

# U.S. Customs and Border Protection

## DEPARTMENT OF THE TREASURY

### 19 CFR PART 24

### CBP DEC. NO. 20-13

### RIN 1515-AE46

## FEES FOR INBOUND EXPRESS MAIL (EMS) ITEMS

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

**ACTION:** Interim final rule.

**SUMMARY:** U.S. Customs and Border Protection (CBP) is amending its regulations to implement new subsection 13031(b)(9)(D) of the Consolidated Omnibus Budget Reconciliation Act (COBRA), as amended by section 8002 of the Synthetics Trafficking and Overdose Prevention Act of 2018 (STOP Act). Among other things, the new subsection establishes a new fee for processing Inbound Express Mail Service items (Inbound EMS items), requires the United States Postal Service to pay a percentage of this fee to CBP on a quarterly basis, provides that Inbound EMS items that are formally entered are also subject to a merchandise processing fee, if applicable, and requires the Secretary of the Treasury to issue regulations regarding USPS's quarterly remittances to CBP. This rule also makes conforming amendments to CBP regulations.

**DATES:** *Effective date:* This interim final rule is effective on August 4, 2020, except for the amendment to § 24.23(c)(1)(v) which is effective September 3, 2020.

*Comment date:* Comments must be received on or before October 5, 2020.

**ADDRESSES:** You may submit comments, identified by docket number, through the following method:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2020-0034.

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

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

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Due to relevant COVID–19-related restrictions, CBP has temporarily suspended its on-site public inspection of submitted comments.

**FOR FURTHER INFORMATION CONTACT:** Quintin Clarke, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs and Border Protection, via email at [Quintin.G.Clarke@cbp.dhs.gov](mailto:Quintin.G.Clarke@cbp.dhs.gov), or by phone at 202–344–2524.

## **SUPPLEMENTARY INFORMATION:**

### **Table of Contents**

- I. Public Participation
- II. Background and Purpose
- III. Fees for Inbound EMS Items Pursuant to New Subsection 13031(b)(9)(D) of COBRA
  - A. General Requirements
  - B. USPS Remittances to CBP and Supporting Documentation
  - C. Adjustment of Inbound EMS Fees Pursuant to New Subsection 13031(b)(9)(D)
- IV. Explanation of Amendments to CBP Regulations
  - A. Definitions
  - B. Inbound EMS Item Processing Fees
  - C. Exclusions
- V. Statutory and Regulatory Requirements
  - A. Administrative Procedure Act
  - B. Executive Orders 12866, 13563, and 13771
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Paperwork Reduction Act
  - F. Signing Authority

## Regulatory Amendments

### I. Public Participation

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

### II. Background and Purpose

In response to the ongoing opioid crisis, the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT for Patients and Communities Act), Public Law 115–271 (2018), was enacted on October 24, 2018. In addition to providing resources and support to communities grappling with opioid addiction, the legislation directs the United States Postal Service (USPS) and CBP to take certain actions to help prevent illicit opioids from reaching the United States.

Title VIII, Subtitle A of the SUPPORT for Patients and Communities Act is the Synthetics Trafficking and Overdose Prevention Act of 2018 (STOP Act). Among other things, the STOP Act amends subsection 13031(b)(9) of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c(b)(9)), to add a new paragraph (D) (hereafter referred to as “new subsection 13031(b)(9)(D)” or “new subsection 13031(b)(9)(D) of COBRA”), which requires certain fees for the processing of Inbound Express Mail Service (Inbound EMS) items at international mail facilities. Inbound Express Mail Service refers to the optional postal express service for sending postal items from other countries.<sup>1</sup> CBP is responsible for screening inbound international mail and removing packages with illicit goods (including, but not limited to, opioids) from the mail stream before delivery to intended recipients in the United States.<sup>2</sup> New subsection

<sup>1</sup> Inbound Express Mail Service (Inbound EMS) is defined in new subsection 13031(b)(9)(D) as the service described in the mail classification schedule referred to in section 3631 of title 39, United States Code and section 3040.104 of title 39 of the Code of Federal Regulations. Section 2515.6 of the mail classification schedule, issued by the Postal Regulatory Commission, pertains to Inbound EMS. It describes Inbound EMS as Inbound Express Mail services offered pursuant to negotiated services agreements.

<sup>2</sup> In addition to the amendments made to COBRA, section 8003 of the STOP Act amends section 343(a)(3)(K) of the Trade Act of 2002 (19 U.S.C. 1415), to require the Secretary of

13031(b)(9)(D) of COBRA requires a payment of \$1 per Inbound EMS item, subject to annual adjustment, for services rendered in screening and processing of Inbound EMS items and, if an Inbound EMS item is formally entered, a payment of the fee provided for under subsection 13031(a)(9) of COBRA, if applicable. The fee provided for under subsection 13031(a)(9) is a merchandise processing fee.<sup>3</sup> Under new subsection 13031(b)(9)(D), USPS must remit 50 percent of the \$1 fee per Inbound EMS item that it collects to CBP on a quarterly basis as reimbursement to CBP for processing of Inbound EMS items, and retain the other 50 percent to cover its processing of these items. The new subsection 13031(b)(9)(D) of COBRA requires the Secretary of the Treasury to issue regulations regarding the details of the quarterly remittances.<sup>4</sup>

CBP is amending its regulations to implement the provisions of new subsection 13031(b)(9)(D) pertaining to Inbound EMS items, including the applicable fees, adjustments to the fees, details about the remittances from USPS to CBP and the required supporting documentation. CBP is also amending its regulations to make certain conforming amendments to reflect the provisions of the new subsection 13031(b)(9)(D) of COBRA. First, CBP is amending its regulations to reflect the fact that the subsection 13031(a)(9) merchandise processing fee will apply to Inbound EMS items as provided in the new subsection 13031(b)(9)(D). Second, CBP is amending its regulations to reflect that the dutiable mail fee previously authorized by subsection 13031(a)(6) will no longer apply to Inbound EMS items, based on the amendments made to subsection 13031(a)(6) of COBRA by section 8002(b) of the STOP Act that specifically exclude Inbound EMS items from the dutiable mail fee.

As provided in section 8002(c) of the STOP Act, the amendments made to COBRA by section 8002 of the STOP Act took effect on January 1, 2020. This rule is effective on August 4, 2020, except with respect to the amendments to § 24.23(c)(1)(v) regarding the merchandise processing fee for formally entered Inbound EMS items, which take effect on September 3, 2020.

Further details about these changes are set forth in sections III and IV, below.

---

Homeland Security to issue regulations that require USPS to transmit certain advance electronic data on international mail shipments destined to the United States for risk assessment purposes. The Secretary of Homeland Security will be issuing a separate rule to implement these provisions.

<sup>3</sup> This fee is subject to additional limitations, enumerated in subsection 13031(b).

<sup>4</sup> The remittance provision in new subsection 13031(b)(9) assumes that USPS will be the agency that collects the \$1 fee per Inbound EMS item. As discussed in section III.B., USPS will collect this fee from foreign postal operators and USPS will remit CBP's portion of these fees to CBP quarterly in the manner prescribed by CBP.

### III. Fees for Inbound EMS Items Pursuant to New Subsection 13031(b)(9)(D) of COBRA

#### A. General Requirements

Section 8002 of the STOP Act amended subsection 13031(b)(9) of COBRA (19 U.S.C. 58c(b)(9)), by adding a new paragraph (D) (new subsection 13031(b)(9)(D)), which requires certain fees for the processing of items that are sent to the United States through the international postal network by “Inbound Express Mail service” or “Inbound EMS” (as that service is described in the mail classification schedule referred to in section 3631 of title 39, United States Code).<sup>5</sup> The initial fee set by Congress is \$1 per Inbound EMS item (new subsection 13031(b)(9)(D)(i)(I)), plus an additional amount for Inbound EMS items that are formally entered (new subsection (b)(9)(D)(i)(II)). The Secretary of the Treasury, in consultation with the Postmaster General, may adjust the former amount annually by regulation. The latter amount is the merchandise processing fee provided for under subsection 13031(a)(9) of COBRA, which is subject to annual adjustment under subsection 13031(l) of COBRA. The new section 13031(b)(9)(D) provides that the above amounts shall be the only payments required for reimbursement of CBP for services provided in connection with the processing of an Inbound EMS item. The new subsection 13031(b)(9)(D) requires USPS to remit 50 percent of the \$1 fee it collects to CBP on a quarterly basis in accordance with regulations issued by the Secretary of the Treasury. Details about these remittances are provided in section III.B., below. Details about the method for adjusting the \$1 fee in new subsection 13031(b)(9)(D)(i)(I) are provided in section III.C., below.

#### B. USPS Remittances to CBP and Supporting Documentation

The new subsection 13031(b)(9)(D) requires USPS to pay CBP on a quarterly basis 50 percent of the amount of the payments required by new subsection 13031(b)(9)(D)(i)(I)—initially set by Congress at \$1 per EMS item—in accordance with regulations prescribed by the Secretary of the Treasury to reimburse CBP for services provided in connection with the processing of Inbound EMS items. USPS is to retain the other 50 percent to reimburse it for services it provided in connection with the processing of Inbound EMS items. New subsection 13031(b)(9)(D) requires that the quarterly remittances from USPS to CBP must be deposited into the Customs User Fee Account

<sup>5</sup> Section 2515.6 of the mail classification schedule, issued by the Postal Regulatory Commission, pertains to Inbound EMS. As noted above, it describes Inbound EMS as Inbound Express Mail services offered pursuant to negotiated services agreements.

and used to reimburse appropriation accounts for amounts paid out of those accounts for the costs incurred by CBP in providing services to international mail facilities. It also provides that the payments retained by USPS with respect to the \$1 processing fee for Inbound EMS items are to be used for reimbursement purposes only.

USPS and CBP conferred about the methodology for how these quarterly remittances from USPS to CBP will occur. The agreed upon methodology takes into account the fact that USPS will collect the \$1 processing fee per Inbound EMS item from foreign postal operators and that USPS will reimburse CBP after settlement with foreign postal operators has occurred. The quarterly remittances from USPS to CBP will be made as follows: USPS will remit to CBP on a quarterly basis 50 percent of the amount required by new subsection 13031(b)(9)(D)(i)(I) of COBRA, for which settlement with foreign postal operators has occurred. Except for the first remittance, USPS must make such remittances to CBP every calendar quarter to cover preceding calendar quarters. As provided in section 8002(c) of the STOP Act, the amendments to COBRA took effect on January 1, 2020. Accordingly, the first remittance from USPS to CBP is due no later than July 31, 2020. It will cover, at a minimum, the first calendar quarter of 2020.<sup>6</sup> This methodology permits USPS to remit the required amounts after payment is settled with foreign postal operators and allows for standard processing times associated with inter-agency funds transfers. Additionally, CBP is requiring USPS to maintain documentation necessary for CBP to verify the accuracy of the fee calculations and to provide certain supporting documentation with each quarterly remittance.

New subsection 13031(b)(9)(D) does not include any specific requirements pertaining to the payment of the applicable merchandise processing fee, pursuant to subsection 13031(a)(9) of COBRA, for Inbound EMS items that are formally entered.<sup>7</sup> Therefore, CBP will collect this fee in the manner that it ordinarily collects a merchandise processing fee, which is directly from the importer of record.<sup>8</sup>

<sup>6</sup> The timing of the first remittance occurring in the third calendar quarter instead of the second calendar quarter is due to the nature of the accounting and interagency payment structure. Thus, while the first remittance must, at minimum, cover the first calendar quarter of 2020, it may also include remittances corresponding to the second calendar quarter of 2020.

<sup>7</sup> 19 CFR 24.23(b)(1) is the regulatory provision for the merchandise processing fee for formally entered items.

<sup>8</sup> 19 U.S.C. 1484(a)(2)(B) is the statutory provision identifying the parties who may qualify as the importer of record for purposes of affecting formal entry. An importer of record may be the owner, purchaser, or consignee of the items, or a duly licensed customs broker authorized to make entry on their behalf. The U.S. Postal Service which carries formally entered EMS items does not qualify as an "importer of record," but the addressee may.

*C. Adjustment of Inbound EMS Fees Pursuant to New Subsection 13031(b)(9)(D)*

New subsection 13031(b)(9)(D)(iv) provides that, beginning in fiscal year 2021, the Secretary of the Treasury, in consultation with the Postmaster General, may adjust the amount new subsection 13031(b)(9)(D)(i)(I), initially \$1 per Inbound EMS item, no more than once per fiscal year. The adjustment is not to exceed the costs of services provided in connection with the processing of inbound EMS items<sup>9</sup> and must be consistent with the obligations of the United States under international agreements. CBP is incorporating this provision into its regulations. For the reasons noted below, the regulations will provide that this fee is not subject to the annual inflation adjustment requirement in subsection 13031(l) of COBRA.

Subsection 13031(l) of COBRA authorizes the Secretary of the Treasury to adjust the fees established under subsections 13031(a) and (b)(2), (b)(3), (b)(5), (b)(6), (b)(8), and (b)(9) of COBRA at the beginning of each fiscal year to reflect the percentage of the increase in the average of the Consumer Price Index for the preceding 12-month period. Although subsection 13031(l) references subsection 13031(b)(9), as noted above, the new subsection 13031(b)(9)(D) explicitly specifies an alternative procedure for adjustment of the \$1 Inbound EMS item fee. In addition, it does not specify that the \$1 per Inbound EMS item fee is “subject to adjustment under subsection (l).” This is in contrast to all the other provisions that are referenced in subsection 13031(b), which explicitly provide that the respective fees imposed by those provisions are “subject to adjustment under subsection (l).” CBP is of the view that by providing a separate and distinct adjustment procedure for the \$1 Inbound EMS item fee, and by conspicuously omitting from new subsection 13031(b)(9)(D) any explicit reference to adjustment under subsection 13031(l), the new subsection 13031(b)(9)(D)(iv) is the sole applicable adjustment procedure—to the exclusion of the annual inflation adjustment procedures specified in subsection 13031(l) of COBRA. Any adjustment to the \$1 fee will be done by regulation. USPS, CBP, and Treasury will consult on such adjustments.

