19 C.F.R. § 351.401(b)(1) ("The interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment . . . .").

Commerce has stated previously that it requires "adequate documentation" that includes both a "qualitative" and "quantitative" analysis to "find that a LOT adjustment and/or CEP offset is [] warranted." *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review; 2019–2020*, 87 Fed. Reg. 69 (Dep't of Commerce Jan. 3, 2022) and accompanying IDM (Dep't of Commerce Dec. 23, 2021) at cmt. 2.

Commerce has explained that this requirement "enable[s] Commerce to determine whether . . . sales were made at different LOTs" and, consequently, to decide whether to provide a respondent with an

adjustment to the normal value of its merchandise. *Id.*

With respect to qualitative evidence, Commerce evaluates information that a respondent may provide such as "narrative descriptions of differences in selling functions, customer correspondence, sample sales records [and] meeting presentations." *Id.*

However, Commerce has stated that "[a]lthough [such] information . . . is helpful and relevant to [Commerce's] LOT analysis, reliance on this information alone limits Commerce's ability to analyze selling functions to determine if LOTs identified by a party have meaningful differences and to evaluate whether a respondent's [LOT] claims are reasonable and accurate." Id. Additionally, "reliance on purely qualitative information may create the potential for manipulation (or inaccurate reporting) by permitting respondents to create a narrative that is not linked in any way to its verifiable financial data." *Id.* Accordingly, "[s]ince 2018, Commerce has required respondents to provide *quantitative* evidence in support of their LOT claims" to "present a complete understanding of a respondent's selling activities." *Id*. (emphasis supplied).

Commerce has stated that "quantitative evidence in support of thorough explanations of the differences in LOTs and the identified selling functions enhances [Commerce's] LOT analysis because such information allows [Commerce] to determine whether differences in prices among various customer categories or differences in levels of expenses in different claimed LOTs are, in fact, attributable to differences in LOTs or to an unrelated factor, such as relative sales volumes." *Id.* Further, such quantitative evidence "reduces subjectivity and the likelihood of inconsistency in the application of Commerce's analytical framework that may result from the analysis of purely qualitative information, which can be, by its nature, subject to different interpretations." *Id.*

DISCUSSION

I. Whether Commerce complied with the Remand Order and satisfied its obligations under 19 U.S.C. § 1677m(d)

The court addresses first whether Commerce complied with the Remand Order and satisfied Commerce's obligations under 19 U.S.C. § 1677m(d). For the below reasons, the court concludes that Commerce's supplemental questionnaires complied with the Remand Order and satisfied Commerce's obligations under 19 U.S.C. § 1677m(d).

A. Positions of the parties

Hyundai argues that Commerce did not satisfy its obligations under § 1677m(d) and, therefore, failed to comply with the court's Re-

mand Order.[1] Hyundai Br. at 2. Hyundai argues that Commerce's supplemental questionnaire did not notify Hyundai of the "nature" of any deficiencies in Hyundai's original submissions made during the course of the underlying administrative review. *Id.*

Hyundai argues further that Commerce "simply requested further information to which Hyundai Steel provided a complete response." *Id.* Hyundai claims that, as a result, it was denied "a meaningful opportunity to 'remedy or explain' in its supplemental questionnaire response." *Id.*

Hyundai claims also that Commerce was required by 19 U.S.C. § 1677m(d) to notify Hyundai of "any concerns in [Hyundai's] quantitative analysis presented in advance of issuing a draft of the remand redetermination," something that Commerce did not do. *Id.* at 7.

The Government argues that Commerce did comply with the Court's Remand Order when Commerce issued supplemental questionnaires to both respondents on remand. Def. Br. at 5. The Government argues that the supplemental questionnaires "specifically identified the nature of deficiencies of each respondents [sic] respective prior submissions and provided an opportunity for both respondents to remedy or explain such deficiencies." *Id.*

Specifically, the Government notes that its supplemental questionnaire to Hyundai requested "documentation that Hyundai Steel and its affiliates performed the reported selling functions, a quantitative analysis showing how the expenses assigned to period of review sales made at different claimed levels of trade impact price comparability, and a demonstration of how indirect selling expenses vary by the different claimed levels of trade." *Id.* at 6. Last, the Government argues that the court should reject Hyundai's argument that Commerce was required under § 1677m(d) to provide Hyundai with an additional opportunity to correct its supplemental responses. *Id.* at 7.

