


U.S. Customs and Border Protection



REVOCATION OF A RULING LETTER AND MODIFICATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF PARTS OF A PAINT MIXING UNIT

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

ACTION: Notice of revocation of a ruling letter, modification of a ruling letter and revocation of treatment relating to the tariff classification of certain parts of a paint mixing unit.

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 a ruling letter and modifying a ruling letter relating to the tariff classification of parts of a paint mixing unit under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 48, No. 45, dated November 12, 2014. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 20, 2015.

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

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective.

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), a notice was published in the Customs Bulletin, Volume 48, No. 45, on November 12, 2014, proposing to revoke New York Ruling Letter (NY) I89639, dated January 21, 2003, and to modify NY R01329, dated January 24, 2005, in which CBP determined that the subject paint mixer parts were classified in heading 9403, HTSUS, as “other furniture and parts thereof.” No comments were received in response to this notice.

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the rulings identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY I89639 and modifying NY R01329, in order to reflect the proper classification of the paint mixer parts under heading 8479, HTSUS, as “machines and

mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof,” according to the analysis contained in HQ H250136, set forth as an attachment to this document.

In accordance with 19 U.S.C. §1625(c)(1), HQ H250136 will become effective 60 days after publication in the *Customs Bulletin*.

Dated: January 28, 2015

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H250136

January 28, 2015**CLA-2 OT:RR:CTF:TCM H250136 EGJ****CATEGORY:** Classification**TARIFF NO.:** 8479.90.94

PETE MENTO
EXPEDITORS TRADEWIN, LLC
1015 THIRD AVENUE, 12TH FLOOR
SEATTLE, WA 98104

RE: Revocation of NY I89639 and Modification of NY R01329: Classification of Parts of a Paint Mixing Unit

DEAR MR. MENTO:

This is in reference to New York Ruling Letter (NY) I89639, dated January 21, 2003, issued to you concerning the tariff classification of metal shelving for the Dedoes Alliance 1.7 and Alliance 2.4 paint mixing units. In NY I89639, U.S. Customs and Border Protection (CBP) classified the metal shelves in heading 9403 of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for furniture and parts thereof.

We have reviewed NY I89639 and find it to be in error. For the reasons set forth below, we hereby revoke NY I89639 and modify one other ruling with substantially similar merchandise: NY R01329, dated January 24, 2005, which was also issued to Expeditors Tradewin, LLC. In NY R01329, CBP classified a blending table, as well the foot and gusset supports (feet) for the Dedoes Alliance Paint Mixing unit.¹ This modification only applies to the feet, which CBP classified in heading 9403, HTSUS.

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 of the proposed modification and revocation was published on November 12, 2014, in the *Customs Bulletin*, Volume 48, No. 45. CBP received no comments in response to this notice.

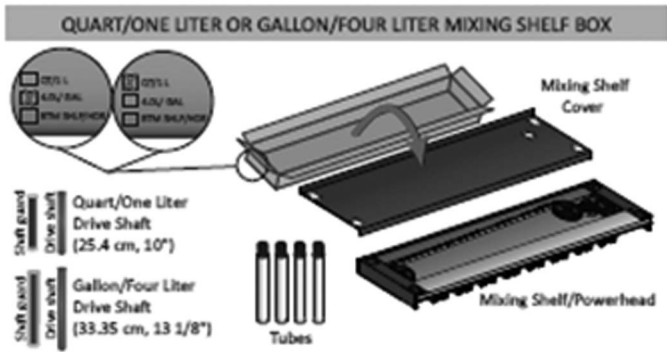
¹ While the ruling request letter and the ruling refer to these components as “foot and gusset supports,” the schematics refer to these components as the left foot and the right foot. As such, this ruling will refer to the instant merchandise as “the feet.”

FACTS:

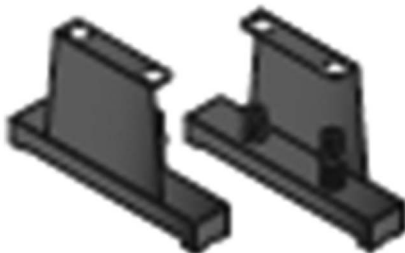
The Dedoes Alliance Paint mixer is a floor-standing unit of metal shelves. An electric motor sits on the bottom shelf and powers gear drives on the shelves. The gear drives rotate paddles on paint can lids specifically designed for the Dedoes Alliance Paint mixer. A picture of the paint mixing unit is provided below:



Each metal shelving unit comes equipped with a gear drive on the top of the shelf and safety guards on the bottom of the shelf. The safety guards lock the paint cans into place and secure them during mixing. A mixing shelf cover is also included to cover the gear drive and set additional paint cans on top of the shelving unit. A picture of the metal shelving unit and its components is provided below:



The feet attach to the bottom of the paint mixing unit and stabilize the unit. A picture of the feet is provided below:



ISSUE:

Are the metal shelving units and the feet classified in heading 9403, HTSUS, as parts of metal furniture, or in heading 8479, HTSUS, as parts of machines which perform individual functions?

LAW AND ANALYSIS:

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

The HTSUS provisions at issue are as follows:

8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:			
	Other machines and mechanical appliances:			
8479.82.00	Mixing, kneading, crushing, grinding, screening, sifting, homogenizing, emulsifying or stirring machines	*	*	*
8479.90	Parts:			
8479.90.94	Other	*	*	*
9403	Other furniture and parts thereof:			
9403.90	Parts:			
	Other:			
9403.90.80	Other	*	*	*

Note 2(a) – (b) to Section XVI (Chapters 84–85) states that:

Subject to note 1 to this section, note 1 to chapter 84 and note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

- (a) Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;
- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517. . .

* * *

Note 5 to Section XVI (Chapters 84 – 85) provides as follows:

- 5. For the purposes of these notes, the expression “machine” means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of chapter 84 or 85.