Consistent with subsection 13031(a)’s explicit provision that the fees listed therein are all “subject to adjustment under subsection (l)”, the annual adjustment under subsection 13031(l) of COBRA will apply to the subsection 13031(a)(9) merchandise processing fee pertaining to formally entered Inbound EMS items.

---

<sup>9</sup> The costs of services include the costs incurred by CBP and USPS for the processing of Inbound EMS items.



#### IV. Explanation of Amendments to CBP Regulations

CBP is amending its regulations to incorporate the fee provisions of new subsection 13031(b)(9)(D) regarding Inbound EMS items and to make the necessary conforming amendments pertaining to the merchandise processing fee and the dutiable mail fee. These amendments are explained in detail below.

Part 24 of Title 19 of the Code of Federal Regulations (CFR) sets forth the CBP regulations regarding customs financial and accounting procedures (19 CFR part 24). Section 24.22 (19 CFR 24.22) describes the customs COBRA user fees for certain services, and when such fees are required and subject to limitations and/or adjustments. Section 24.23 (19 CFR 24.23) sets forth the terms and conditions for when the fees for processing merchandise are required. These two sections will incorporate the fees associated with processing of Inbound EMS items that are subject to the new subsection 13031(b)(9)(D) of COBRA.

##### *A. Definitions*

First, CBP is amending the definitions in §§ 24.22 and 24.23 to define the term “Inbound Express Mail service” or “Inbound EMS”. As described in new subsection 13031(b)(9)(D), “Inbound Express Mail service” or “Inbound EMS” is the service described in the mail classification schedule referred to in section 3631 of title 39, United States Code. The mail classification schedule referred to in section 3631 of title 39, United States Code, is further described in section 3040.104 of title 39 of the Code of Federal Regulations.

##### *B. Inbound EMS Item Processing Fees*

CBP is amending § 24.22 to add a new paragraph (l) to incorporate the new processing fees as provided in new subsection 13031(b)(9)(D) of COBRA. Paragraph (l)(1) implements the amendments made in new subsection 13031(b)(9)(D), which require the payment of \$1 per Inbound EMS item and, for formally entered Inbound EMS items, an additional merchandise processing fee provided for under subsection (a)(9) of section 13031 of COBRA (19 U.S.C. 58c(a)(9)). Specifically, paragraph (l)(1)(i) requires the payment of \$1 per Inbound EMS item, as adjusted in accordance with the terms of paragraph (1)(3), rather than the annual adjustment inflation provided for in 19 CFR 24.22(k). Next, paragraph (l)(1)(ii) requires that if an Inbound EMS item is formally entered, the merchandise processing fee provided in 19 CFR 24.23(b)(1) must be paid.<sup>10</sup>

---

<sup>10</sup> As discussed previously, 19 CFR 24.23(b)(1) is the regulatory provision for formally entered items that is provided for in subsection 13031(a)(9) of COBRA.



Paragraph (1)(2) specifies how the remittance of payments required by subsection 13031(b)(9)(D)(i)(I) of COBRA will occur between USPS and CBP. As required by new subsection 13031(b)(9)(D)(iii)(I)(aa) of COBRA, paragraph (1)(2) states that USPS will remit to CBP on a quarterly basis 50 percent of the payments required by paragraph (1)(1) to reimburse CBP for services provided in connection with the processing of Inbound EMS items.<sup>11</sup> Paragraph (1)(2)(i) describes the method of remittance, in which USPS must remit 50 percent of payments required in paragraph (1)(1)(i) for which settlement with foreign postal operators has occurred.

Paragraph (1)(2)(i) requires USPS to make such remittances on a quarterly basis to cover preceding calendar quarters, with the first remittance due no later than July 31, 2020 to cover, at minimum, the first calendar quarter of 2020. Paragraph (1)(2)(ii) requires USPS to maintain documentation necessary for CBP to verify the accuracy of the fee calculations and to provide supporting documentation with its quarterly remittances, which shows: (1) The total quantity of Inbound EMS items for which 50 percent of the payments required by paragraph (1)(1)(i) of this section are being remitted; (2) the receiving international mail facility location of each Inbound EMS item for which 50 percent of the payments required by paragraph (1)(1)(i) of this section are being remitted; (3) the total amount of payments required by paragraph (1)(1)(i) of this section for which settlement with foreign postal operators has occurred; and (4) for any Inbound EMS items sent to the United States through the international postal network in preceding calendar quarters for which settlement with foreign postal operators concerning the payments required by paragraph (1)(1)(i) of this section has not occurred, the receiving international mail facility location of each such Inbound EMS item and the total quantity of any such Inbound EMS items received at each affected international mail facility location. The above requirements ensure that CBP has the supporting documentation necessary to track USPS's remittances to CBP to ensure that the statutory requirements are met.

Paragraph (1)(3) provides that beginning in fiscal year 2021, the Secretary of the Treasury may adjust by regulation the payments required in (1)(1)(i) after consultation with the Postmaster General. It further provides that such adjustments may be made not more frequently than once per fiscal year, and only to an amount that does not exceed the costs of services provided in connection with the process-

---

<sup>11</sup> For example, USPS must remit fifty cents to CBP and will retain fifty cents for one Inbound EMS item.

ing of Inbound EMS items and consistent with the obligations of the United States under international agreements.

Finally, with respect to fees, CBP amends § 24.23(c) that pertains to exemptions from the merchandise processing fee. Section 24.23(c) provides exemptions and limitations to when the merchandise processing fee, surcharge, or specific fees provided under section 24.23 will not apply. Among other exemptions, § 24.23(c)(1)(v) currently exempts merchandise imported by mail from the fees in § 24.23. However, pursuant to the newly amended subsection 13031(b)(9)(D)(i)(II) of COBRA, Inbound EMS items that are formally entered are subject to a merchandise processing fee. Thus, CBP is amending § 24.23(c)(1)(v) to exclude formally entered Inbound EMS items from this exemption.

### *C. Exclusions*

To effectuate the new subsection 13031(b)(9)(D)(i) of COBRA, CBP is also amending § 24.22 to exclude the \$1 fee per Inbound EMS item from the annual adjustment inflation mechanism provided in § 24.22(k) and exclude Inbound EMS items from the dutiable mail fee in § 24.22(f).

Specifically, CBP is amending the introductory paragraph of § 24.22 to exclude the \$1 processing fee contained in the newly added subparagraph (l) from the annual adjustment for inflation provision contained in § 24.22(k) (19 CFR 24.22(k)).<sup>12</sup>

CBP is amending § 24.22(f) to exclude Inbound EMS items from the dutiable mail fee. Current § 24.22(f) provides that the addressee of each item of dutiable mail for which a CBP officer prepares documentation will be assessed a processing fee.<sup>13</sup> This fee is authorized by subsection 13031(a)(6) of COBRA and current section 24.22(f) and is referred to as the dutiable mail fee. CBP is amending § 24.22(f) to conform with the amendment made by section 8002(b) of the STOP Act to subsection 13031(a)(6) of COBRA that specifically excludes Inbound EMS items from the dutiable mail fee. CBP is also amending Appendix A to Part 24 to reflect the numbering change in the dutiable mail fee provision from 24.22(f) to 24.22(f)(1).

---

<sup>12</sup> The merchandise processing fee applicable to Inbound EMS items that are formally entered will be subject to the annual inflation adjustment methodology in 19 CFR 24.22(k).

<sup>13</sup> The dutiable mail fee under 24.22(f) is subject to the annual inflation adjustment of the Fixing America's Surface Transportation (FAST) Act. The fee for FY 2020 is \$5.89. See CBP Dec. 19-08 (84 FR 37902).

## V. Statutory and Regulatory Requirements

### A. *Administrative Procedure Act*

The Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking in the **Federal Register** (5 U.S.C. 553(b)) and provide interested persons the opportunity to submit comments (5 U.S.C. 553(c)). However, the APA provides an exception to these requirements “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(B). For the reasons specified below, CBP has determined that there is good cause to publish this rule without prior notice and comment procedures.

This rule implements the amendments made to subsection 13031(b)(9) of COBRA by section 8002 of the STOP Act. The new subsection 13031(b)(9)(D) of COBRA prescribes the relevant requirements for the new fees for processing Inbound EMS items. Subsection 13031(b)(9)(D) of COBRA establishes the fee amount (initially \$1 per item plus the merchandise processing fee if the item is formally entered), what the fees cover (reimbursement for costs incurred in providing services in connection with the processing of Inbound EMS items), the percentage of the fee to be remitted to CBP from USPS (50 percent of the \$1 per Inbound EMS item), how often USPS must remit such amounts to CBP (on a quarterly basis), the account in which such payments to CBP are to be deposited (Customs User Fee Account), how often the \$1 fee may be adjusted by the Secretary of the Treasury in consultation with the Postmaster General (beginning in fiscal year 2021, and not more frequently than once each fiscal year) and considerations for how such adjustments are to be made (not to exceed the costs of services provided in connection with the processing of Inbound EMS items, consistent with obligations of the United States under international agreements).

As described above, this rule implements the amendments made to subsection 13031(b)(9) of COBRA by section 8002 of the STOP Act, which establish nondiscretionary requirements with respect to payments for the processing of Inbound EMS items at international mail facilities. Virtually all of the substantive provisions regarding the new fees are specifically provided by statute. This rule simply implements those requirements and makes necessary conforming amendments to CBP regulations.<sup>14</sup> The only discretionary matter that was

---

<sup>14</sup> The nondiscretionary conforming amendments refer to amending CBP regulations to subject Inbound EMS items that are formally entered to the merchandise processing fee

left for regulations was the specific method by which USPS must remit payments to CBP. Since CBP was given very little discretion regarding the implementation of new subsection 13031(b)(9)(D), CBP believes that prior notice and public comment procedure would be impracticable, unnecessary, and contrary to the public interest. Accordingly, CBP finds that there is good cause to issue this rule without prior notice and comment.

CBP has also concluded that this rule is exempt from the prior notice and comment rulemaking procedures under 5 U.S.C. 553(b)(A), which states that such procedures do not apply to “rules of agency organization, procedure, or practice.” 5 U.S.C. 553(b)(A). CBP considers this rule to fall within that exemption, as the rule adopts and implements the substantive requirements under the newly amended subsection 13031(b)(9) of COBRA, as amended by section 8002 of the STOP Act, and simply sets forth the procedures that will apply with regard to certain remittances from USPS to CBP. As discussed above, Congress established the substantive provisions of the fees for processing Inbound EMS items, including the fee amount, method of remittances, authorized uses upon receipt of payment, and discretion to adjust the \$1 fee once implemented after a year.

These regulations set forth the statutory requirements and the agency procedures for remitting the payments required under new subsection 13031(b)(9)(D) of COBRA. Specifically, the regulations detail the procedures regarding how USPS will remit the payments required by new subsection 13031(b)(9)(D) of COBRA. These regulations do not impose any obligations or costs to the public, and are procedural in nature.

Although this rule is exempt from the prior notice and comment procedure, CBP is requesting public comments on this interim final rule and will take into account public comments received before issuing a final rule.

### *B. Executive Orders 12866, 13563, and 13771*

Executive Orders 12866 (“Regulatory Planning and 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 both costs and benefits, of reducing costs, of harmonizing

under subsection 13031(a)(9) of COBRA, and the amendments made to subsection 13031(a)(6) of COBRA by section 8002(b) of the STOP Act that exclude Inbound EMS items from the dutiable mail fee provided for in that subsection.

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

This rule is a “significant regulatory action,” although not an economically significant regulatory action, under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this rule. Federal spending regulatory actions that cause only income transfers between taxpayers and program beneficiaries are not covered by Executive Order 13771. However, such regulatory actions may impose requirements apart from transfers and, in those cases, the actions would need to be offset to the extent they impose more than *de minimis* costs.<sup>15</sup> This rule is not expected to be subject to the requirements of Executive Order 13771 because this rule is expected to result in no more than *de minimis* costs. CBP has prepared a regulatory impact analysis of this rule in accordance with Executive Orders 12866 and 13563. CBP is unable to publish the full analysis because it uses proprietary, non-public USPS data. As such, CBP has included the following summary of the analysis to help inform stakeholders of this rule’s impacts.

### 1. Background and Purpose of Rule

As mentioned above, the STOP Act amends the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, 19 U.S.C. 58c(b)(9), to create new subsection 13031(b)(9)(D), which requires certain fees for the screening and processing of Inbound Express Mail Service (Inbound EMS) items at international mail facilities. Express Mail Service refers to the optional express delivery service for international postal items that provides reliable and high-speed service for sending postal items to other countries. USPS is responsible for processing and delivering these items in the United States, while CBP is responsible for screening such items and removing packages with illicit goods from the mail stream before delivery to intended recipients in the United States.