B. Analysis

The court concludes that Commerce's supplemental questionnaires complied with the Remand Order and satisfied Commerce's obligations under § 1677m(d). Section 1677m(d) provides that upon "determin[ing] that a response to a request for information . . . does not comply with the request," Commerce "shall *promptly inform* the person submitting the response of the nature of the deficiency and shall, *to the extent practicable*, provide that person with an *opportunity to remedy or explain the deficiency*." (emphases supplied).

[1] Husteel does not make an equivalent argument with respect to the supplemental questionnaire it received from Commerce. *See* Husteel Br.

Hyundai does not assert that Commerce's supplemental questionnaire was not timely, only that Commerce failed to specify the nature of the deficiencies in Hyundai's original submissions. *See* Hyundai Br. at 2. The court concludes that Commerce adequately informed Hyundai of the deficiencies in Hyundai's original submissions.

First, Hyundai cannot claim that it was not made aware of the deficiencies in its original submissions. From Commerce's discussion in the Final Results, and from this Court's discussion thereof in the Remand Order, Hyundai was alerted to the deficiencies in its original submissions.

In the Final Results, Commerce found that "the quantitative analyses provided by the respondents was inadequate in response to Commerce's initial questionnaire." IDM at 13. Specifically, Commerce stated that neither mandatory respondent had provided an adequate quantitative analysis "showing how the expenses assigned to the POR sales made at different claimed LOTs impact[ed] price comparability [or] how the quantitative analysis support[ed] the claimed levels of intensity for the selling activities reported in the selling functions chart." *Id.*

Notwithstanding these deficiencies, Commerce conceded that it had failed to "inform the [mandatory] respondents that [Commerce] required more information" in their respective submissions, which resulted in neither mandatory respondent "ha[ving] an opportunity, pursuant to [§ 1677m(d)], to remedy any deficiency in their quantitative analyses by providing additional information in a supplemental questionnaire response."[2] *Id.* at 13–14. In sum, Hyundai was alerted to the nature of the deficiencies in its original submissions, even prior to receiving Commerce's supplemental questionnaire.

Second, Commerce's supplemental questionnaire to Hyundai adequately reiterated these deficiencies and specifically identified the information Hyundai needed to submit to correct such deficiencies. In its cover letter to Hyundai's supplemental questionnaire, Commerce informed Hyundai that Commerce "identified several areas in Hyundai Steel's section A of its initial questionnaire response for which [Commerce] require[d] further information as specified" in the supplemental questionnaire. Hyundai Supp. Quest. at 1. In addition, Commerce noted that it would "not be issuing another supplemental questionnaire after this one." Id.

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[2] Commerce's discussion of respondents' deficient submissions is repeated and summarized in the Remand Order. *See Wheatland Tube I*, 47 CIT __, __, 650 F. Supp. 3d 1379, 1381 (2023).

Commerce's supplemental questionnaire to Hyundai explicitly referenced specific exhibits from Hyundai's original submissions and specified information that Commerce deemed missing from those exhibits. *See, e.g.*, *id.* at 2 ("Add a column to Exhibit A-13-A which provides the citations to the relevant documentation demonstrating that Hyundai Steel . . . performed the selling activities listed in the selling functions chart.").

Further, Commerce's supplemental requests plainly sought clarification of the deficiencies identified by Commerce in the Final Results, deficiencies to which Hyundai was already alerted. *Compare, e.g.*, *id.* at 2 ("Please provide a quantitative analysis showing how the expenses assigned to POR sales made at different claimed [LOTs] impact price comparability."), *with* IDM at 13 ("Neither respondent provided an analysis showing how expenses assigned to sales at different claimed LOTs impacted price comparability.").

The Federal Circuit has held that Commerce "satisfie[s] its obligations under section 1677m(d) when it issue[s] a supplemental questionnaire specifically pointing out and requesting clarification of [a respondent's] deficient responses." *NSK Ltd. v. United States*, 481 F.3d 1355, 1360 n.1 (Fed. Cir. 2007); *see also Maverick Tube Corp. v. United States*, 857 F.3d 1353, 1361 (Fed. Cir. 2017) (holding that Commerce satisfied its obligation under section 1677m(d) when the respondent "failed to provide the information requested in Commerce's original questionnaire, and the supplemental questionnaire notified [the respondent] of that defect"). Following the Federal Circuit's guidance, the court concludes that Commerce's supplemental questionnaire to Hyundai satisfied its obligations under § 1677m(d).[3]

Hyundai makes the additional argument that Commerce was obligated under § 1677m(d) to notify Hyundai of any flaws in the quantitative analysis Hyundai submitted as part of its supplemental response. Hyundai Br. at 6–7. Hyundai notes that it requested in its supplemental response that Commerce "notify and provide guidance" should Commerce disagree with Hyundai's quantitative analysis, "so that Hyundai Steel has the opportunity to demonstrate that [Commerce] should continue to grant a CEP offset, as required by 19 U.S.C. § 1677m(d)." Hyundai SQR at RS-11.