* * *

Note 2 to Chapter 94 provides as follows:

- 2. The articles (other than parts) referred to in headings 9401 to 9403 are to be classified in those headings only if they are designed for placing on the floor or ground.

The following are, however, to be classified in the above-mentioned headings even if they are designed to be hung, to be fixed to the wall or to stand one on the other.

- (a) Cupboards, bookcases, other shelved furniture (including single shelves presented with supports for fixing them to the wall) and unit furniture;
- (b) Seats and beds.

* * *

GRI 3(a) provides as follows:

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

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

* * *

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

EN 84.79 provides, in pertinent part, as follows:

For this purpose the following are to be regarded as having “individual functions”:

(I) MACHINERY OF GENERAL USE

This group includes, for example:

...

- (2) Presses, crushers, grinders, mixers, etc., not designed for particular goods or industries.

* * *

Applying GRI 1, the first issue is whether the complete paint mixing unit is classified as a machine of heading 8479, HTSUS, or as shelved furniture of heading 9403, HTSUS. In NY I89639 and NY R01329, CBP classified the unit’s metal shelves and feet as parts of furniture under heading 9403, HTSUS. This means that in those rulings, CBP considered the complete paint mixing unit to be classifiable as shelved furniture of heading 9403, HTSUS.

However, in NY I86036, dated October 2, 2002, CBP examined the Alliance Elite paint can lids for the paint mixing unit. Each paint can lid is equipped with a paddle assembly. The operator will attach the Alliance Elite lid to the top of a paint can, and then place the paint can on one of the unit’s shelves. The lid’s paddle assembly attaches to the gear drive inside the shelf. When the operator turns on the unit’s motor, the gear shaft turns the paddle assembly inside of the lid and mixes the paint. CBP classified the Alliance Elite lids under subheading 8479.82, HTSUS, as mixing machines in themselves.

Heading 8479 provides for machines and mechanical appliances having individual functions.² In *United States v. Guth Stern & Co., Inc.*, 21 C.C.P.A. 246 (1933) (*Guth Stern*), the U.S. Court of Customs and Patent Appeals (CCPA) (predecessor to the U.S. Court of Appeals for the Federal Circuit) defined the term “machine” as follows:

² Note 5 to Section XVI states that a machine, for the purposes of the Section Notes, is any machine classified in the headings to Chapters 84 or 85. This definition only applies to the use of the term “machine” in the Notes to Section XVI; it does not apply to the term “machine” as it appears in the headings of the HTSUS. When a tariff term is not defined by the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576.

Popularly and in the wider mechanical sense, a machine is a more or less complex combination of mechanical parts, as levers, cog and sprocket wheels, pulleys, shafts, and spindles, ropes, chains, and bands, cams and other turning and sliding pieces, springs, confined fluids, etc., together with the framework and fastenings supporting and connecting them, as when it is designed to operate upon material to change it in some pre-conceived and definite manner, to lift or transport loads, etc. *Id.* at 248 citing *Webster's New International Dictionary* [citation omitted in original].

While the CCPA was interpreting the tariff term “machine” under the Tariff Schedule of the United States (TSUS), predecessor to the HTSUS, this definition is still helpful. As noted in House Conference Report No. 100–576, dated April 20, 1998, on the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100–418), decisions by the Customs Service and the courts interpreting nomenclature under the TSUS are not to be deemed dispositive in interpreting the HTSUS. Nevertheless, on a case-by-case basis, prior decisions should be considered instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS.

Moreover, the CCPA’s definition is consistent with current dictionary definitions of the term “machine.” The *Merriam-Webster Online Dictionary* (11th ed. 2014), available at www.merriam-webster.com, defines “machine” as “a piece of equipment with moving parts that does work when it is given power from electricity, gasoline, etc.” The *Macmillan Dictionary* (Macmillan Publisher Ltd. 2009 – 2014) available at www.macmillandictionary.com, defines machine as “a piece of equipment that does a particular job by using electricity, steam, gas, etc.”

The paint mixing unit has an electric motor that powers the gear drive shafts inside of each shelf. The drive shafts connect to the paint can lids, which are equipped with mixing paddles. The drive shafts turn the mixing paddles to mix up the paint. Thus, the paint mixing unit satisfies the CCPA’s definition of a machine because it consists of shafts, pulleys and other simple machines. These simple machines are combined together on a framework to mix paint. Also, the paint mixing unit is powered by an electric motor, which satisfies the current dictionary definitions. Therefore, the paint mixing unit is a machine. Moreover, EN 84.79 states that mixing machines are classifiable as machines with individual functions. For these reasons, the entire paint mixing unit is classifiable as a machine performing an individual function under heading 8479, HTSUS.

Heading 9403, HTSUS, provides for furniture. Note 2 to Chapter 94 describes the merchandise covered by the term “furniture.” Note 2 states that “the articles ... referred to in headings 9401 to 9403 are to be classified in those headings only if they are designed for placing on the floor or ground.” Further, Note 2 states that “cupboards, bookcases, other shelved furniture...seats and beds” are classifiable as furniture even if they are “designed to be hung, to be fixed to the wall or to stand one on the other.”

The paint mixing unit is designed for placing on the floor or the ground. Moreover, it consists of shelved furniture similar to bookcases and cupboards. As such, the paint mixing unit satisfies the definition of furniture set forth in Note 2 to Chapter 94. Therefore, it is classifiable as furniture under heading 9403, HTSUS.

GRI 3(a) provides that when goods are, *prima facie*, classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. Heading 9403, HTSUS, provides for “other furniture.” Heading 8479, HTSUS, provides for “machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter.” While heading 9403, HTSUS, appropriately describes the paint mixing unit as a shelving unit, heading 8479, HTSUS, more specifically describes the paint mixing unit as a machine performing an individual function. As mentioned above, a machine can be powered by electricity, can consist of smaller, simpler machines and can perform a specific job. The paint mixing unit does all of these things. By application of GRI 3(a), we find that the paint mixing unit is properly classified in heading 8479, HTSUS, because it more specific than heading 9403, HTSUS.