New subsection 13031(b)(9)(D) of COBRA requires a payment of \$1 per Inbound EMS item (“Inbound EMS item fee”), subject to annual adjustment, for services rendered in the screening and processing of Inbound EMS items. Under this new subsection, USPS must pay 50

---

<sup>15</sup> See U.S. Office of Management and Budget’s memorandum titled, “Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

percent of the designated \$1 fee per Inbound EMS item that it collects to CBP on a quarterly basis as reimbursement to CBP for processing of Inbound EMS items and retain the other 50 percent to cover its processing of these items. Depending on postal procedures, the \$1 Inbound EMS item fee may ultimately be paid by foreign postal operators, shippers, or other entities. New subsection 13031(b)(9)(D) of COBRA also specifies that the *ad valorem* merchandise processing fee (MPF) currently under subsection 13031(a)(9) of COBRA shall be required if applicable to Inbound EMS items that are formally entered; these new implementing regulations will make the MPF applicable to formally entered Inbound EMS items prospectively by removing the current regulatory exemption.<sup>16</sup> With this change, importers of record, who are addressees or addressees' brokers in the inbound mail environment, will be required to now pay an *ad valorem* MPF on any formally entered Inbound EMS items directly to CBP, consistent with current entry and entry summary procedures for other mail fees. For fiscal year (FY) 2020, this *ad valorem* MPF is 0.3464 percent, though it cannot exceed \$519.76 and cannot be less than \$26.79.<sup>17</sup> These maximum and minimum fee values are determined each fiscal year and published via **Federal Register** notice.

Under existing regulations, CBP also assesses duties, taxes, and fees on applicable Inbound EMS items, including a dutiable mail fee. Currently, all dutiable mail items for which a CBP officer prepared documentation (*i.e.*, formal entries and informal entries subject to duties) are subject to a dutiable mail fee. This dutiable mail fee, which is currently \$5.89 and is subject to annual adjustment for inflation, is generally paid by addressees of dutiable Inbound EMS items and other dutiable mail items.<sup>18</sup> When the mail item is delivered by USPS generally for informal entries, the dutiable mail fee generally is collected at the time of delivery of the merchandise, along with any duties and taxes due. CBP may also collect the fee directly from an addressee. The amendments made to COBRA by the STOP Act exclude Inbound EMS items from this dutiable mail fee.

---

<sup>16</sup> Formally entered items generally include those valued at over \$2,500, but they may also include other items with a value less than \$2,500, such as commercial shipments containing textiles and apparel and products regulated by other government agencies. MPFs are paid by the importer of record, who are addressees or addressees' brokers in the inbound mail environment. See 19 CFR 145.12 and [https://help.cbp.gov/app/answers/detail/a\\_id/121/kw/formal%20entry%20filing/related/1/session/L2F2LzEPvdGltZS8xNTY3MTczOTg0L3NpZC81WjVwS0Jubw%3D%3D](https://help.cbp.gov/app/answers/detail/a_id/121/kw/formal%20entry%20filing/related/1/session/L2F2LzEPvdGltZS8xNTY3MTczOTg0L3NpZC81WjVwS0Jubw%3D%3D). Accessed August 30, 2019.

<sup>17</sup> See CBP Dec. 19-08 (84 FR 37902).

<sup>18</sup> In accordance with the Fixing America's Surface Transportation Act of 2015 (FAST Act), the dutiable mail fee is updated to account for inflation each fiscal year. The FY 2020 fee is \$5.89. See CBP Dec. 19-08 (84 FR 37902).



As provided in the STOP Act, the aforementioned amendments to the COBRA fees took effect on January 1, 2020, though not all changes have been implemented. Through this rule, CBP is amending its regulations to implement all of the STOP Act's COBRA amendments that pertain to Inbound EMS items, including statutorily-prescribed fees, adjustments to fees, fee revenue remittances from USPS to CBP, and the elimination of the dutiable mail fee for Inbound EMS items. CBP is also requiring USPS to maintain and provide supporting documentation to the agency to ensure the accuracy of the fee remittances with this rule. Table 1 summarizes the COBRA user fees applicable to Inbound EMS items with and without the COBRA amendments and this rule.

TABLE 1—INBOUND EMS ITEM USER FEES WITH AND WITHOUT THE COBRA AMENDMENTS AND RULE

Inbound EMS item entry type	Without COBRA amendments and rule	With COBRA amendments and rule
Formal Entry (Generally >\$2,500 in value).	Dutiable mail fee for dutiable items (FY 2020 fee is \$5.89) <sup>19</sup> .	\$1.00 Inbound EMS item fee and <i>Ad valorem</i> MPF of 0.3464 percent (In FY 2020 the maximum amount of the fee cannot exceed \$519.76 and cannot be less than \$26.79).
Informal Entry <sup>20</sup> (Generally < or = \$2,500).	Dutiable mail fee for dutiable items (FY 2020 fee is \$5.89).	\$1.00 Inbound EMS item fee.

Source: Email communication with CBP's Office of Finance on June 21, 2019. Also see 19 CFR 145.12 and [https://help.cbp.gov/app/answers/detail/a\\_id/121/kw/formal%20entry%20filing/related/1/session/L2F2LzEvdGltZS8xNTY3MTczOTg0L3NpZC81WjVwS0Jubw%3D%3D](https://help.cbp.gov/app/answers/detail/a_id/121/kw/formal%20entry%20filing/related/1/session/L2F2LzEvdGltZS8xNTY3MTczOTg0L3NpZC81WjVwS0Jubw%3D%3D). Accessed August 30, 2019.

<sup>19</sup> See CBP Dec. 19–08 (84 FR 37902).

<sup>20</sup> Informal entries may include shipments that are subject to the *de minimis* administrative exemption, which generally exempts from duties and taxes shipments of merchandise imported by one person on one day and having an aggregate fair retail value in the country of shipment of not more than \$800 (bona-fide gifts and certain personal and household goods are subject to different requirements in order to qualify for separate administrative exemptions). See 19 U.S.C. 1321(a)(2); 19 CFR 10.151 and 145.31. In accordance with the Trade Facilitation and Trade Enforcement Act of 2015, the *de minimis* value changed from \$200 to \$800 on March 10, 2016. See <https://www.cbp.gov/newsroom/national-media-release/de-minimis-value-increases-800>. Accessed July 24, 2019. *De minimis* shipments will be subject to this rule's Inbound EMS item fee.



## 2. Historical and Projected Inbound Mail Volumes and Fees

Between FY 2017 and FY 2019, Inbound EMS items slightly declined, while total inbound mail items decreased at a higher rate. During this period, Inbound EMS items represented a small portion of total inbound mail. In the absence of robust data on formally and informally entered inbound mail items, CBP estimates that a small percentage of the total Inbound EMS items delivered between FY 2017 and FY 2019 were formally entered based on subject matter expert input and the FY 2017 to FY 2019 shares of total inbound mail items that were Inbound EMS items.<sup>21</sup> An even smaller number of total inbound mail items between FY 2017 and FY 2019 were dutiable items with dutiable mail fee collections. Without more specific dutiable mail fee data, CBP estimates that the share of total dutiable mail fee items with dutiable mail fee collections between FY 2017 and FY 2019 that corresponded to Inbound EMS items was consistent with the FY 2017 to FY 2019 share of total inbound mail items that were Inbound EMS items. CBP uses the historical Inbound EMS items data and assumptions to project future Inbound EMS items with and without this rule. In the absence of any rulemakings, CBP projects that the volume of Inbound EMS items will continue to decline at its FY 2017 to FY 2019 compound annual growth rate (CAGR) each year under the baseline from FY 2020 to FY 2024 (using FY 2019 as a basis for the initial projection). CBP also projects that the number of Inbound EMS items with dutiable mail fee collections will also decline at the FY 2017 to FY 2019 Inbound EMS item CAGR each year under the baseline from FY 2020 to FY 2024 (using FY 2019 as a basis for the initial projection). Based on the approximate share of Inbound EMS items that were formally entered from FY 2017 to FY 2019, CBP estimates that a small percentage of the projected Inbound EMS item volumes for FY 2020 to FY 2024 will correspond to formal entries.

Based on input from USPS subject matter experts, CBP predicts that the rule's \$1 Inbound EMS item fee and the *ad valorem* MPF for Inbound EMS items are likely to lead to decreases in Inbound EMS item volumes; however, the exact amounts of the decreases are unknown.<sup>22</sup> As such, CBP analyzes the impacts of this rule under three Inbound EMS item changes compared to the baseline. Under the first projection method, CBP predicts that the rule will have no impact on future Inbound EMS item volumes relative to the baseline. Thus, CBP projects that the changes in Inbound EMS item volumes with

---

<sup>21</sup> Source: Email communication with CBP's Office of Trade on June 24, 2019; August 7, 2019; and September 10, 2019, and email communication with CBP's Office of Field Operations on September 10, 2019.

<sup>22</sup> Source: Email communication with USPS on May 7, 2020.

this rule will be the same as those predicted under the baseline, decreasing by a small percentage each year starting from their FY 2019 value. Under the second projection method, CBP projects that Inbound EMS item volumes will decline by a slightly greater percentage point relative to the baseline each year starting from the FY 2019 total volume of Inbound EMS items. Under the third projection method, CBP projects that Inbound EMS item volumes will decline by an even greater additional percentage relative to the baseline each year starting from the FY 2019 total volume of Inbound EMS items. CBP will also no longer assess or collect dutiable mail fees for dutiable Inbound EMS items with this rule, meaning that there will be no corresponding fee collections during the period of analysis with this rule.

CBP is aware that the outbreak of COVID–19 will likely reduce the volume of future inbound mail in the short run. Consequently, using historical growth rates and figures from FY 2017 to FY 2019 to estimate Inbound EMS item volumes for FY 2020 through FY 2024 will not reflect any impacts from the COVID–19 pandemic. It is not clear what level of reductions the pandemic will have on Inbound EMS item volumes or how CBP would estimate such an impact with any precision given available data. Therefore, the Inbound EMS item projections CBP uses in this analysis are expected to be overestimations for the period of analysis, resulting in potential overestimations of this rule’s costs and benefits.

### 3. Transfer Payments From Rule

This rule’s \$1 Inbound EMS item fee and *ad valorem* MPF for formally entered Inbound EMS items are payments required for the reimbursement to USPS and CBP for services rendered during the screening and processing of Inbound EMS items. In accordance with OMB’s Circular A–4 (Regulatory Impact Analysis: A Primer), these fees to government agencies for services rendered are monetary transfers from fee payers to the U.S. Government for costs realized by the U.S. Government (specifically, USPS and CBP).<sup>23</sup> The dutiable mail fee for dutiable Inbound EMS items is also a monetary transfer from fee payers to the U.S. Government, which will be eliminated with this rule.

To calculate this rule’s monetary transfers, CBP considered the new or eliminated fee amounts and the projected number of Inbound EMS items respectively subject to these fee changes. In particular, to cal-

<sup>23</sup> Source: U.S. Office of Management and Budget. Circular A–4. *Regulatory Impact Analysis: A Primer*. Available at [https://www.reginfo.gov/public/jsp/Utilities/circular-a-4\\_regulatory-impact-analysis-a-primer.pdf](https://www.reginfo.gov/public/jsp/Utilities/circular-a-4_regulatory-impact-analysis-a-primer.pdf). Accessed July 24, 2019.

culate the total Inbound EMS item fee payments resulting from this rule, CBP multiplied the \$1 Inbound EMS item fee by the projected number of Inbound EMS items delivered by USPS from FY 2020 to FY 2024. To determine the *ad valorem* MPF payments from importers of record, who are addressees or addressees' brokers in the inbound mail environment, to the U.S. Government under this rule, CBP used an estimate of the average *ad valorem* MPF assessed for each formally entered Inbound EMS item multiplied by the projected number of formally entered Inbound EMS items over the period of analysis. In the absence of robust data on the value of formally entered Inbound EMS items, CBP estimated that the average MPF assessed for each formally entered Inbound EMS item will be equal to the minimum MPF for FY 2020 of \$26.79 between FY 2020 and FY 2024.<sup>24</sup> To measure the total amount of forgone dutiable mail fee transfer payments from addressees of dutiable Inbound EMS items to the U.S. Government, CBP multiplied the FY 2020 dutiable mail fee of \$5.89 by the projected number of Inbound EMS items that will be subject to the dutiable mail fee under the baseline from FY 2020 to FY 2024. According to these calculations, the U.S. Government will enjoy an undiscounted net transfer payment from fee payers of at least \$54.3 million from this rule between FY 2020 and FY 2024 according to the projection method used (see Table 2). When discounted, this net transfer payment equals at least \$47.9 million in present value and at least \$10.9 million on an annualized basis (using a 7 percent discount rate; see Table 2). To the extent that fee payers make more (fewer) transfer payments to the U.S. Government with this rule than estimated, the actual net transfers to the U.S. Government will be higher (lower).

---

<sup>24</sup> CBP based this estimate on U.S. Department of Transportation data on the total value of merchandise imported via multiple modes and mail for 2018 and USPS data on the total number of inbound mail shipments for FY 2018. CBP found that the average merchandise value of inbound mail shipment was less than the MPF of \$26.79 that will generally be applicable to Inbound EMS items formally entered under this rule; hence, the minimum MPF fee of \$26.79 will apply. Source of merchandise value data: U.S. Department of Transportation, Bureau of Transportation Statistics and Federal Highway Administration. Freight Analysis Framework, version 4.5.1, 2019. "Value of shipments by transportation mode" table. Trade type: Imports, Mode: Multiple Modes and Mail, 2018. Available at <https://www.bts.gov/faf>. Accessed May 7, 2020.