Hyundai's argument misunderstands the requirements of § 1677m(d). In the Remand Results, Commerce did not find that Hyundai failed to comply with Commerce's request, as is the definition of a deficient submission under the statute. See 19 U.S.C. § 1677m(d)

[3] Husteel does not challenge Commerce's compliance with 19 U.S.C. § 1677m(d), but the court concludes that Commerce satisfied its obligations with respect to Husteel for the same foregoing reasons.

(stating that a submission is deficient if Commerce "determines that a response to a request . . . does not comply with the request"). Rather, Commerce determined merely that Hyundai's quantitative analysis did not allow Commerce to "find home market sales at a different LOT and more advanced stage of distribution than the CEP LOT." Remand Results at 6.

What Hyundai seeks is the opportunity to amend its quantitative analysis in a manner more to Commerce's liking, with the benefit of having Commerce's reasoning in the Remand Results before it. Section 1677m(d) provides for no such opportunity. *See ABB Inc. v. United States*, 42 CIT __, __, 355 F. Supp. 3d 1206, 1222 (2018) ("Commerce is not obligated to issue a supplemental questionnaire to the effect of, 'Are you sure?'").

Further, the burden "falls to the party seeking the CEP offset to provide the requisite evidence that would allow Commerce to determine that a CEP offset adjustment is warranted." *Dong-A Steel*, 44 CIT at __, 475 F. Supp. 3d at 1347 n.22. "That Commerce did not request any additional information beyond what was provided by [Hyundai] does not discredit the validity of the conclusion drawn from that evidence." *Id*. Commerce is not obligated under § 1677m(d) "to work with [Hyundai] to correct . . . the record [where] the fundamental difference in conclusions reached by [Hyundai] and Commerce derived . . . from differing yet equally reasonable interpretations of the evidence." *Id*.

In sum, the court concludes that Commerce fully met its obligations under § 1677m(d).

II. Whether Commerce's Remand Results are supported by substantial evidence

The court now turns to the mandatory respondents' challenge to Commerce's denial of CEP offsets to both mandatory respondents. For the below reasons, the court concludes that Commerce's denial of a CEP offset to both mandatory respondents was reasonable and supported by substantial evidence.

A. Positions of the parties

1. Commerce's denial of a CEP offset to Hyundai

Hyundai argues that Commerce's denial of a CEP offset is unreasonable and unsupported by substantial evidence. Hyundai asserts that Commerce's methodology was "mathematically invalid" because Commerce "divided the specific reported level of intensity by the quantity sold in the home market [("HM")] . . . and did the same for Hyundai Steel's U.S. sales." Hyundai Br. at 8. Hyundai argues fur-

ther that "Commerce's error in dividing intensity levels by particular market sales totals" "disregards entirely that [Hyundai] reported its levels of intensity on a per-sale basis and not cumulatively for all sales made in each market." *Id*.

In response, the Government argues that "Commerce reasonably determined that it [was] necessary to account for and eliminate the distortion created by the differences in the sizes between the home market and U.S. market." Def. Br. at 13. According to the Government, "Commerce reasonably explained that . . . relying on values for total expenses or number of employees without considering the relative sizes of the two markets . . . does not reflect the fact that the home market is significantly greater than the U.S. market, and is therefore distortive." *Id*. (citing Remand Results at 10–11). Additionally, the Government argues that "Commerce reasonably found that Hyundai Steel did not provide any evidence from its books and records that ties the number of employees to specific individual selling functions in the different channels of distribution." *Id*. at 10.

Hyundai argues also that Commerce erred in using in its calculations "only U.S. sales of subject merchandise to [Hyundai's] U.S. affiliates where the levels of intensity were based on company-wide exports that include exports to countries other than the U.S. market." Hyundai Br. at 9. According to Hyundai, this error resulted in Commerce "vastly overstat[ing] the per-unit selling expense intensity for the CEP LOT for the majority of the reported selling functions." *Id*.

In response, plaintiff argues that Commerce was correct in using only U.S. sales in its calculations because such sales are "the only export sales that matter in this analysis." Pl. Br. at 7.