Turning next to the classification of the shelving units and the feet, Note 2(a) to Section XVI provides that parts which are goods included in any of the headings of Chapter 84 or 85 are in all cases to be classified in their respective headings. As the feet and shelving units are not goods included in a heading of Section XVI, we must proceed to Note 2(b).

Note 2(b) states that parts which are suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind. In their condition as imported, the instant shelving units contain gear drives that only function with the complete paint mixing unit. The gear drives are powered by the unit’s motor and turn the paddle assemblies in the paint can lids. The unit’s feet are designed for use solely with the complete paint mixing unit. As such, both the shelves and feet are solely used with a machine having an individual function of heading 8479, HTSUS. For all of the aforementioned reasons, the shelving units and the feet are properly classified as parts of machines which have an individual function under subheading 8479.90, HTSUS.

HOLDING:

By application of GRI 1 (Note 2(b) to Section XVI) and GRI 3(a), the shelving units and the feet for the Dedoes Alliance Paint Mixing unit are classified under heading 8479, HTSUS. Specifically, they are classified under subheading 8479.90.94, HTSUS, which provides, in pertinent part, for “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Parts: Other.” The 2015 column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY I89639, dated January 21, 2003, is hereby revoked.

NY R01329, dated January 24, 2005, is hereby modified with regard to the tariff classification of the foot and gusset support (feet).

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

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177**MODIFICIATION OF ONE RULING LETTER, REVOCATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF LANDFILL COMPACTORS**

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

ACTION: Modification of one ruling letter, revocation of two ruling letters and revocation of treatment relating to the classification of landfill compactors.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is modifying one ruling letter and revoking two ruling letters concerning the classification of landfill compactors 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. 48, No. 50, on December 17, 2014. CBP received one comment in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 20, 2015.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

SUPPLEMENTARY INFORMATION:**Background**

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), notice proposing to modify New York Ruling Letter (NY) J89586, dated October 28, 2013, and revoke NY N064482, dated July 8, 2009, and NY A89554, dated December 11, 1996, was published in the Customs Bulletin, Vol. 48, No. 50, on December 17, 2014. CBP received one comment in response to this notice.

Although in this notice CBP is specifically referring to NY J89586, NY N064482 and NY A89554, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP 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 notice period. An importer's failure to have advised CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY J89586, and revoking NY N064482 and NY A89554 in order to reflect the proper classification of this merchandise pursuant to the analysis set forth in Headquarters Ruling Letter ("HQ") H255319, set forth as an attach-

ment to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: January 28, 2015

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

*HQ H255319**January 28, 2015***CLA-2 OT:RR:CTF:TCM H255319 TNA****CATEGORY:** Classification**TARIFF NO.:** 8479.10.00

MR. K. TURKIA
KALTEK, INC.
PO Box 88390
ATLANTA, GA 30356

RE: Revocation of NY J89586, NY N064482, NY A89554; Classification of a Landfill Compactors

DEAR MR. KALTEK:

This letter is in reference to New York Ruling Letter (“NY”) J89586, issued to you on October 28, 2003, concerning the tariff classification of landfill compactors from Finland. There, U.S. Customs and Border Protection (“CBP”) classified the landfill compactors in subheading 8479.89.98, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances: Other: Other.” We have reviewed NY J89586 and found it to be incorrect with respect to the classification of its merchandise. We have also reviewed NY N064482, dated July 8, 2009, and NY A89554, dated December 11, 1996, which classify substantially similar landfill compactors in subheading 8479.89.98, HTSUS. For the reasons that follow, we hereby modify NY J89586 and revoke NY N064482 and NY A89554.

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 modify NY J89586 and revoke NY N064482 and NY A89554 was published on December 17, 2014, in Vol. 48, No. 50, of the Customs Bulletin. CBP received one comment in response to this notice, which is addressed in the ruling.

FACTS:

The subject merchandise consists of self-propelled machines designed to crush, compact, and spread trash, garbage, household waste, construction materials and other forms of compactible material in solid-waste landfills. Each compactor consists of a 232 to 540 horsepower engine within a large articulated frame mounted on two drums with a hydraulically operated landfill blade attached to the front and rear of the unit. They all contain an enclosed operator’s cab mounted over the machine’s compaction drums and wheels, and chopper blades. The blades are mounted differently on the front and rear wheels to maximize chopping and compaction in both forward and reverse. The operator of the compactor drives over the waste in order to crush and compact it. The blades chop the waste so that it uses as little space as possible in the landfill.

In NY J89586, NY N064482 and NY A89554, CBP the subject merchandise in 8479.89.98, HTSUS, which provides for “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances: Other: Other.”

ISSUE:

Whether the subject landfill compactors are classified as self-propelled bulldozers, tamping machines or road rollers of heading 8429, HTSUS; as compacting machinery of heading 8430, HTSUS; machinery for public works, building or the like of subheading 8479.10.00, HTSUS; or as other machines and mechanical appliances of subheading 8479.89.98, HTSUS?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. GRI 6 states, in pertinent part, that “the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable.”

The HTSUS provisions under consideration are as follows:

8429	Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers:
8430	Other moving, grading, leveling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snowplows and snowblowers:
8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:
8479.10.00	Machinery for public works, building or the like Other machines and mechanical appliances:
8479.89	Other
8479.89.98	Other

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The EN to heading 8429, HTSUS, states in pertinent part, that:

The heading covers a number of earth digging, excavating or compacting machines which are explicitly cited in the heading and which have in common the fact that they are all self-propelled.

The provisions of Explanatory Note to heading 84.30 relating to self-propelled and multi-function machines apply, *mutatis mutandis*, to the self-propelled machinery of this heading, which includes the following:...

(D) **Tamping machines** as used in road making, for packing rail-road ballast, etc. (but *see* paragraph (a) of the introduction to Explanatory Note to heading 84.30 regarding machines mounted on vehicles of Chapter 86).