TABLE 2—TOTAL POTENTIAL MONETIZED PRESENT VALUE AND ANNUALIZED NET TRANSFER PAYMENTS OF RULE, FY 2020–FY 2024 [2020 U.S. Dollars]

	Undiscounted	3% Discount rate		7% Discount rate	
		Present value	Annualized	Present value	Annualized
Total Net Transfer Payment from Fee Payers to U.S. Government:					
Projection Method 1 * .....					
Projection Method 2 .....	\$57,735,540	\$54,527,317	\$11,559,504	\$50,783,914	\$11,575,443
Projection Method 3 .....	54,342,534	51,385,168	10,893,385	47,931,993	10,925,390

\* These estimates were excluded from the table for commercial sensitivity reasons.  
**Note:** The estimates in this table are contingent upon CBP’s projections as well as the discount rates applied.

#### 4. Costs and Benefits of Rule

Together with transfer payments, this rule will introduce costs to USPS, CBP, and fee payers. USPS will incur initial costs to set up accounts to collect the new \$1 Inbound EMS item fee and to remit a portion of the fee to CBP. USPS does not currently have estimates for the one-time costs that this new collection and remittance process will impose. However, because USPS already collects and processes other inbound mail fees, including some CBP-specific fees, CBP expects the cost of collecting and remitting an additional fee payment to be minimal. Along with these one-time costs, USPS will sustain recurring costs from this rule’s requirement for USPS to maintain and provide supporting documentation to CBP to ensure the accuracy of the \$1 Inbound EMS item fee remittances. The supporting documentation should show Inbound EMS item volume data as well as Inbound EMS item fee collections that are being remitted to CBP and outstanding balances. USPS must provide this documentation to CBP on a quarterly basis. This requirement will also likely impose a minimal burden on USPS.<sup>25</sup>

CBP’s Office of Finance will experience some time burdens associated with the review of USPS’s \$1 Inbound EMS item fee documentation. CBP staff will have to match supporting documentation provided by USPS with funds remitted to CBP. There will also be periodic audits by CBP’s Regulatory Audit and Agency Advisory Services Directorate to ensure Inbound EMS item volumes reported by USPS and the funds remitted to CBP match the volumes indicated in CBP’s system. CBP will conduct these reviews and audits in conjunction with other remittance reviews and audits. CBP estimates that the monetized time burden of these reviews and audits will be very small

<sup>25</sup> Source: Communication with USPS on September 20, 2019.

each year.<sup>26</sup> As such, this Inbound EMS item user fee documentation review and auditing will not meaningfully affect CBP operations.

With this rule, CBP processing of Inbound EMS items will largely remain the same, except CBP will now collect an *ad valorem* MPF for each formally entered Inbound EMS item and CBP will no longer assess the dutiable mail fee on Inbound EMS items. CBP will now collect the *ad valorem* MPF on formally entered items consistent with existing entry and entry summary procedures for other mail fees. Likewise, CBP officers at international mail facilities will ensure the payment of this MPF electronically in the same manner as other items currently subject to MPF and related duties, taxes, and fees. Thus, CBP does not believe that the collection of the *ad valorem* MPF for formally entered Inbound EMS items will impose an added processing time burden on CBP.<sup>27</sup> CBP also does not believe that the rule's elimination of the dutiable mail fee for Inbound EMS items will generally result in time savings to CBP.<sup>28</sup>

In addition to the U.S. Government, CBP estimates that this rule's new fee collections will impose nominal time burdens on fee payers, as they will generally pay the fees with other duties, taxes, and fees currently assessed on their Inbound EMS items.

Besides enabling CBP and USPS to comply with the amendments made to COBRA by the STOP Act, CBP believes this rule will produce negligible benefits.

## 5. Summary

In summary, this rule will mostly result in transfer payments between fee payers and the U.S. Government (specifically, USPS and CBP). On net, payers will transfer at least an estimated \$10.9 million in annualized fee payments to the U.S. Government from FY 2020 to FY 2024 (using a 7 percent discount rate). These estimates are based on historical growth rates and shares. The transfer payments resulting from this rule could be understated if future inbound mail volumes increase more than estimated, or they could be overstated if future inbound mail volumes decrease more than estimated, like during the COVID-19 pandemic. To the extent that fee payers make more (fewer) transfer payments to the U.S. Government with this rule than estimated, the actual net transfers to the U.S. Government from this rule will be higher (lower). USPS, CBP, and fee payers will likely incur minimal costs from this rule.

---

<sup>26</sup> Source: Email communication with CBP's Office of Finance on July 25, 2019.

<sup>27</sup> Source: Communication with CBP's Office of Field Operations on September 9, 2019.

<sup>28</sup> Source: Communication with CBP's Office of Field Operations on September 9, 2019.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

### *D. Unfunded Mandates Reform Act of 1995*

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

### *E. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that CBP consider the impact of paperwork and other information collection burdens imposed on the public. This IFR imposes a burden on a partner government agency, USPS, and as such, the provisions of the Act do not apply to this rule. Therefore, CBP has determined that there is no collection of information which requires a control number assigned by the Office of Management and Budget.

### *F. Signing Authority*

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

## **List of Subjects in 19 CFR Part 24**

Accounting, Claims, Customs duties and inspection, Harbors, Reporting and recordkeeping requirements, Taxes.

## **Amendments to the Regulations**

For the reasons set forth above, part 24 of title 19 of the Code of Federal Regulations (19 CFR part 24) is amended as follows:

**PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE**

■ 1. The general authority citation for part 24 continues and the separate authority citations for §§ 24.22 and 24.23 are revised to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 3717, 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

\* \* \* \* \*

Section 24.22 also issued under Sec. 892, Pub. L. 108–357, 118 Stat. 1418 (19 U.S.C. 58c); Sec. 32201, Pub. L. 114–94, 129 Stat. 1312 (19 U.S.C. 58c); Pub. L. 115–271, 132 Stat. 3895 (19 U.S.C. 58c).

Section 24.23 also issued under 19 U.S.C. 3332; Sec. 892, Pub. L. 108–357, 118 Stat. 1418 (19 U.S.C. 58c); Sec. 32201, Pub. L. 114–94, 129 Stat. 1312 (19 U.S.C. 58c); Pub. L. 115–271, 132 Stat. 3895 (19 U.S.C. 58c).

\* \* \* \* \*

■ 2. Amend § 24.22 by:

■ a. In the introductory text, adding the words “Except as provided in paragraph (1)(1)(i) of this section,” to the beginning of the second sentence;

■ b. Adding paragraph (a)(5);

■ c. Revising paragraph (f);

■ d. Adding paragraph (l).

The additions and revision read as follows:

**§ 24.22 Fees for certain services.**

(a) \* \* \*

(5) The term *Inbound Express Mail service* or *Inbound EMS* means the service described in the mail classification schedule referred to in section 3631 of title 39, United States Code and 39 CFR 3040.104.

\* \* \* \* \*

(f) *Fee for dutiable mail*—(1) *Dutiable mail other than Inbound EMS items.* Except as provided in paragraph (f)(2) of this section, the addressee of each item of dutiable mail for which a CBP officer prepares documentation will be assessed a processing fee in the



amount of \$5.50, as adjusted in accordance with the terms of paragraph (k) of this section. When the merchandise is delivered by the Postal Service, the fee will be shown as a separate item on the entry and collected at the time of delivery of the merchandise along with any duty and taxes due. When CBP collects the fee directly from the importer or his agent, the fee will be included as a separate item on the informal entry or entry summary document.

(2) *Dutiable Inbound EMS items.* The fee specified in paragraph (f)(1) of this section does not apply to dutiable Inbound EMS items.

\* \* \* \* \*

(1) *Fees for Inbound Express Mail service (Inbound EMS) items.* (1) *Amounts.* As provided in subsection (b)(9)(D) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA), as amended by section 8002 of the Synthetics Trafficking and Overdose Prevention Act of 2018 (STOP Act of 2018) (19 U.S.C. 58c(b)(9)(D)), with respect to the processing of items that are sent to the United States through the international postal network by ‘Inbound Express Mail service’ or ‘Inbound EMS’, the following payments are required:

(i) \$1 per Inbound EMS item, as adjusted in accordance with the terms of paragraph (1)(3) of this section, and

(ii) If an Inbound EMS item is formally entered, the fee provided for under § 24.23(b)(1).

(2) *Remittances from United States Postal Service to CBP.* As provided in subsection (b)(9)(D) of section 13031 of the COBRA, as amended by section 8002 of the STOP Act of 2018 (19 U.S.C. 58c(b)(9)(D)), United States Postal Service must remit to CBP on a quarterly basis 50 percent of the payments required by paragraph (1)(1)(i) of this section, to reimburse CBP for customs services provided in connection with the processing of Inbound EMS items. United States Postal Service will retain 50 percent of the amounts of the payments required by paragraph (1)(1)(i) of this section, to reimburse the Postal Service for services provided in connection with the processing of Inbound EMS items.

(i) *Method of Remittance.* United States Postal Service must remit to CBP, on a quarterly basis, 50 percent of the payments required by paragraph (1)(1)(i) of this section for which settlement with foreign postal operators has occurred. Except for the first remittance, United States Postal Service must make such remittances to CBP every calendar quarter to cover preceding calendar quarters. The first remittance to CBP, due no later than July 31, 2020, must at a minimum cover the first calendar quarter of 2020.

(ii) *Supporting Documentation.* United States Postal Service must maintain documentation necessary for CBP to verify the accuracy of

the fee calculations. With each quarterly remittance to CBP, United States Postal Service must provide a supporting document that shows:

(A) The total quantity of Inbound EMS items for which 50 percent of the payments required by paragraph (l)(1)(i) of this section are being remitted;

(B) The receiving international mail facility location of each Inbound EMS item for which 50 percent of the payments required by paragraph (l)(1)(i) of this section are being remitted;

(C) The total amount of payments required by paragraph (l)(1)(i) of this section for which settlement with foreign postal operators has occurred; and

(D) For any Inbound EMS items sent to the United States through the international postal network in preceding calendar quarters for which settlement with foreign postal operators concerning the payments required by paragraph (l)(1)(i) of this section has not occurred, the receiving international mail facility location of each such Inbound EMS item and the total quantity of any such Inbound EMS items received at each affected international mail facility location.

(3) *Adjustment of User Fee for Inbound Express Mail items.* Beginning in fiscal year 2021, the Secretary of the Treasury, in consultation with the Postmaster General, may adjust by regulation, not more frequently than once each fiscal year, the amount described in paragraph (l)(1)(i) of this section to an amount not to exceed the costs of services provided in connection with the customs processing of Inbound EMS items, consistent with the obligations of the United States under international agreements.

■ 3. Amend § 24.23 by:

■ a. Adding paragraph (a)(6); and

■ b. Revising paragraph (c)(1)(v).

The addition and revision read as follows:

**§ 24.23 Fees for processing merchandise.**

(a) \* \* \*

(6) *Inbound Express Mail service or Inbound EMS.* *Inbound Express Mail service or Inbound EMS* means the service described in the mail classification schedule referred to in section 3631 of title 39, United States Code and 39 CFR 3040.104.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(v) Merchandise described in General Note 19, HTSUS, merchandise released under 19 U.S.C. 1321, and merchandise imported by mail, other than Inbound EMS items that are formally entered on or after September 3, 2020

\* \* \* \* \*

**Appendix A to Part 24 [Amended]**

■ 4. In Appendix A to Part 24 amend the entry for (a)(6) by removing, in the second column, “(f) and adding in its place “(f)(1)”.

Dated: July 15, 2020.

MARK A. MORGAN,  
*Chief Operating Officer and Senior Official  
Performing the Duties of Commissioner,  
U.S. Customs and Border Protection.*

Approved:

TIMOTHY E. SKUD,  
*Deputy Assistant  
Secretary of the Treasury.*

[Published in the Federal Register, August 4, 2020 (85 FR 47018)]

**COPYRIGHT, TRADEMARK, AND TRADE NAME  
RECORDATIONS  
(No. 7 2020)**

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

**SUMMARY:** The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in July 2020. A total of 188 recordation applications were approved, consisting of 10 copyrights and 178 trademarks. The last notice was published in the Customs Bulletin Vol. 54, No. 28, July 22, 2020.

Corrections or updates may be sent to: Intellectual Property Rights Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE., 10th Floor, Washington, D.C. 20229–1177, or via email at [iprrquestions@cbp.dhs.gov](mailto:iprrquestions@cbp.dhs.gov).