Hyundai's final argument is that Commerce failed to consider the qualitative record information previously cited to in Commerce's original preliminary determination. Hyundai Br. at 10. Hyundai asserts that this qualitative evidence supports the conclusion that Hyundai's home market LOT was "at a more advanced distribution stage than the CEP LOT." *Id*.

In response, the Government argues that Commerce did examine the qualitative record information but that, nevertheless, Commerce "reasonably explained that under its current methodology [Commerce] requires a quantitative analysis supported by demonstrative company records or other documentation to warrant the granting of an offset." Def. Br. at 14. Plaintiff adds that even if Hyundai's qualitative evidence was "sufficient," Commerce still "properly rejected Hyundai Steel's quantitative claims and so properly found [that] Hyundai Steel failed to meet its burden to qualify for a CEP offset." Pl. Br. at 16–17.

2. Commerce's denial of a CEP offset to Husteel

Husteel argues that Commerce's denial of a CEP offset is contrary to the record. Husteel claims that "Commerce's multiple attempts to manipulate the data in [Commerce's] per-unit analysis . . . are results driven and mathematically incorrect." Husteel Br. at 3. Husteel insists that Commerce's methodology "resulted in a double adjustment for market size and a distorted quantitative analysis." *Id*. at 6.

Husteel argues that its quantitative analysis already properly adjusted for market size differences and demonstrated that Husteel's home market selling expenses "are much higher than [its] US sales expenses on a per-unit basis." *Id*. at 7. Husteel asserts that Commerce erred in "examin[ing] the intensities in each market in isolation" when Commerce "compare[d] the selling activity ISE in the HM as a percent of its total ISE, and those of the US market as a percentage of the total in that market, with no adjustment to allow a comparison between the two markets." *Id*. at 9. Husteel argues further that the correct comparison is "the expense to Husteel to sell in each market relative to the other market," specifically "what the expense is to Husteel in the US market, relative to the HM." *Id*.

The Government argues that Commerce "was reasonable in finding Husteel's analysis insufficient" because "Husteel did not divide its U.S. indirect selling expense accounts by its total U.S. indirect selling expense amount, but instead divided by a derived figure from its home market indirect selling expense amount," which "did not reflect the actual levels of intensity for the U.S. market and understated the value." Def. Br. at 15–16. Plaintiff adds that "Commerce's decision to apply the same calculation methodology to both [Husteel's home and U.S.] markets in order to compare consistent figures was reasonable." Pl. Br. at 18. Plaintiff argues that both respondents "seek to have the Court substitute [their] preferred weighing of the evidence for how Commerce weighted that evidence." *Id*. at 17. Plaintiff argues further that respondents merely "disagree[] about the methodology the agency found appropriate to apply." *Id*. at 12. Therefore, plaintiff asserts that respondents have failed to provide the court "with any meaningful reason to disturb" Commerce's Remand Results. *Id*. at 11.

B. Analysis

The court concludes that Commerce's denial of a CEP offset to both respondents was reasonable and supported by substantial evidence.

As an initial matter, both the statute, 19 U.S.C. § 1677b(a)(7)(B), and Commerce's regulations, 19 C.F.R. § 351.412, provide limited direction as to the methodology Commerce is to use to analyze whether to grant a CEP offset. Section 1677b(a)(7)(B) provides that

Commerce will grant a CEP offset when "normal value is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the constructed export price, but the data available do not provide an appropriate basis to determine . . . a level of trade adjustment." However, the statute is silent as to how exactly Commerce should analyze whether the normal value LOT is more advanced than the CEP LOT.[4]

Commerce's own regulations provide that Commerce "will determine that sales are made at different levels of trade if they are made at different marketing stages." 19 C.F.R. § 351.412(c)(2). Commerce's regulations state also that "[s]ubstantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing." *Id*. Beyond these general requirements, Commerce's regulations do not require Commerce to adhere to a particular methodology when analyzing differences in marketing stages and selling activities.

When analyzing whether to grant CEP offsets to the respondents, Commerce found that neither respondent's quantitative analysis demonstrated that home market sales were at a different and more advanced stage of distribution than U.S. sales. Remand Results at 6. With respect to Hyundai, Commerce explained that Hyundai's analysis, which calculated intensities of different selling functions based on the number of employees, did not "consider differences in the sizes between the two markets." *Id*. at 10. Commerce explained also that Hyundai did not provide "any evidence from its books and records that tie[d] the number of employees to specific individual selling functions in the different channels of distribution." *Id*. at 11. Commerce explained further that Hyundai "used the same cost category as the basis of intensity for a variety of selling functions and provided no information on the actual selling activities or how the intensity was determined, beyond overall wage cost." *Id*.