(E) Self-propelled **road rollers** as used in road building or other public works (e.g., for levelling the ground or rolling the road surface).

These machines are fitted with heavy cast iron or steel cylinders of large diameter, smooth or studded with metal feet which press into the soil ("sheep's-foot" rollers), or with wheels and heavy grade solid or pneumatic tyres.

The EN to heading 8430, HTSUS, states in pertinent part, the following:

This heading covers machinery, other than the self-propelled machines of heading 84.29 and agricultural, horticultural or forestry machinery (heading 84.32), for "attacking" the earth's crust (e.g., for cutting and breaking down rock, earth, coal, etc.; earth excavation, digging, drilling, etc.), or for preparing or compacting the terrain (e.g., scraping, levelling, grading, tamping or rolling). It also includes pile-drivers, pile-extractors, snow-ploughs, and snow-blowers....

The heading includes:...

(IV) TAMPING OR COMPACTING MACHINES

This group includes:

- (A) **Road rollers designed to be pushed or towed.** This group includes "sheep's-foot" tamping rollers studded with metal feet which press into the soil, and tamping rollers made up of a series of lorry type wheels with heavy grade pneumatic tyres mounted on a common axle.

However, the heading **excludes** self-propelled road rollers, whether or not fitted with "sheep's-feet" or with solid or pneumatic tyres (**heading 84.29**) and agricultural rollers (**heading 84.32**).

- (B) **Tamping machines** as used in road making, for packing rail-road ballast, etc., not self-propelled. Tools for working in the hand, pneumatic, hydraulic or with self-contained motor, are, however, **excluded** (**heading 84.67**).
- (C) **Machines, usually pneumatic, for compacting the sides of embankments, etc.**

The EN to heading 8479, HTSUS, states in pertinent part, that:

This heading is restricted to machinery having individual functions, which:

- (a) Is not excluded from this Chapter by the operation of any Section or Chapter Note.

and (b) Is not covered more specifically by a heading in any other Chapter of the Nomenclature.

and (c) Cannot be classified in any other particular heading of this Chapter since:

- (i) No other heading covers it by reference to its method of functioning, description or type.

and (ii) No other heading covers it by reference to its use or to the industry in which it is employed.

or (iii) It could fall equally well into two (or more) other such headings (general purpose machines)....

(II) MACHINERY FOR CERTAIN INDUSTRIES

This group includes:

(A) **Machinery for public works, building or the like, e.g.:**

- (1) Machines for spreading mortar or concrete (**excluding** mixers for preparing concrete or mortar - **heading** 84.74 or 87.05).
- (2) Road making machines which vibrate the concrete to consolidate it and to camber the surface, sometimes also spreading the concrete.

However this heading **does not include** levellers of **heading** 84.29.

- (3) Machines, whether or not self-propelled, for spraying gravel on road or similar surfaces and self-propelled machines for spreading and tamping bituminous road-surfacing materials. Gravel sprayers mounted on a motor vehicle chassis are **excluded** (**heading** 87.05).
- (4) Machinery and mechanical appliances for smoothing, grooving, checking, etc., fresh concrete, bitumen or other similar soft surfaces.

Heating apparatus for bitumen, etc., are **excluded** (**heading** 84.19).

- (5) Small pedestrian directed motorised apparatus for the maintenance of roads (e.g., sweepers and white line painters).

Mechanical rotating brooms, which may be mounted with a dirt hopper and a sprinkler system on a wheeled chassis powered by a tractor of **heading** 87.01, are also classified in this heading as interchangeable equipment, even if they are presented with the tractor.

- (6) Salt and sand spreaders for clearing snow, designed to be mounted on a lorry, consisting of a tank for storing sand and salt, equipped with a lump-breaking agitator, a system for crushing/grinding the lumps of salt, and a hydraulic projection system with spreading disk. The machines' various functions are operated from the cab of the lorry, by remote control.

The subject merchandise consists of self-propelled machines that compact trash in a landfill. Heading 8429, HTSUS, provides for "Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers." We acknowledge that the subject landfill compactors contain many of the same physical features as bulldozers and road rollers of heading 8429, HTSUS. They also use the same large wheel drums to compact layers of soil and waste as is used by roadrollers and bulldozers. However, the subject merchandise is not used for road-building. The machines of heading 8429, HTSUS, are characterized by their use in compacting earth for making roads. The subject machines, by contrast, compact trash in a landfill. Even their incidental soil compacting capabilities are for covering the trash they compact, not for building roads. As a result, the subject merchandise is not described by the terms of heading 8429, HTSUS, and we examine alternate headings.

In submitting your ruling request for NY J89586, you argued for classification in heading 8430, HTSUS, which provides for “other moving, grading, leveling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-plows and snowblowers.” However, as explained in NY J89586, heading 8430, HTSUS, encompasses machines for “attacking” the earth’s crust, an action that includes such actions as cutting and breaking down rock, earth, coal, etc. See EN 84.30; NY J89586. We also reasoned that heading 8430, HTSUS, encompasses machines for preparing or compacting the terrain, an operation that includes scraping, leveling, grading, tamping or rolling. See EN 84.30; NY J89586. See also HQ 966618, dated January 16, 2004.

In the present case, the subject landfill compactors compact trash so as to make the best use of the space in a landfill. This does not require the crushing of rock or earth; nor does it require the leveling, grading or tamping of these materials. Thus, the subject landfill compactors do not “attack” the Earth’s crust. As a result, they are fundamentally different from the machinery of heading 8430, HTSUS. Therefore, the subject merchandise does not meet the terms of heading 8430, HTSUS, and cannot be classified there.