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

ALAINA VAN HORN

*Chief,*

*Intellectual Property Rights Branch  
Regulations and Rulings, Office of Trade*

## CBP IPR RECORDATION — JULY 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
COP 20-00038	07/01/2020	07/01/2040	Commissioner's Trophy	Office of the Commissioner of Baseball,	No
COP 20-00039	07/02/2020	01/02/2021	NY Subway Line Marker	Miriam Kaplan	No
COP 20-00040	07/02/2020	01/02/2021	Grand Central Terminal Building glass Christmas ornament	Miriam Kaplan	No
COP 20-00041	07/02/2020	01/02/2021	Token glass Christmas ornament	Miriam Kaplan	No
COP 20-00042	07/13/2020	07/13/2040	remote controlled TOY SHARK	Buzzbrained LLC.	No
COP 20-00043	07/15/2020	07/15/2040	Tessuto mosaic tile pattern	Artistic Tile, Inc.	No
COP 20-00044	07/15/2020	07/15/2040	Grand Hotel Mosaic Tile Pattern	Artistic Tile, Inc.	No
COP 20-00045	07/20/2020	07/20/2040	Never Stop Dreaming	NICOLE LEE	No
COP 20-00046	07/29/2020	07/29/2040	Digital tiger stripe.	Bradford Dyeing Association, Inc.	No
COP 20-00047	07/30/2020	04/29/2021	2HT-13	Terry Michael LeRoy	No
TMK 02-00420	07/07/2020	07/04/2030	NARCISO RODRIGUEZ	NARCISO RODRIGUEZ CORPORATION	No
TMK 02-00504	07/07/2020	10/10/2030	LASER II	LASER SHAVING (INDIA) PRIVATE LIMITED	No
TMK 04-00653	07/07/2020	10/24/2030	BURBERRY	BURBERRY LIMITED	No
TMK 05-00466	07/20/2020	03/21/2022	CROSS	A.T. CROSS COMPANY, LLC	No
TMK 05-00662	07/09/2020	10/11/2030	TOSTITOS	FRITO-LAY NORTH AMERICA, INC.	No
TMK 05-00797	07/13/2020	08/23/2030	PANTHERE DE CARTIER	CARTIER INTERNATIONAL A.G.	No
TMK 06-00470	07/13/2020	08/02/2030	PANTHERE	CARTIER INTERNATIONAL A.G.	No
TMK 07-00434	07/02/2020	09/12/2030	Chinese character design	GARDEN COMPANY LIMITED, THE	No
TMK 07-01103	07/01/2020	01/23/2028	Configuration of Tall (Bullet) Blender	CAPBRAN HOLDINGS, LLC	No
TMK 07-01108	07/01/2020	01/02/2028	Configuration short (bullet) blender	CAPBRAN HOLDINGS, LLC	No
TMK 08-00624	07/07/2020	07/29/2028	LOCS (STYLIZED)	Jay-Y Enterprise Co., Inc.	No
TMK 08-00771	07/15/2020	06/18/2028	DONG SUH	Dong Suh Foods Corporation	No
TMK 08-00818	07/16/2020	07/22/2028	Korean Character Mark (Dong Suh)	Dong Suh Foods Corporation	No

## CBP IPR RECORDATION — JULY 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tm/Trm	Owner Name	GM Restricted
TMK 08-00877	07/15/2020	04/30/2027	Apple Design Logo	Dong Suh Foods Corporation	No
TMK 09-00165	07/24/2020	08/02/2030	TAPOUT	AGB TAPOUT LLC	No
TMK 10-00062	07/27/2020	04/05/2030	KENY	KSG TRADE CO.	No
TMK 10-00917	07/09/2020	07/25/2030	SUPER MARIO BROS.	Nintendo of America Inc.	No
TMK 10-00930	07/08/2020	07/25/2030	SUPER MARIO	Nintendo of America Inc.	No
TMK 10-00997	07/08/2020	07/25/2030	ZELDA	Nintendo of America Inc.	No
TMK 10-01011	07/30/2020	05/01/2030	CAMARO	GENERAL MOTORS LLC	No
TMK 10-01061	07/30/2020	04/25/2030	CHEVROLET	GENERAL MOTORS LLC	No
TMK 10-01085	07/29/2020	04/25/2030	CORVETTE	GENERAL MOTORS LLC	No
TMK 10-01088	07/29/2020	04/25/2030	CHEVROLET EMBLEM Configuration Design	General Motors LLC	No
TMK 10-01100	07/29/2020	04/25/2030	CHEVROLET EMBLEM Design Configuration	GENERAL MOTORS LLC	No
TMK 10-01258	07/30/2020	05/01/2030	CORVETTE	GENERAL MOTORS LLC	No
TMK 10-01308	07/29/2020	04/19/2030	CORVETTE C6 EMBLEM	General Motors LLC	No
TMK 10-01322	07/29/2020	04/19/2030	CORVETTE C6 EMBLEM	General Motors LLC	No
TMK 10-01324	07/29/2020	04/19/2030	CORVETTE C6 EMBLEM	General Motors LLC	No
TMK 11-00143	07/23/2020	08/25/2030	NOSTROMO	Luis Calvo Sanz, S.A.	No
TMK 11-00585	07/30/2020	04/06/2030	HERMES & Design Configuration	HERMES INTERNATIONAL	No
TMK 11-00795	07/01/2020	04/30/2030	STYLIZED WIFFLE BALL DESIGN	WIFFLE BALL, INC., THE	No
TMK 11-00999	07/23/2020	11/03/2030	MONSTER HIGH	MATTEL, INC.	No
TMK 11-01093	07/09/2020	10/04/2030	THEAM	WESTCON MFG INC.	No
TMK 12-00816	07/13/2020	09/13/2030	ARAUJO	KERWIN ESTATE LLC	No
TMK 12-00827	07/07/2020	07/12/2030	JESSICA SIMPSON (Stylized)	WITH YOU LLC	No

## CBP IPR RECORDATION — JULY 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 12-00952	07/28/2020	08/01/2030	HUGO BOSS	HUGO BOSS TRADE MARK MANAGEMENT GMBH & CO. KG	No
TMK 13-00024	07/15/2020	09/29/2030	PRADA MILANO & Design	Prada S.A.	No
TMK 13-00393	07/15/2020	04/12/2030	FOX	Fox Head, Inc.	No
TMK 13-00732	07/02/2020	02/02/2030	JOHN DEERE	DERE & COMPANY	No
TMK 13-00870	07/13/2020	07/22/2030	HASTELLOY	HAYNES INTERNATIONAL, INC.	No
TMK 14-00061	07/01/2020	06/09/2030	NEW ERA	New Era Cap Co., Inc.	No
TMK 14-00211	07/13/2020	04/12/2030	M MONCLER (Stylized) & Design	MONCLER S.P.A.	No
TMK 14-00796	07/01/2020	05/16/2030	BELLADOS	Sobel Westex	No
TMK 14-00896	07/30/2020	04/25/2030	CORVETTE C4 EMBLEM	GENERAL MOTORS LLC	No
TMK 14-00910	07/29/2020	04/25/2030	CHEVROLET EMBLEM	GENERAL MOTORS LLC	No
TMK 14-00954	07/29/2020	04/19/2030	CORVETTE C6 EMBLEM	GENERAL MOTORS LLC	No
TMK 14-00955	07/29/2020	04/19/2030	CORVETTE C6 EMBLEM	GENERAL MOTORS LLC	No
TMK 14-00989	07/29/2020	04/19/2030	CORVETTE C6 EMBLEM	General Motors LLC	No
TMK 14-01005	07/29/2020	04/19/2030	CORVETTE C6 EMBLEM	General Motors LLC	No
TMK 14-01008	07/29/2020	04/18/2030	CHEVROLET	GENERAL MOTORS LLC	No
TMK 15-00066	07/29/2020	04/19/2030	CORVETTE C6 EMBLEM	GENERAL MOTORS LLC	No
TMK 15-00487	07/23/2020	03/15/2030	RAIDERS & Shield Design	RAIDERS FOOTBALL CLUB, LLC	No
TMK 15-00909	07/17/2020	03/29/2030	FITBIT	FITBIT, INC.	No
TMK 15-01232	07/06/2020	07/06/2030	TRIPLE TESTED TROJAN QUALITY and DESIGN	CHURCH & DWIGHT CO., INC.	No
TMK 18-00547	07/08/2020	09/22/2030	TRUSHIELD	Performance Fabrics, Inc.	No
TMK 18-01061	07/07/2020	03/15/2030	NISSAN LOGO	NISSAN JIDOSHA KABUSHIKI KAISHA	No
TMK 18-01296	07/13/2020	03/07/2030	T & DESIGN	CHEVRON INTELLECTUAL PROPERTY LLC	No



## CBP IPR RECORDATION — JULY 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 19-00319	07/27/2020	08/11/2030	GAMBLER	Top Tobacco LP	No
TMK 19-00577	07/02/2020	07/20/2030	TUBE CUT	Top Tobacco, LP	No
TMK 19-00586	07/29/2020	08/11/2030	TUBE CUT	Top Tobacco, LP	No
TMK 19-00747	07/13/2020	07/13/2030	BEAUTY 360	CVS Pharmacy, Inc.	No
TMK 20-00141	07/17/2020	07/17/2030	MEDTRONIC	MEDTRONIC, INC.	No
TMK 20-00514	07/01/2020	06/17/2025	MCM (Stylized) and Design Pattern	TRIAS Holding AG	No
TMK 20-00515	07/01/2020	11/19/2024	TT TIZIANA TEREZNI SINCE 1968 WHITE FIRE & DESIGN	Cereria Terenzi Evelino S.R.L.	No
TMK 20-00516	07/01/2020	04/21/2024	TIZIANA TEREZNI (Stylized) and Design	Cereria Terenzi Evelino S.R.L.	No
TMK 20-00517	07/01/2020	08/08/2028	TT TIZIANA TEREZNI SINCE 1968 & DESIGN	Cereria Terenzi Evelino S.R.L.	No
TMK 20-00518	07/01/2020	03/20/2027	V CANTO BY TEREZNI & DESIGN	CERERIA TEREZNI EVELINO S.R.L.	No
TMK 20-00519	07/01/2020	09/09/2030	W (Stylized)	Washington Nationals Baseball Club, LLC	No
TMK 20-00520	07/01/2020	05/20/2023	TFT Word Mark	TASK FORCE TIPS LLC	No
TMK 20-00521	07/01/2020	02/27/2028	TFT (STYLIZED)	TASK FORCE TIPS LLC	No
TMK 20-00522	07/01/2020	10/10/2028	Configuration of World Series Trophy	Office of the Commissioner of Baseball	No
TMK 20-00523	07/01/2020	05/24/2024	BLISTEX	BLISTEX INC.	No
TMK 20-00524	07/02/2020	05/28/2022	ODOR-EATERS	Blistex Inc.	No
TMK 20-00525	07/02/2020	03/03/2030	BLISTEX	Blistex Inc.	No
TMK 20-00526	07/02/2020	05/19/2028	STRIDEX	Blistex Inc.	No
TMK 20-00527	07/02/2020	07/29/2026	LIP MEDEX	BLISTEX INC.	No
TMK 20-00528	07/02/2020	07/30/2029	Tri-color Cigar Design	Siboney Corporation	No
TMK 20-00529	07/02/2020	11/14/2027	WASHINGTON NATIONALS	Washington Nationals Baseball Club, LLC	No
TMK 20-00530	07/02/2020	06/13/2028	WASHINGTON NATIONALS W & design	Washington Nationals Baseball Club, LLC	No
TMK 20-00531	07/06/2020	06/17/2030	SRX	Rexair LLC	No

## CBP IPR RECORDATION — JULY 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tm/Tm	Owner Name	GM Restricted
TMK 20-00532	07/07/2020	01/27/2026	COLOR GREEN ON INSIDE OF POT/ PAN	ORGREENIC, LLC	No
TMK 20-00533	07/07/2020	07/07/2030	RUPTELA	Ruptela, UAB	No
TMK 20-00534	07/07/2020	08/25/2030	ORGREENIC	ORGREENIC, LLC	No
TMK 20-00535	07/07/2020	09/18/2023	NATS	Washington Nationals Baseball Club, LLC	No
TMK 20-00536	07/07/2020	04/08/2023	NATS	Washington Nationals Baseball Club, LLC	No
TMK 20-00537	07/07/2020	09/18/2022	FAT FLUSH KIT	FIRST LADY OF NUTRITION, INC.	No
TMK 20-00538	07/08/2020	02/13/2028	DC (Stylized)	Washington Nationals Baseball Club, LLC	No
TMK 20-00539	07/08/2020	03/04/2028	NATIONALS (Stylized)	WASHINGTON NATIONALS BASEBALL CLUB, LLC	No
TMK 20-00540	07/08/2020	01/10/2028	BRUMATE	BRUMATE, LLC	No
TMK 20-00541	07/08/2020	02/19/2030	CEROS	Performance Fabrics, Inc.	No
TMK 20-00542	07/08/2020	06/17/2030	CBR65	Performance Fabrics, Inc.	No
TMK 20-00543	07/08/2020	08/21/2023	HEMP LOVE	TATTOO HOLDINGS LLC	No
TMK 20-00544	07/08/2020	01/20/2026	HEMP LOVE	TATTOO HOLDINGS LLC	No
TMK 20-00545	07/08/2020	04/30/2028	HEMP LOVE	TATTOO HOLDINGS LLC	No
TMK 20-00546	07/09/2020	06/12/2023	BOGG	Twenty-Six Designs, LLC	No
TMK 20-00547	07/13/2020	09/16/2030	TIO JORGE & DESIGN	MERCADAGRO INTERNATIONAL CORPORATION	No
TMK 20-00548	07/15/2020	01/02/2022	GATEWAY	ACER INCORPORATED	No
TMK 20-00549	07/15/2020	11/08/2027	GATEWAY & Design	Acer Incorporated	No
TMK 20-00550	07/16/2020	10/17/2028	GC Ghost Controls (Stylized) & Design	Ghost Controls, LLC	No
TMK 20-00551	07/17/2020	09/25/2029	GHOST PRO SERIES	Ghost Controls, LLC	No
TMK 20-00552	07/19/2020	01/10/2026	TODDY	TODDY, LLC	No
TMK 20-00553	07/19/2020	05/13/2028	TODDY & Design	Toddy, LLC	No