With respect to Husteel, Commerce explained similarly that there were faults in Husteel's methodology, which analyzed "the amount spent on each selling activity relative to the total domestic ISE and U.S. ISE (adjusted based on sales value in the market) to determine intensities of the different selling functions," and Husteel's supporting documentation. *Id*. at 13–14. Commerce explained that Husteel provided "sales forecasting, and strategic and economic planning reports" that "neither link[ed] to the reported ISE nor explain[ed] or support[ed] how Husteel determined which selling functions corre-

[4] Hyundai concedes that "the statute provides no guidance about the methods by which Commerce should evaluate whether to grant a CEP offset." Hyundai Br. at 4.

sponded to each selling activity category." *Id*. at 14. Commerce explained further that Husteel's market size adjustment did not "properly calculate the different levels of intensity across various selling functions" because "Husteel calculated the ratio between domestic sales and U.S. sales and then applied that ratio to domestic ISE to calculate U.S. ISE." *Id*. Commerce explained that Husteel's methodology did not provide "the actual levels of intensity for the U.S. market and . . . understated the level." *Id*.

Commerce found that both mandatory respondents' analyses were flawed. Commerce concluded that it needed to "extend[] [those] analyses to also include a perunit analysis . . . based on . . . sales volume" to derive a valid comparison. *Id*. at 5. Commerce's per-unit analysis in turn "establishe[d] that the home market LOT is not at a more advanced stage of distribution than the LOT of the CEP LOT of either respondent." *Id*. at 6.

The mandatory respondents argue that Commerce's methodology was unreasonable and unsupported by substantial evidence. Hyundai Br. at 8–9; Husteel Br. at 6, 9. Respondents' arguments are not persuasive. There is nothing in Commerce's choice of methodology for analyzing differences in selling activities that conflicts with the statutory or regulatory requirements. Given the minimal statutory and regulatory guidance, Commerce determined reasonably that a per-unit analysis was necessary to adjust for market size differences to compare more accurately differences in levels of trade between markets. Further, Commerce's analysis is supported by substantial evidence in the record.

This Court has previously held, in cases challenging antidumping determinations by Commerce, "that where the relevant statute provides little direction, 'Commerce enjoys discretion in choosing its methodology.'" *Al Ghurair Iron & Steel LLC v. United States*, 45 CIT __, __, 536 F. Supp. 3d 1357, 1374 (2021) (quoting *NSK Ltd. v. United States*, 29 CIT 1, 17, 358 F. Supp. 2d 1276, 1291 (2005), *aff'd*, 162 F. App'x 982 (Fed. Cir. 2006)), *aff'd*, 65 F.4th 1351 (Fed. Cir. 2023).

"Because [the statute] does not mandate the use of a particular formula, Commerce has the ability to choose how to calculate [differences in levels of trade] as long as its chosen methodology is reasonable and Commerce explains its choice." *Id*. Additionally, "Commerce is [not] required to use a party's proffered and preferred methodology" so long as "Commerce used a reasonable formula that satisfies the statutory requirements." *Id*. at __, 536 F. Supp. 3d at 1374–75; *see also Dong-A Steel*, 42 CIT at __, 337 F. Supp. 3d at 1375 ("Commerce is not bound to a specific formula to determine whether to grant a constructed export price offset.").

Moreover, the Federal Circuit has recognized that Commerce is entitled to deference in administering the antidumping law. *Fujitsu Gen. v. United States*, 88 F.3d 1034, 1039 (Fed. Cir. 1996) (citing *Smith-Corona Grp. v. United States*, 713 F.2d 1568, 1571, 1582 (Fed. Cir. 1983)). This deference stems from the recognition that "[a]ntidumping . . . duty determinations involve complex economic and accounting decisions of a technical nature, for which agencies possess far greater expertise than courts." *Id*. (citing *United States v. Zenith Radio Corp*., 64 CCPA 130, 139, 562 F.2d 1209, 1216 (1977), *aff'd*, 437 U.S. 443 (1978)).

In sum, Commerce's determination in the Remand Results to deny a CEP offset to respondents was supported by substantial evidence and in accordance with law.

CONCLUSION

For the foregoing reasons, Commerce's Remand Results are sustained. Judgment will enter accordingly.

Dated: January 15, 2025
New York, New York

/*s*/ *Timothy M. Reif*
TIMOTHY M. REIF, JUDGE

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