The comment that CBP received in response to the proposed revocation noted that landfill compactors do in fact compact earth on landfill sites, and that, more generally, these landfill compactors compact the terrain of a landfill. The commenter argues that these landfill compactors compact the trash in a landfill and then covers the waste with a minimum of six inches before driving over the soil to compact it with the layers of refuse. Commenter argues that the addition and compaction of these six inches of soil on a daily basis is mandated by law and cites regulations promulgated by the U.S. Environmental Protection Agency (“EPA”), which require that each level in a landfill be covered by six inches of soil for reasons of pest and disease control. Because of this soil compaction function, the commenter concludes that the subject landfill compactors meet the definition of tamping and compacting machinery of heading 8430, HTSUS.

In response, while we do not dispute that the subject landfill compactors also compact soil in this manner, it is clear that this soil compaction is a function that is secondary to refuse compaction. These landfill compactors’ main function is refuse compaction, which is not described by the terms of heading 8430, HTSUS. Furthermore, although the soil compaction function may be built in to comply with the cited EPA regulations, other agencies’ regulations are not binding on CBP for purposes of tariff classification.¹

The commenter also cites Merriam-Webster to define the term “terrain” as that term appears in heading 8430, HTSUS, as: “1(a): a geographic area, (2): a piece of land: ground; b.: the physical features of a tract of land.” The commenter argues that based on any of these definitions, the subject landfill prepare or compact “the terrain” as contemplated by EN 84.30. In response, we note that heading 8340, HTSUS, provides for “Other moving, grading, leveling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores” (emphasis added). The fact that this heading specifically covers machines for working these elements is evident in Section IV of EN 84.30, which defines tamping or compacting machines as including those which tamp soil, are used in road making or for packing

¹ See, e.g., HQ H243642, dated July 2, 2014; HQ H026663, dated September 2, 2010; HQ 964589, dated March 8, 2002.

rail-road ballast, and machines that compact the sides of embankments. These are all machines that work the earth- i.e., soil. As discussed above, soil compaction is a secondary function of the subject landfill compactors. Interpreting the term “terrain” as broadly as the commenter advocates would impermissibly widen the scope of heading 8430, HTSUS.

Having excluded the subject merchandise from other headings in Chapter 84, HTSUS, we consider classification in heading 8479, HTSUS, which provides for “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter.” In particular, subheading 8479.10.00, HTSUS, provides for “machinery for public works, building or the like.” The question of whether landfills are public works is an issue of first impression.

CBP has stated that public works consist of (1) projects, such as highways, dams, and bridges, which are (2) financed by public funds and (3) are for use by the general public. *See* NY H87937, dated February 21, 2002; HQ 956637, dated August 29, 1994. Merchandise has been classified in subheading 8479.10.00, HTSUS, only when it meets all three criteria. In NY 849386, February 22, 1990, for example, CBP classified refuse treatment equipment, used in municipal waste treatment plants, for resource recovery and compacting non-combustible refuse. There, CBP described the plants as “municipal” to stress that they were not for private commercial use, and classified the machinery at issue in subheading 8479.10.00, HTSUS, as being for public works. *See also* NY 898924 (classifying machinery designed to remove ice sheets which can form on road surfaces, bridges, city sidewalks or other public areas in subheading 8479.10.00, HTSUS); NY 875235, dated July 1, 1992 (classifying machinery designed to clean a paved surface such as a road, walkway, or airport runway of snow, slush, dirt, leaves, stones, etc., in subheading 8479.10, HTSUS).

In the present case, we note that many municipalities maintain landfills as part of their public duties. *See, e.g.*, <http://www.epa.gov/osw/nonhaz/municipal/landfill/section3.pdf>; <http://www.brunswickme.org/departments/public-works/landfill/>; http://en.wikipedia.org/wiki/Public_works. Furthermore, published statistics show that approximately 65 percent of landfills are publicly owned, while only 35 percent are privately owned. *See, e.g.*, “Policy Study No. 267: Privatizing Landfills: Market Solutions for Solid-waste Disposal,” by Geoffrey F. Segal and Adrian T. Moore, <http://research.policyarchive.org/6336.pdf> (last accessed May 29, 2014). In addition, while privatization of landfills has been an increasing trend recently, discussions about it recognize that landfills have traditionally been the purview of state and local governments. These governments have used public funds for them and not restricted their use beyond the general public. *See, e.g.*, “Policy Study No. 267: Privatizing Landfills: Market Solutions for Solid-waste Disposal”; Jim Johnson: “Slow, but steady: Parties more cautious about privatizing services.” *Waste News*, May 8, 2006; <http://www.wastebusinessjournal.com/overview.htm>. As a result, we find that landfills are public works. The landfills that are run by local governments are works of the same type as highways and dams. Furthermore, they are publicly funded and are open to the public. Thus, they meet the definition of

“public works.” See NY H87937; HQ 956637; NY 849386.

In the present case, it is not in dispute that the subject compactors are used primarily with landfills. Because landfills are public works pursuant to the analysis above, the subject merchandise is machinery for public works. As a result, the subject merchandise is classified in subheading 8479.10.00, HTSUS. With respect to NY J89586 in particular, we note that we are modifying this ruling with respect to the classification of its landfill compactor, while affirming its reasoning with respect to heading 8430, HTSUS, as discussed above. We note that the comment that CBP received in response to the proposed revocation supported classification in subheading 8479.10.00, HTSUS, if heading 8430, HTSUS, was found to be inapplicable.

Lastly, we note that NY J89586, NY N064482, and NY A89554 classified the subject landfill compactors in subheading 8479.89.98, HTSUS. This is a basket subheading that provides for “Other machines and mechanical appliances: Other: Other.” Merchandise can only be classified in this subheading when it is not provided for elsewhere in the nomenclature. Pursuant to the analysis above, the subject merchandise is described by the terms of subheading 8479.10.00, HTSUS. As a result, it cannot be classified in subheading 8479.89.98, HTSUS.

HOLDING:

Under the authority of GRI 1, the subject landfill compactors are classified in heading 8479, HTSUS. They are specifically classified in subheading 8479.10.00, HTSUS, which provides for “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Machinery for public works, building or the like.” The column one general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY J89586, dated October 28, 2003, is MODIFIED with respect to the classification of its merchandise.