## CBP IPR RECORDATION — JULY 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 20-00554	07/19/2020	02/20/2029	TODDY	Toddy, LLC	No
TMK 20-00555	07/19/2020	08/07/2029	2G (Stylized) & Design	KOI BRANDS, LLC	No
TMK 20-00556	07/20/2020	02/26/2030	VERSA	Ftbit, Inc.	No
TMK 20-00557	07/20/2020	08/08/2028	FINDYOURFIT	FITBIT, INC.	No
TMK 20-00558	07/20/2020	02/26/2030	FITBIT VERSA	Ftbit, Inc.	No
TMK 20-00559	07/20/2020	05/25/2030	FITBIT + & DIAMOND DESIGN	Ftbit, Inc.	No
TMK 20-00560	07/21/2020	04/21/2024	Stop the Killing and Violence and Logo	STOP THE KILLING AND VIOLENCE, LLC	No
TMK 20-00561	07/21/2020	05/28/2027	SMARTTRACK	FITBIT, INC.	No
TMK 20-00562	07/21/2020	05/14/2027	GET FIT IN STYLE	Ftbit, Inc.	No
TMK 20-00563	07/21/2020	10/14/2030	AMERICAN RESPONSE VEHICLES ARV HELPING EMERGENCY SERVICES	American Response Vehicles	No
TMK 20-00564	07/21/2020	11/13/2029	FITBIT INSPIRE	Ftbit, Inc.	No
TMK 20-00565	07/21/2020	04/07/2024	Puma (Stylized) and Design	PUMA SE	No
TMK 20-00566	07/21/2020	10/01/2026	Puma (Stylized) and Design	PUMA SE	No
TMK 20-00567	07/21/2020	10/31/2028	CONFIGURATION DESIGN (SERIES OF IRREGULAR DOTS FORMING A DIAMOND)	Ftbit, Inc.	No
TMK 20-00568	07/22/2020	08/19/2030	Configuration of Gear Box Design	Universal Motion Components Co., Inc.	No
TMK 20-00569	07/22/2020	09/01/2030	Puma & Design	PUMA SE SOCIETAS EUROPAE (SE)	No
TMK 20-00570	07/22/2020	01/12/2031	Puma Form Stripe	PUMA SE SOCIETAS EUROPAE (SE),	No
TMK 20-00571	07/22/2020	12/03/2029	DAKA	Magpul Industries Corp.	No
TMK 20-00572	07/22/2020	03/29/2026	M-LOK	Magpul Industries Corp.	No
TMK 20-00573	07/22/2020	09/21/2026	M & Design	Magpul Industries Corp.	No
TMK 20-00574	07/22/2020	09/14/2026	M M-LOK (Stylized)	Magpul Industries Corp.	No

## CBP IPR RECORDATION — JULY 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 20-00575	07/22/2020	12/03/2029	MAGPUL	Magpul Industries Corp.	No
TMK 20-00576	07/22/2020	08/05/2030	HGC APPAREL	Marcia L. Smith	No
TMK 20-00577	07/22/2020	03/24/2030	3-Prong Design Resembling Hatchet Enclosed in Circle	Magpul Industries Corp.	No
TMK 20-00578	07/22/2020	07/19/2021	RVG	Magpul Industries Corp.	No
TMK 20-00579	07/22/2020	01/11/2027	FITFORGOOD	Fibbit, Inc.	No
TMK 20-00580	07/22/2020	08/26/2030	HGC APPAREL	HGC Apparel, LLC	No
TMK 20-00581	07/22/2020	08/05/2030	BLACK BY POPULAR DEMAND and Design	Marcia L. Smith	No
TMK 20-00582	07/22/2020	07/02/2029	BLACK BY POPULAR DEMAND and Design	Smith, Marcia L.	No
TMK 20-00583	07/22/2020	07/02/2029	BLACK BY POPULAR DEMAND & DESIGN	Smith, Marcia L.	No
TMK 20-00584	07/23/2020	11/08/2027	EDUCATED BLACK QUEEN	Smith, Marcia L.	No
TMK 20-00585	07/23/2020	08/14/2029	FIBBIT ACE	Fibbit, Inc.	No
TMK 20-00586	07/23/2020	12/18/2028	ANAB ACCREDITED logo	American National Standards Institute, Incorporated	No
TMK 20-00587	07/23/2020	06/30/2030	FIBBIT CARE	Fibbit, Inc.	No
TMK 20-00588	07/23/2020	12/13/2025	GINGER MINT KC CANDY	K.C. Confectionery, Ltd.	No
TMK 20-00589	07/23/2020	04/05/2023	KC CANDY and Design	K.C. CONFECTIONERY, LTD.	No
TMK 20-00590	07/23/2020	09/02/2030	EDUCATED NEGRO	HGC Apparel LLC	No
TMK 20-00591	07/23/2020	02/26/2030	PROUD BLACK WOMAN	HGC Apparel LLC	No
TMK 20-00592	07/23/2020	11/01/2027	RESPECT PROTECT LOVE THE BLACK WOMAN	Smith, Marcia L.	No
TMK 20-00593	07/23/2020	11/08/2027	ALL WE EVER DID WAS BE BLACK	Smith, Marcia L.	No
TMK 20-00594	07/23/2020	11/07/2028	BLACK LOVE MADE ME	Marcia L. Smith	No

## CBP IPR RECORDATION — JULY 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 20-00595	07/23/2020	07/23/2029	BLACK MEN I LOVE YOU & DESIGN	Smith, Marcia L.	No
TMK 20-00596	07/23/2020	12/24/2029	I AM AN EDUCATED BLACK QUEEN and Design	Marcia L. Smith	No
TMK 20-00597	07/23/2020	10/31/2028	DESIGN ONLY (SERIES OF IRREGULAR TEAL DOTS FORMING A DIAMOND)	Fitbit, Inc.	No
TMK 20-00598	07/23/2020	10/31/2028	FITBIT	Fitbit, Inc.	No
TMK 20-00599	07/23/2020	12/03/2029	BLACK BY POPULAR DEMAND and Design	HGC Apparel LLC	No
TMK 20-00600	07/24/2020	02/03/2026	FITBIT	FITBIT, INC.	No
TMK 20-00601	07/24/2020	07/17/2027	VOLT	RYAN, OWEN	No
TMK 20-00602	07/27/2020	10/04/2027	A-B	Rockwell Automation, Inc.	No
TMK 20-00603	07/27/2020	06/21/2021	ALLEN-BRADLEY	ROCKWELL AUTOMATION, INC.	No
TMK 20-00604	07/27/2020	02/21/2028	ALLEN-BRADLEY	Rockwell Automation, Inc.	No
TMK 20-00605	07/27/2020	01/13/2022	ALLEN-BRADLEY	Rockwell Automation, Inc.	No
TMK 20-00606	07/27/2020	06/21/2021	ALLEN-BRADLEY	ROCKWELL AUTOMATION, INC.	No
TMK 20-00607	07/27/2020	02/20/2022	ROCKWELL AUTOMATION	Rockwell Automation, Inc.	No
TMK 20-00608	07/27/2020	03/12/2021	CONTROLLOGIX	ROCKWELL AUTOMATION, INC.	No
TMK 20-00609	07/27/2020	07/01/2023	ROCKWELL AUTOMATION	Rockwell Automation, Inc.	No
TMK 20-00610	07/27/2020	01/13/2022	A-B and Design	Rockwell Automation, Inc.	No
TMK 20-00611	07/27/2020	07/19/2030	A-B and Design	Rockwell Automation, Inc.	No
TMK 20-00612	07/27/2020	06/01/2030	A-B and Design	ROCKWELL AUTOMATION, INC.	No
TMK 20-00613	07/27/2020	06/01/2030	A-B Quality and Design	ROCKWELL AUTOMATION, INC.	No
TMK 20-00614	07/27/2020	06/29/2030	A-B Quality and Design	ROCKWELL AUTOMATION, INC.	No
TMK 20-00615	07/27/2020	08/30/2027	THERAGUN	THERAGUN, INC.	No

## CBP IPR RECORDATION — JULY 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 20-00616	07/27/2020	02/27/2029	G2PRO	THERAGUN, INC.	No
TMK 20-00617	07/28/2020	03/30/2027	CC (STYLIZED)	CONTAINER CENTRALEN A/S	No
TMK 20-00618	07/29/2020	04/05/2026	CUROLOGY	CUROLOGY, INC.	No
TMK 20-00619	07/30/2020	09/02/2030	ACTIGRAFT	REDDRESS LTD	No
TMK 20-00620	07/30/2020	09/02/2030	REDDRESS	REDDRESS LTD	No
TMK 20-00621	07/30/2020	10/21/2030	H (Stylized)	HERMES INTERNATIONAL	No
TMK 20-00622	07/30/2020	07/07/2030	SOLEIL Handle Design Configuration of Razor	Société BIC	No
TMK 20-00623	07/30/2020	08/19/2030	MAKFA & DESIGN	Aktsionerhoe obschestvo "MAKFA"	No
TMK 20-00624	07/30/2020	09/23/2030	START ALL JUMP PACK 10.000A 133200 JOULES 5S 12V & DESIGN	Vanair Manufacturing, Inc.	No
TMK 20-00625	07/30/2020	12/24/2023	OO (plus design)	OOFOS, INC.	No
TMK 20-00626	07/30/2020	08/08/2022	OOFOS	OOFOS, INC.	No
TMK 20-00627	07/31/2020	04/22/2029	TUMI	Tumi, Inc.	No
TMK 20-00628	07/31/2020	04/22/2029	TUMI (stylized)	Tumi, Inc.	No
TMK 99-00267	07/17/2020	03/29/2029	KERTILES	KERTILES LLC	No

**PROPOSED MODIFICATION OF A RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF CERTAIN NETWORK  
DEVICES KNOWN AS ACCESS POINTS**

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

**ACTION:** Notice of proposed modification of a ruling letter, and revocation of treatment relating to the tariff classification of a certain network devices known as access points.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify a ruling letter concerning tariff classification of network devices known as access points 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 September 18, 2020.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Ms. Cammy Canedo at (202) 325–0439.

**FOR FURTHER INFORMATION CONTACT:** Tom P. Beris, Electronics, Machinery, Automotive, and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0292.

**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 a ruling letter pertaining to the tariff classification of certain network devices known as access points. Although in this notice, CBP is specifically referring to New York Ruling Letter (NYRL) N301462, dated November 20, 2018 (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 NYRL N301462, CBP classified network devices referred to as access points in subheading 8517.62.0020, HTSUSA (Annotated), which provides for "Telephone sets...; other apparatus for the transmission or reception of voice, images or other data...: Other apparatus for transmission or reception...: Machines for the reception, conversion, and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Switching and routing apparatus." CBP has reviewed N301462 and has determined the portion of the ruling letter pertaining to these devices to be in error.

It is now CBP's position that the access points should be classified under subheading 8517.62.0090, HTSUS, which provides for "Telephone sets...; other apparatus for the transmission or reception of voice, images or other data...: Other apparatus for transmission or

reception...: Machines for the reception, conversion & transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NYRL N301462 as indicated above and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H304471, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke or modify any treatment previously accorded by CBP to substantially identical transactions.

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

GREGORY CONNOR  
*for*

CRAIG T. CLARK,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

ATTACHMENT A

N301462

November 20, 2018

CLA-2-85:OT:RR:NC:N2:209

CATEGORY: Classification

TARIFF NO.: 8517.62.0090, 8517.62.0020

CARL W. MERTZ

TP-LINK USA CORP

145 SOUTH STATE COLLEGE BLVD SUITE 400

BREA, CA 92821

RE: The tariff classification of network devices from China

DEAR MR. MERTZ:

In your letter dated October 29, 2018, you requested a tariff classification ruling.

The items concerned are: a cloud controller (model OC200), a wireless dual band access point (model EAP245), a 5GHz 300Mbps 23dBI outdoor CPE access point (model CPE610), and a 2.4GHz wireless outdoor high power access point (model CPE210).

The first item is the Omada Cloud Controller (model OC200). This is a small form factor device designed to allow centralized management of an access point (AP) network. This device allows management through 3 methods: direct connection, cloud, or mobile application. It is pre-loaded with TP-Link free management software, and it can be powered via micro USB or power over Ethernet (POE) (802.3af/at). It also allows for guest networks to be created via various login methods. It incorporates 3 output ports and 1 input port.

The second item is the AC1750 dual band gigabit ceiling mount access point (model EAP245). This device features band steering and load balancing. Band steering helps direct devices to the correct band by analyzing the data transfer rate. Load balancing ensures smooth network traffic, especially in a high density environment. The unit has 1 RJ45 gigabit Ethernet port. The unit can be powered by POE using 802.11at standards. It incorporates 6 internal antennas, 3 of which are 4dBi 2.4GHz, and the next 3 are 4dBi 5GHz.

The third item is a 5GHz 300Mbps 23dBI outdoor CPE access point (model CPE610). This device is powered by passive POE. It has a transmit beam length of 9 degrees horizontally and 7 degrees vertically requiring line of sight communication to the receiving end. The antenna gain is 23dBI and supports IEEE 802.11 a/n. Maximum transmit power is 27dBm but is adjustable in increments of 1dBm. Its antenna is a 2x2 MIMO design and uses a parabolic design to ensure maximum transmission. It is designed to provide long range line of site network access to a remote location. This item generally needs two units, one set up in client mode (receiver) and the other as an access point (transmitter), through which the client side would then be connected to another router, switch or indoor access point that would provide the remote location with internet service.

The fourth item is a 2.4GHz 300Mbps 9dBI outdoor CPE access point (model CPE210). This device is powered by passive POE. It has a transmit beam length of 65 degrees horizontally and 35 degrees vertically requiring line of sight communication to the receiving end. The device supports IEEE

80.211 b/g/n. Maximum transmit power is 27dBm but is adjustable in increments of 1dBm. The device has a maximum range of 5km or 3.14 miles. Its antenna is a 2x2 dual-polarized MIMO design. It is powered by a Qualcomm Atheros 560MHz CPU. It is designed to provide long range line or site network access to a remote location. This item generally needs two units, one set up in client mode (receiver) and the other as an access point (transmitter), through which the client side would then be connected to another router, switch or indoor access point that would provide the remote location with internet service.

The applicable subheading for the Omada Cloud Controller (model OC200) will be 8517.62.0090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Telephone sets...; other apparatus for the transmission or reception of voice, images or other data...: Other apparatus for transmission or reception...: Machines for the reception, conversion, and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other.” The general rate of duty will be Free.

The applicable subheading for the AC1750 Dual band gigabit ceiling mount access point (model EAP245), the 5GHz 300Mbps 23dBI outdoor CPE access point (model CPE610), and the 2.4GHz 300Mbps 9dBI outdoor CPE access point (model CPE210) will be 8517.62.0020, HTSUS, which provides for “Telephone sets...; other apparatus for the transmission or reception of voice, images or other data...: Other apparatus for transmission or reception...: Machines for the reception, conversion, and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Switching and routing apparatus.” The general rate of duty will be Free.

Effective July 6, 2018, the Office of the United States Trade Representative (USTR) imposed an additional tariff on certain products of China classified in the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(b), HTSUS. The USTR imposed additional tariffs, effective August 23, 2018, on products classified under the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(d), HTSUS. Subsequently, the USTR imposed further tariffs, effective September 24, 2018, on products classified under the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(f) and U.S. Note 20(g), HTSUS. For additional information, please see the relevant Federal Register notices dated June 20, 2018 (83 F.R. 28710), August 16, 2018 (83 F.R. 40823), and September 21, 2018 (83 F.R. 47974). Products of China that are provided for in subheading 9903.88.01, 9903.88.02, 9903.88.03, or 9903.88.04 and classified in one of the subheadings enumerated in U.S. Note 20(b), U.S. Note 20(d), U.S. Note 20(f) or U.S. Note 20(g) to subchapter III shall continue to be subject to antidumping, countervailing, or other duties, fees and charges that apply to such products, as well as to those imposed by the aforementioned Chapter 99 subheadings.

Products of China classified under subheading 8517.62.00, HTSUS, unless specifically excluded, are subject to the additional 10 percent ad valorem rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.04, in addition to subheading 8517.62.0020, HTSUS, listed above.

The tariff is subject to periodic amendment so you should exercise reasonable care in monitoring the status of goods covered by the Notice cited above and the applicable Chapter 99 subheading.

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, contact National Import Specialist Steven Pollichino at [steven.pollichino@cbp.dhs.gov](mailto:steven.pollichino@cbp.dhs.gov).

*Sincerely,*

STEVEN A. MACK

*Director*

*National Commodity Specialist Division*

## ATTACHMENT B

HQ H304471

CLA-2 OT:RR:CTF:EMAIN H304471 TPB

CATEGORY: Classification

TARIFF NO.: 8517.62.0090

CARL W. MERTZ

TP-LINK USA CORP

145 SOUTH STATE COLLEGE BLVD., SUITE 400

BREA, CA 92821

RE: Modification of New York (NY) ruling letter N301462; Classification of network devices; re-classification of Wi-Fi access points

DEAR MR. MERTZ:

In your letter dated October 29, 2018, you requested a tariff classification ruling on certain network devices. The devices concerned are: a cloud controller (model OC200), a wireless dual band access point (model EAP245), a 5GHz 300Mbps 23dBI outdoor CPE access point (model CPE610), and a 2.4GHz wireless outdoor high power access point (model CPE210).

In NY N301462, U.S. Customs and Border Protection (CBP) classified the subject cloud controller in subheading 8517.62.0090, HTSUSA (Annotated), which provides for “Telephone sets...; other apparatus for the transmission or reception of voice, images or other data...: Other apparatus for transmission or reception...: Machines for the reception, conversion, and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other.” The remaining devices, i.e., the access points, were classified in subheading 8517.62.0020, HTSUSA, which provides for “Telephone sets...; other apparatus for the transmission or reception of voice, images or other data...: Other apparatus for transmission or reception...: Machines for the reception, conversion, and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Switching and routing apparatus.”

We have determined that all of the network devices subject to N301462 are classifiable in subheading 8517.62.0090, HTSUSA, by application of GRIs 1 and 6. For the reasons set forth below, we hereby propose to modify NY N301462.

**FACTS:**

The Omada Cloud Controller (model OC200) is a small form factor device designed to allow centralized management of an access point (AP) network. This device allows management through three methods: direct connection, cloud, or mobile application. It is pre-loaded with TP-Link free management software, and it can be powered via micro-USB or power over Ethernet (POE) (802.3af/at). It also allows for guest networks to be created via various login methods. It incorporates three output ports and one input port.

The AC1750 dual band gigabit ceiling mount access point (model EAP245) features band steering and load balancing. Band steering helps direct devices to the correct band by analyzing the data transfer rate. Load balancing ensures smooth network traffic, especially in a high density environment. The unit has one RJ45 gigabit Ethernet port. The unit can be powered by POE using 802.11at standards. It incorporates six internal antennas, three of which are 4dBi 2.4GHz, the other three are 4dBi 5GHz.

The 5GHz 300Mbps 23dBI outdoor CPE access point (model CPE610) is powered by passive POE. It has a transmit beam length of nine degrees horizontally and seven degrees vertically requiring line of sight communication to the receiving end. The antenna gain is 23dBI and supports IEEE 80.211 a/n. Maximum transmit power is 27dBm but is adjustable in increments of 1dBm. Its antenna is a 2x2 MIMO design, and uses a parabolic design to ensure maximum transmission. It is designed to provide long range line of site network access to a remote location. This item generally needs two units, one set up in client mode (receiver) and the other as an access point (transmitter), through which the client side would then be connected to another router, switch or indoor access point that would provide the remote location with internet service.

The 2.4GHz 300Mbps 9dBI outdoor CPE access point (model CPE210) is powered by passive POE. It has a transmit beam length of 65 degrees horizontally and 35 degrees vertically requiring line of sight communication to the receiving end. The device supports IEEE 80.211 b/g/n. Maximum transmit power is 27dBm but is adjustable in increments of 1dBm. The device has a maximum range of 5 km or 3.14 miles. Its antenna is a 2x2 dual-polarized MIMO design. It is powered by a Qualcomm Atheros 560MHz CPU, and it is designed to provide long range line or site network access to a remote location. This item generally needs two units, one set up in client mode (receiver), and the other as an access point (transmitter), through which the client side would then be connected to another router, switch or indoor access point that would provide the remote location with internet service.

#### **ISSUE:**

Whether the network devices at issue should be classified as switching and routing apparatus under the 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 subheadings under consideration are:

8517 Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; parts thereof:

Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network):

8517.62.00 Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus:

8517.62.0020	Switching and routing apparatus
8517.62.0090	Other

As indicated by you in a supplemental submission, an access point is a device creating a wireless local area networking (Wi-Fi) and enabling devices based on the IEEE 802.11 to connect to a wired network, in order to receive and transmit data without path selection. It typically connects via a switch to a router (via a wired network) as a standalone device. The access point transmits data over all outgoing ports as originally received. Devices connected to the access point receive all data, and it is up to the device to filter and pick up that which is addressed to it. There are no tables (routing, MAC address, etc.) and no intelligent switching or routing of the data.

Further, CBP has also found information describing access points as devices which provide wireless internet by connecting to a hub, switch, or router. Wireless access points allow computers to gain wireless access to wired networks. These access points act in a similar fashion to cell phone towers; one can move across several different locations and still have wireless access. To share an internet connection, one must connect the access point with a router. Access points are widely used by hotels, airports, and restaurants.

In a wireless local area network (WLAN), an access point is a station that transmits and receives data (sometimes referred to as a transceiver). An access point connects users to other users within the network and also can serve as the point of interconnection between the WLAN and a fixed wire network. Each access point can serve multiple users within a defined network area; as people move beyond the range of one access point, they are automatically handed over to the next one. A small WLAN may only require a single access point; the number required increases as a function of the number of network users and the physical size of the network increase.

To be classified as switching or routing apparatus, the devices must perform switching or routing themselves and not merely rely on an external switching or routing device. Based on the supplemental information provided and the notion that the access points concerned do not act as a switch or a router within the realm of networking terminology, CBP is now of the view that these three access points (models EAP245, CPE210, and CPE610) are properly classified under subheading 8517.62.0090, HTSUS, which provides for “Telephone sets...; other apparatus for the transmission or reception of voice, images or other data...: Other apparatus for transmission or reception...: Machines for the reception, conversion, and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other.” The general rate of duty will be Free.

The Omada Cloud Controller (model OC200), which is designed to allow centralized management of an access point network is also classified in subheading 8517.62.0090, HTSUS, as indicated in N301462. That portion of the ruling letter is affirmed.

#### **HOLDING:**

For the reasons set forth above, the AC1750 dual band gigabit ceiling mount access point (model EAP245), the 5GHz 300Mbps 23dBI outdoor CPE access point (model CPE610), and the 2.4GHz 300Mbps 9dBI outdoor CPE access point (model CPE210) are classified in subheading 8517.62.0090, HT-



SUS, which provides for “Machines for the reception, conversion & transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other.” The column one, general rate of duty is free.

Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

NY N301462, dated November 20, 2018, is hereby MODIFIED to reflect the analysis above.

*Sincerely,*

CRAIG T. CLARK,

*Director*

*Commercial and Trade Facilitation Division*

**19 CFR PART 177****MODIFICATION OF ONE RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF A DOCUMENT HOLDER  
WITH NOTE PAD**

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

**ACTION:** Notice of modification of one ruling letter and of revocation of treatment relating to the tariff classification of a document holder with note pad.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning tariff classification of a document holder with note pad under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 53, No. 48, on January 2, 2020. No comments were received in response to that notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 18, 2020.

**FOR FURTHER INFORMATION CONTACT:** Lindsay Heebner, Chemicals, Petroleum, Metals, and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0266.

**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), a notice was published in the *Customs Bulletin*, Vol. 53, No. 48, on January 2, 2020, proposing to modify one ruling letter pertaining to the tariff classification of a document holder with note pad. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In New York Ruling Letter ("NY") N069095, dated August 19, 2009, CBP classified a document holder with note pad in heading 4202, HTSUS, specifically in subheading 4202.12.8170<sup>1</sup>, HTSUS, which provides for "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers: With outer surface of plastics or of textile materials: Of man-made fibers: Other." CBP has reviewed NY N069095 and has determined the ruling letter to be in error. It is now CBP's position that the document holder with note pad is properly classified, in heading 4820, HTSUS, specifically in subheading 4820.10.2040, HTSUS, which provides for "Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting pads, binders (looseleaf or other), folders, file covers, manifold business forms, interleaved car-

<sup>1</sup> 2009 HTSUS subheading 4202.12.8030.

bon sets and other articles of stationery, of paper or paperboard; albums for samples or for collections and book covers (including cover boards and book jackets) of paper or paperboard: Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles: Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles: Other note books with dimensions of 152.4–381 mm (6" – 15"), inclusive (small side) X 222.5–381 mm (8.75" – 15"), inclusive (large side)."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY N069095 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H188455, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 29, 2020

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

*Attachment*

HQ H188455

July 29, 2020

OT:RR:CTF:CPMM:LMH

CATEGORY: Classification

TARIFF NO.: 4820.10.2040

LISA GINGERICH  
COPPERSMITH INC.  
760 BONNIE LANE  
ELK GROVE VILLAGE, IL 60007

RE: Modification of NY N069095. Tariff classification of certain document holders with notepads.

DEAR LISA GINGERICH,

U.S. Customs and Border Protection (CBP) issued you New York Ruling Letter (NY) N069095, dated August 19, 2009. That ruling pertains to the tariff classification under the Harmonized Tariff Schedule of the United States, (HTSUS) of a document holder with a notepad and an accordion style coupon holder. We have since reviewed this ruling and find it to be in error with respect to the document holder with notepad, which is described in detail herein.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI, notice proposing to modify NY N069095 was published in the *Customs Bulletin*, Vol. 53, No. 48, on January 2, 2020. No comments were received in response to that notice

**FACTS:**

NY N069095 states the following, in relevant part:

Style 98735 and 95835 are expandable document organizers constructed with an outer surface of man-made textile material. Both styles are a form of a portfolio. Each is made up to provide storage, protection, portability and organization to documents and other such items as catalog pages, etc., as well as accessories. Each organizer features an open pocket with a retractable paper notepad and thirteen semi-translucent plastic expandable sleeve dividers with tab holders to identify document contents. Style 95835 has a zipper closure along three sides. Style 98735 has a flap with a magnetic closure. Both measure approximately 11.5" (W) x 14" (L) x 1.5" (D).

**ISSUE:**

Whether the document holder with notepad is classified as a container of heading 4202, HTSUS, or a notebook, memorandum pad, or letter pad of heading 4820, HTSUS.

**LAW AND ANALYSIS:**

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

goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration in this case are as follows:

- 4202 Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:
- Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers:
- 4202.12 With outer surface of plastics or of textile materials:
- With outer surface of textile materials:
- 4202.12.81 Of man-made fibers:
- 4202.12.8170 Other.
- \*\*\*
- 4820 Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting pads, binders (looseleaf or other), folders, file covers, manifold business forms, interleaved carbon sets and other articles of stationery, of paper or paperboard; albums for samples or for collections and book covers (including cover boards and book jackets) of paper or paperboard:
- 4820.10 Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles:
- 4820.10.20 Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles:
- 4820.10.2040 Other note books with dimensions of 152.4–381 mm (6"–15"), inclusive (small side) X 222.5–381 mm (8.75"–15"), inclusive (large side).