NY N064482, dated July 8, 2009, and NY A89554, dated December 11, 1996, are REVOKED.

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**COPYRIGHT, TRADEMARK, AND TRADE NAME
RECORDATIONS****(No. 12 2014)**

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 December 2014. The last notice was published in the CUSTOMS BULLETIN December 24, 2014.

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

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

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

CBP IPR RECORDATION — DECEMBER 2014

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 03-00505	12/10/2014	12/10/2024	DIOR	CHRISTIAN DIOR, S.A.	No
TMK 05-00806	12/10/2014	12/10/2024	MONTBLANC	Montblanc-Simplo GmbH	No
TMK 97-00661	12/10/2014	12/10/2024	PIX (Stylized)	GEN U ONE, INC.	No
TMK 05-00057	12/10/2014	12/10/2024	DESIGN ONLY (COLORED STRIPE)	ILLINOIS TOOL WORKS INC.	No
TMK 05-00476	12/10/2014	12/10/2024	NHL & Shield Design	NATIONAL HOCKEY LEAGUE NON-PROFIT ASSOCIATION	No
TMK 05-00749	12/10/2014	12/10/2024	LANGE	LANGE UHREN GmbH	No
TMK 05-00802	12/10/2014	1/5/2025	SHANGHAI TANG	Tangs Department Limited	No
TMK 04-00991	12/10/2014	12/10/2024	NHL & Shield Design	NATIONAL HOCKEY LEAGUE NOT FOR PROFIT ASSOCIATION	No
TMK 03-00165	12/10/2014	12/10/2024	CHRISTIAN DIOR	CHRISTIAN DIOR COUTURE, S.A.	No
TMK 04-01070	12/10/2014	12/10/2024	STOLICHNAYA	SPIRITS INTERNATIONAL B.V.	No
TMK 05-00270	12/10/2014	2/8/2025	CINNINNATI BENGALS	Cincinnati Bengals, Inc.	No
TMK 93-00321	12/15/2014	2/21/2018	Design Only	MONTBLANC-SIMPLO GMBH	NO
TMK 03-00709	12/10/2014	12/10/2024	CHRISTIAN DIOR	CHRISTIAN DIOR COUTURE, S.A.	No
TMK 04-01020	12/10/2014	12/10/2024	SEXY HAIR	SEXY HAIR CONCEPTS, LLC	No
TMK 00-00058	12/10/2014	11/3/2019	PIX	GEN U ONE, INC.	No
TMK 02-00768	12/10/2014	12/10/2024	Design Only.	Montblanc-Simplo GmbH	No

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TMK 01-00033	12/10/2014	12/10/2024	CHRISTIAN DIOR	CHRISTIAN DIOR COUTURE, S.A.	No
TMK 05-00314	12/10/2014	12/10/2024	SK-II	Procter & Gamble Company, The	No
TMK 05-00694	12/10/2014	11/30/2024	POCKET ETCH A SKETCH	THE OHIO ART COMPANY	No
TMK 97-00660	12/15/2014	12/15/2024	PIX	GEN U ONE, INC.	No
TMK 05-00750	12/10/2014	12/10/2024	MONTBLANC	Montblanc-Simplo Gmbh	No
TMK 06-00902	12/10/2014	12/10/2024	BOHEME	Montblanc-Simplo Gmbh	No
TMK 06-00900	12/10/2014	12/10/2024	TIMEWALKER	Montblanc-Simplo Gmbh	No
TMK 07-00821	12/15/2014	3/8/2025	ANGEL SOFT	Georgia-Pacific Consumer Products LP	No
TMK 07-00947	12/15/2014	12/15/2024	INCOGNITO	MICHAEL-DAVID, LLC	No
TMK 08-00394	12/10/2014	12/10/2024	L&M Trademark Recordation renewal	TRADEMARKS LLC	No
TMK 09-00097	12/10/2014	1/26/2025	HDMI HIGH-DEFINITION MULTIME-DIA INTERFACE	HDMI LICENSING L.L.C.	No
TMK 09-00092	12/10/2014	2/2/2025	HDMI	HDMI LICENSING L.L.C.	No
TMK 14-01172	12/2/2014	3/22/2020	MBT (And Design)	MASAI INTERNATIONAL PTE LTD.	No
TMK 14-01173	12/2/2014	6/28/2016	WALKING MAN Design	Masai International Pte. Ltd.	No
TMK 14-01174	12/12/2014	11/3/2024	BETTIE PAGE	BETTIE PAGE LLC	No
TMK 14-01236	12/10/2014	6/21/2016	A. LANGE & SOHNE (Stylized)	Lange Uhren Gmbh G.M.B.H.	No
TMK 14-01235	12/10/2014	11/17/2020	LANGE ZEITWERK	Lange Uhren Gmbh	No

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TMK 14-01234	12/10/2014	8/4/2024	1815	LANGE UHREN GmbH	No
TMK 14-01233	12/10/2014	1/22/2019	DUNHILL	ALFRED DUNHILL LIMITED	No
TMK 14-01232	12/10/2014	1/13/2020	SEE BY CHLOE	Chloe S.A.S.	No
TMK 14-01231	12/10/2014	1/29/2023	SEE BY CHLOE	CHLOE S.A.S.	No
TMK 14-01230	12/10/2014	8/27/2016	LANCEL	LANCEL INTERNATIONAL SA	No
TMK 14-01229	12/10/2014	5/18/2024	LECOULTRE	Richemont International S.A. socit anonyme (sa)	No
TMK 14-01228	12/10/2014	3/8/2022	JL (Stylized)	Richemont International SA	No
TMK 14-01227	12/10/2014	11/25/2021	REVERSO	Richemont International SA SOCIT ANONYME (SA)	No
TMK 14-01226	12/10/2014	7/12/2021	Design Only	OFFICINE PANERAI A.G.	No
TMK 14-01225	12/10/2014	6/9/2020	Design Only	OFFICINE PANERAI A.G.	No
TMK 14-01224	12/10/2014	7/25/2020	ROGER DUBUIS	ROGER DUBUIS, S.A.	No
TMK 14-01200	12/10/2014	12/11/2022	RD (Stylized)	ROGER DUBUIS SA socit anonyme (sa)	No
TMK 14-01223	12/10/2014	12/2/2023	STARWALKER	Montblanc-Simplo GmbH	No
TMK 14-01222	12/10/2014	1/13/2020	Design Only	Montblanc-Simplo GmbH	No
TMK 14-01221	12/10/2014	5/23/2020	BLACK MYSTERY	Montblanc-Simplo GmbH	No
TMK 14-01219	12/10/2014	4/9/2024	PRESENCE	MONTBLANC NORTH AMERICA LLC	No