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the HTSUS at the international level, may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS.<sup>2</sup>

The EN to GRI 3(b) states:

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

<sup>2</sup> See T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

Applying the GRIs and analyzing the headings and related section and chapter notes, we note that this product is a composite good with a man-made textile cover, plastic expandable sleeve dividers, and a paper letter pad. As such, GRIs 1 and 2 are not sufficient to classify the product because it could fall under multiple provisions. In addition, the binder is made of various materials, eliminating the possibility of classification by material alone. Under GRI 3(a), the container and letter pad refer only to part of the composite product and are considered equally specific. As a result, we move to GRI 3(b) to determine the essential character of the product.

The Explanatory Note to GRI 3(b) states, “the factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.”<sup>3</sup> The courts have found that the “essential character” of an article is “that which is indispensable to the structure, core or condition of the article, i.e., what it is.”<sup>4</sup> Further, “the existence of other materials which impart something to the article ought not to preclude an attempt to isolate the most outstanding and distinctive characteristic of the article . . . .”<sup>5</sup> The courts make clear that determining the essential character of an article requires a fact-intensive analysis.<sup>6</sup>

In this case, the letter pad or notebook accounts for the bulk of the weight of the product, while the textile outer portion comprises more value than any other individual material in the good. However, the role of the notepad in relation to the use of the good is paramount in that the pockets, plastic sleeves and cover facilitate the ability to keep and carry notes written on the pad or in the notebook.

The above analysis is in accordance with court precedent. Specifically, the Court of Appeals for the Federal Circuit evaluated a similar product in *Aves. in Leather, Inc. v. United States*. The product was described as:

...Calcu-Folios measure approximately 13.5 inches tall by 11.5 inches wide by 1.5 inches deep when closed, are zippered on three sides with an interior sleeve, possess one exterior open flat pocket and a number of small interior pockets, have a padded carrying handle fitted to the exterior spine, are constructed of paperboard covered with plastic foam and a vinyl/plastic exterior and interior, contain a solar-powered calculator, and have an interior three-ring metal binder permanently affixed to the spine.<sup>7</sup>

In that case, the Court considered whether the Calcu-Folios were properly classified under heading 4802 or 4202 and concluded:

Here, while the Calcu-Folios may be used to organize and protect small and/or flat items in addition to a writing pad, they have an internal capacity of only 1 inch and lack significant carrying space. These characteristics make them unsuitable to carry newspapers, books, and other

<sup>3</sup> EN to Rule 3(b), (VIII).

<sup>4</sup> See *United China & Glass Co. v. United States*, 61 Cust. Ct. 386, C.D. 3637, 293 F. Supp. 734, 737, (1968).

<sup>5</sup> *Canadian Vinyl Indus., Inc. v. United States*, 76 Cust. Ct. 1, 3, C.D. 4626 408 F. Supp. 1377, 1378 (1976).

<sup>6</sup> See *Toy Biz, Inc. v. United States*, 219 F. Supp. 2d 1289, 1301 (CIT 2002).

<sup>7</sup> 423 F.3d 1326 (Fed. Cir. 2005) at 1328.

objects that are normally carried in containers that are common to Heading 4202. Moreover, while the articles in question may be generally described as “containers,” their specific use is limited to facilitation in taking of notes as well as aiding in the organization of print and other visual flat materials. Such a specific use, which predominates over the more general description of containers, precludes classification of the Calcu-Folios under Heading 4202.<sup>8</sup>

As with the case above, the instant product has slim pockets to hold print and other visual flat materials and is used to facilitate notetaking. The more specific use of notetaking predominates over the general description as a container. In Headquarters Ruling Letter (HQ) 967816, we followed the decision in *Aves. in Leather*, classifying a folio filer with memorandum pad or spiral notebook under heading 4820, HTSUS. The merchandise in that ruling was described as follows:

[The Big Mouth Folio is] made of translucent polypropylene sheeting that has been scored, folded, heat-sealed and spot bonded to form a bifold case with a flap closure. The inner left side of the folder contains an accordion pouch fitted with five tabbed plastic folders. This side measures approximately 13” high by 10” wide. A bungee stretches over a plastic button rivet to secure the folders. The inner right side of the folder incorporates a horizontal slit into which a legal size paper pad has been inserted. This side also measures approximately 13” high by 10” wide. When in closed position, the Big Mouth Folio measures approximately 13” high, 11” wide, and 1–1/8” thick.

We found that the article’s use was centered on the memorandum pad of heading 4820 and the other features served merely to enhance the ability to provide a convenient and organized method by which to take notes. *See also* New York Ruling Letter (NY) N031216, dated July 10, 2008. Because the essential character of the instant document holder with notepad is the notepad, it is classified via GRIs 1 and 3(b), under heading 4820 as a notebook or letter pad in accordance with *Aves. In Leather* and the above cited rulings.

#### **HOLDING:**

By application of GRIs 1 and 3(b), the subject document holder with notepad is classified in heading 4820, HTSUS. It is specifically provided for in subheading 4820.10.2040, HTSUS, which provides for, “Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting pads, binders (looseleaf or other), folders, file covers, manifold business forms, interleaved carbon sets and other articles of stationery, of paper or paperboard; albums for samples or for collections and book covers (including cover boards and book jackets) of paper or paperboard: Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles: Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles: Other note books with dimensions of 152.4–381 mm (6” – 15”), inclusive (small side) X 222.5–381 mm (8.75” – 15”), inclusive (large side).” The 2019 column one general rate of duty is free.

---

<sup>8</sup> *Id.* at 1333.



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

**EFFECT ON OTHER RULINGS:**

NY N069095, dated August 19, 2009, with respect to the document holder with notepad is hereby MODIFIED.

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

*Sincerely,*

*for*

CRAIG T. CLARK,

*Director,*

*Commercial and Trade Facilitation Division*

**19 CFR PART 177****REVOCAION OF NY F89845 AND MODIFICATION OF NY K83210 RULING LETTERS AND REVOCAION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF HAND-HELD SPREADERS**

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

**ACTION:** Notice of revocation of NY F89845 ruling letter and modification of NY K83210, and of revocation of treatment relating to the tariff classification of hand-held spreaders.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter and modifying one ruling letter concerning tariff classification of hand-held spreaders under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 54, No. 22, on June 10, 2020. No comments were received in response to that notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 18, 2020.

**FOR FURTHER INFORMATION CONTACT:** Andrew Levey, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–3298.

**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), a notice was published in the *Customs Bulletin*, Vol. 54, No. 10, on June 10, 2020, proposing to revoke one ruling letter and modify one ruling letter pertaining to the tariff classification of hand-held spreaders. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In New York Ruling Letter ("NY") F89845, dated August 2, 2000, and NY K83210, dated March 5, 20004, CBP classified hand-held spreaders in heading 3924, HTSUS, specifically in subheading 3924.90.5500, HTSUS, which provides for "...other household articles...of plastics: other, other..." CBP has reviewed NY F89845 and has determined the ruling letters to be in error. It is now CBP's position that hand-held spreaders are properly classified, in heading 8479, HTSUS, specifically in subheading 8479.89.9499, HTSUS, which provides for "[m]achines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof; Other machines and mechanical appliances: Other: Other: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY F89845 and modifying NY K83210 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H306890, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 31, 2020

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

*Attachment*

HQ H306890

July 31 2020

OT:RR:CTF:CPMM H306890 ABL

CATEGORY: Classification

TARIFF NO.: 8479.89.9499

MR. JOSEPH R. HAFFACKER  
BARTHCO TRADE CONSULTANTS, INC.  
7575 HOLSTEIN AVENUE  
PHILADELPHIA, PA 19153

RE: Revocation of NY F89845; Classification of plastic lawn and garden spreader from Taiwan, and modification of NY K83210; classification of various hand-held spreaders from Taiwan.

DEAR MR. HAFFACKER,

This is in reference to the New York Ruling Letter (NY) F89845, issued to you by U.S. Customs and Border Protection (CBP) on August 2, 2000 concerning the classification of a plastic lawn and garden spreader from Taiwan under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed this ruling and determined that is incorrect. For the reasons set forth below, we are revoking it.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke HQ H306890 was published on June 10, 2020, in Volume 54, Number 22, of the *Customs Bulletin*. No comments were received in response to this Notice.

**FACTS:**

The merchandise in NY F89845 was described as a lawn and garden handi-spreader. Your letter of inquiry states that the spreader is made of plastic. The spreader has a rotary handle that is turned by the operator to spread the seeds.<sup>1</sup> Another handle is located on the backside so the operator can hold the spreader while dispersing the seeds. Additionally, we are modifying NY K83210, dated march 5, 2004, issued to Ms. Lisa Pietz of Kuehne & Nagle, Inc., with respect to similar merchandise.<sup>2</sup>

**ISSUE:**

Whether the subject merchandise, consisting of lawn and garden hand-held-spreaders, should remain classified in heading 3924, HTSUS, as household articles of plastic, or in heading 8432 as agricultural, horticultural or forestry machinery for soil preparation or in heading 8479, HTSUS, which provides machines and mechanical appliances having individual functions.

---

<sup>1</sup> NY C89072, dated June 19, 1998 is distinguishable from the current merchandise, as the ruling does not describe a spreader containing mechanical components such as a crank and gears. Therefore, NY C89072 will not be revoked or modified.

<sup>2</sup> There are three items in K83210, of the three items, only one is in dispute, which is identified as a 76500 Scatter Box. This merchandise is a hand-held spreader made of polypropylene and has a handle, hand crank and product hopper. There is an on-off flow rate adjuster and rate application chart on the hopper. The Scatter Box is said to be an all-purpose applicator for fertilizer, seed and granular insecticides.

## LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. Goods that are *prima facie* classifiable under two or more headings are classifiable in accordance with GRI 3. GRI 3(b) provides, in relevant part, that such sets are classified by the component that imparts the essential character of the set. If the essential character cannot be determined, GRI 3(c) provides that the set will be classified in the heading that occurs last in numerical order among those which equally merit consideration. GRI 3(c) applies only where GRI 3(a) and GRI 3(b) fail. *See* EN to GRI 3.

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

The 2018 HTSUS provisions under consideration are as follows:

\* \* \* \* \*

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

\* \* \* \* \*

**8432** Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports ground rollers; parts thereof:

\* \* \* \* \*

**8479** Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:

\* \* \* \* \*

Note 2(s) to Chapter 39 states that articles of Section XVI (machines and mechanical or electrical appliances) are excluded from classification in Chapter 39.

Note 2(t) to Subchapter XVII states that articles of subheading 8479.89, HTSUS are excluded from headings 9817.00.50 and 9817.00.60, HTSUS.<sup>3</sup>

The EN for chapter 39.24 states:

**39.24 – Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics.**

This heading covers the following articles of plastics:

(C) Other household articles such as ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers (slipovers).

<sup>3</sup> Heading 9817.00.50 is the special classification provision for “Machinery, equipment and implements to be used for agricultural or horticultural purposes.”

\* \* \* \* \*

The EN for chapter 84.32 states:

This heading covers machines, whatever their mode of traction, used in place of hand tools...

\* \* \*

The machines of this heading may be hauled by an animal or by a vehicle (e.g., a tractor), or may be mounted on a vehicle (e.g., on a tractor or a horse drawn chassis). (In this context, “tractor” includes “single axle tractor”.)

\* \* \* \* \*

If the merchandise is described by either chapter 84 heading, it is excluded from classification in chapter 39 under note 2(s) thereto. Even though the ENs mention a “watering can” as an example of a household good of plastic, the watering can is not like a mechanical seed spreader in that it expels water through the use of gravity. The instant seed and fertilizer spreaders use a rotary handle that is turned by the operator at the speed of their discretion to spread the seeds. This is an active mechanical function unlike the use of a watering can. Hence, classification in heading 3924 is precluded.

Although tow-behind seed spreaders are classified in heading 8432, HTSUS (see HQ H029996, dated 11/7/2008), the heading does not describe the instant merchandise because it is used by application of a hand-held rotatory and is neither pushed along the ground nor attached to another vehicle or tractor. Considering the merchandise is not used through the use of any mechanisms described in EN 84.32, the merchandise is not described by this heading.

Rather, the mechanical rotary function of the instant merchandise is described in heading 8479 as an individual function of a machine or mechanical appliance. As such, it is described in subheading 8479.89.9499 as “an other mechanical appliance” and cannot be classified under chapter 39 under note 2(s) to the chapter.

At GRI 6, subheading 8479.89 names machines which mix and stir like the instant merchandise which operate via a crank and rotary mechanism to mix and disperse the seeds. Lastly, Note 2(t) to Subchapter XVII reflects that the provisions of heading 9817.00.50, HTSUS, an alternative heading which provides for machinery, equipment and implements to be used for agricultural or horticultural purposes, does not apply to articles provided for in subheading 8479.89, HTSUS.

#### **HOLDING:**

The lawn and garden handi-spreader is classified in heading 8479, HTSUS, specifically in subheading 8479.89.9499, HTSUS, for “[m]achines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof; Other machines and mechanical appliances: Other: Other: Other.” The general, column 1 rate of duty for subheadings 8479.89.9499, HTSUS, is 2.5%.

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

A copy of this ruling letter should be attached to the entry documents filed at the time the goods are to be entered. If the document have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transaction.

**EFFECT ON OTHER RULINGS**

New York letter F89845, dated August 2, 2000 is hereby REVOKED, and New York Ruling letter K83210, dated March 5, 2004 is hereby MODIFIED in accordance with the above analysis.

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

*Sincerely,*  
*for*

CRAIG T. CLARK,  
*Director*

*Commercial and Trade Facilitation Division*

CC: Ms. Lisa Pietz  
Kuehne & Nagel, Inc.  
822 James Record Road  
Huntsville, AL 35824