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TMK 14-01220	12/10/2014	10/9/2023	JMK	Illinois Industrial Tool, Inc. DBA JMK-IIT, Inc.	No
TMK 14-01218	12/10/2014	9/18/2023	NAKED URBAN DECAY BASICS (Stylized)	L'OREAL USA CREATIVE, INC.	No
TMK 14-01188	12/9/2014	10/29/2024	BALLAST POINT BREWING COMPANY VICTORY AT SEA	Home Brew Mart, Inc.	No
TMK 14-01175	12/2/2014	2/4/2025	Majesty Tax Service Tax Professionals You Can Count On! and Shield Design	LUNA, JOSE	No
TMK 14-01176	12/2/2014	12/9/2024	NELAT	Salomon Zirdok	No
COP 14-00249	12/10/2014	9/17/2034	Nicole Lee lining bag travelware acc.	NICOLE LEE	No
TMK 14-01177	12/2/2014	1/12/2021	APOQUEL	ZOETIS LLC	No
TMK 14-01178	12/2/2014	8/31/2024	BOEING	THE BOEING COMPANY	No
TMK 14-01179	12/2/2014	3/4/2023	E&E ENERGY AND ENDURANCE	BEACHBODY, LLC	No
TMK 14-01180	12/2/2014	6/25/2024	P90X3	Beachbody, LLC	No
COP 14-00248	12/10/2014	9/6/2033	suitcase artwork -trolley and backpack.	Picture case ltd, Transfer	No
COP 14-00247	12/10/2014	9/9/2033	suitcase artwork- trolley case and backpack.	Picture case ltd, Transfer	No
COP 14-00246	12/10/2014	9/25/2034	DAMASK GREY FLOWER	KEVIN S. NOH	No
TMK 14-01181	12/2/2014	9/25/2023	DOOR MONKEY	Jordacon Enterprises LLC	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 14-01182	12/2/2014	11/28/2021	YAKULT & Design	KABUSHIKI KAISHA YAKULT HONSHA	No
TMK 14-01183	12/2/2014	7/2/2023	YAKULT LIGHT & Design	Kabushiki Kaisha Yakult Honsha TA Yakult Honsha Co., Ltd.	No
TMK 14-01185	12/2/2014	10/15/2018	Bottle Design	Kabushiki Kaisha Yakult Honsha	No
TMK 14-01189	12/9/2014	6/26/2023	L-CASEI SHIROTA	Kabushiki Kaisha Yakult Honsha TA Yakult Honsha Co.,Ltd.	No
TMK 14-01186	12/2/2014	5/2/2023	ECO-SAFE	MICHAEL BRANDT FAMILY TRUST DBA Eco-Safe of Dallas, Inc.	No
TMK 14-01217	12/10/2014	3/30/2024	JELLYCAT	Jellycat, Ltd.	No
TMK 14-01216	12/10/2014	4/21/2024	CATSEYE	Jellycat, Ltd	No
TMK 14-01214	12/10/2014	9/10/2024	CATSEYE	Jellycat, Ltd.	No
TMK 14-01213	12/10/2014	1/25/2022	NYX	NYX, Los Angeles Inc.;	NO
TMK 14-01211	12/10/2014	11/17/2024	Cervélo	PON BICYCLE I.B.V. BESLOTEN VENNOOTSCHAP.	No
TMK 14-01210	12/10/2014	10/6/2024	MITCHELL & NESS	SPORTS LICENSED DIVISION OF THE ADIDAS GROUP, LLC	No
TMK 14-01199	12/10/2014	11/27/2023	MEFOTO	Mamlya America Corporation	No
TMK 14-01215	12/10/2014	10/28/2019	VAULT LOCKS	MFS Supply, LLC	No
TMK 14-01206	12/10/2014	1/28/2025	THE COUNSELOR	Goldschmidt Vineyards LLC	No

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TMK 14-01184	12/2/2014	2/4/2019	VOTRE SANTÉ	GMYL, L.P. Sentinel Corp.,	No
COP 14-00245	12/10/2014	11/6/2034	[The Elf on the Shelf Doll - 2012 Girl Light]	CCA and B, LLC.	No
TMK 14-01205	12/10/2014	12/2/2024	CASTELMAURE	Kysela Pere et Fils, Ltd.	No
TMK 14-01209	12/10/2014	3/27/2022	ROCKTAPE	Rocktape, Inc.	No
TMK 14-01191	12/9/2014	4/10/2022	ROCK SAUCE	Rocktape, Inc.;	No
TMK 14-01190	12/9/2014	12/2/2024	ROCK GUARDS	Rocktape, Inc.	No
TMK 14-01208	12/10/2014	10/30/2023	ROCK WRAP	Rocktape, Inc. CALIFORNIA	No
TMK 14-01192	12/9/2014	9/17/2024	IFACE	Jong Rin Lee DBA Ace Display Co., Ltd.	No
TMK 14-01207	12/10/2014	7/28/2018	BROCADE	BROCADE COMMUNICATIONS SYSTEMS, INC.	No
TMK 14-01193	12/9/2014	10/19/2021	VCM VEHICLE COMMUNICATION MODULE	Ford Motor Company	No
COP 14-00244	12/10/2014	11/2/2034	SUPER SMASH BROS. FOR NINTENDO 3DS (NOAM-4-10066)	Nintendo of America Inc.	No
TMK 14-01194	12/9/2014	2/25/2025	RIVER PASS	Goldschmidt Vineyards LLC DBA The Counselor Wines	No
TMK 14-01204	12/10/2014	10/21/2019	FORD and Oval Design	Ford Motor Company	No

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TMK 14-01203	12/10/2014	8/5/2019	KATHY SMITH'S PROJECT: YOU TYPE 2	BEACHBODY, LLC	No
TMK 14-01212	12/10/2014	11/3/2024	P90X	BEACHBODY, LLC	No
TMK 14-01195	12/9/2014	11/2/2015	STELLA	STELLA MCCARTNEY LIMITED	No
TMK 14-01202	12/10/2014	1/27/2020	NO and Design	New Dimensions Precision Machining, Inc.	No
TMK 14-01196	12/9/2014	2/4/2025	VESPA	Vespa Power Products, LLC	No
COP 14-00243	12/10/2014	12/3/2034	Papa Smurf Doll	Pierre Culliford d.b.a. Peyo	No
TMK 14-01197	12/9/2014	6/12/2021	BOSCH	ROBERT BOSCH GMBH	
COP 14-00242	12/10/2014	12/5/2034	Smurfette doll / Pierre Culliford d.b.a. Peyo.	Pierre Culliford d.b.a. Peyo	No
COP 14-00241	12/10/2014	12/3/2034	Mushroom House Pin	Pierre Culliford d.b.a. Peyo	No
COP 14-00240	12/10/2014	12/5/2034	Gargamel and Azrael.	Pierre Culliford d.b.a. Peyo	No
TMK 14-01251	12/10/2014	2/5/2020	DESIGN ONLY	ROBERT BOSCH GMBH CORPORA-TION	No
TMK 14-01250	12/10/2014	11/28/2016	Armature Design	ROBERT BOSCH GMBH	No
TMK 14-01249	12/10/2014	11/26/2024	HURRICANE MASTER BY DAB and Design	DAB Door Company, Inc.	No

CBP IPR RECORDATION — DECEMBER 2014

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 14-00239	12/10/2014	10/3/2034	NICOLE LEE 2015 PRINT ARTWORK PART2.	NICOLE LEE, Address	No
TMK 14-01201	12/10/2014	12/2/2024	CELLTO	LEE, YUN	No
TMK 14-01248	12/10/2014	8/17/2015	Stella McCartney	Stella McCartney Limited	No
TMK 14-01247	12/10/2014	11/24/2024	EASY TRAVELER	CAPITOL CUPS, INC.	No
TMK 14-01246	12/10/2014	1/15/2024	INSTANT ICE WRAP	Summit Partners Inc.	No
COP 14-00253	12/22/2014	12/15/2031	Skull Bottle Packaging.	Globefill Incorporated	No
TMK 14-01256	12/15/2014	1/25/2022	DESIGN ONLY	Globefill Incorporated CORPORATION	No
TMK 14-01238	12/10/2014	7/1/2024	Marc Jacobs and Design	Marc Jacobs Trademarks, L.L.C.	No
TMK 14-01245	12/10/2014	1/1/2024	MARC JACOBS	Marc Jacobs Trademarks, L.L.C.	No
TMK 14-01244	12/10/2014	6/21/2016	MARC JACOBS	Marc Jacobs Trademarks, L.L.C.	No
TMK 14-01237	12/10/2014	9/17/2023	NEXTTEQ	Nextteq, L.L.C.	No
TMK 14-01243	12/10/2014	10/22/2018	KVB Knockoff of KYB	Kayaba Industry Co., Ltd.; (KAYABA No KOGYO KABUSHIKI KAISHA)	No
TMK 14-01242	12/10/2014	2/12/2016	Parma and Design	CONSORZIO DEL PROSCIUTTO DI	No
TMK 14-01198	12/9/2014	2/12/2017	PARMA HAM	CONSORZIO DEL PROSCIUTTO DI PARMA ASSOCIATION ITALY	No
TMK 14-01187	12/9/2014	2/12/2017	PROSCIUTTO DI PARMA	CONSORZIO DEL PROSCIUTTO DI PARMA	No

CBP IPR RECORDATION — DECEMBER 2014

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
COP 14-00251	12/10/2014	12/8/2034	Plain Smurf Doll	Studio Peyo, S.A.	No
COP 14-00250	12/10/2014	11/5/2034	Belt; Decorative, bold vertical belt design with buckle detail and N L.	NICOLE LEE	No
COP 14-00252	12/16/2014	11/4/2034	15; Tropical floral background with Nicole Lee 15 in the center, embellishment of clear stones, et al.	NICOLE LEE	No
TMK 14-01241	12/10/2014	1/12/2025	Miscellaneous Design	NINTENDO OF AMERICA INC.	No
TMK 14-01253	12/15/2014	2/9/2025	Miscellaneous Design	Nintendo of America Inc.	No
TMK 14-01240	12/10/2014	1/28/2025	GOTTA CATCH 'EM ALL!	Nintendo of America Inc.	No
TMK 14-01257	12/16/2014	1/28/2025	POKEMON	Nintendo of America Inc.	No
TMK 14-01239	12/10/2014	1/28/2025	GOTTA CATCH 'EM ALL!	Nintendo of America Inc.	No
TMK 14-01254	12/15/2014	10/3/2022	TAO VODKA	BENDER CONSULTING LTD. DBA Asian Pacific Beverages	No
TMK 14-01255	12/15/2014	1/7/2025	VIONIC	VCG HOLDINGS LTD.	No
TMK 14-01258	12/16/2014	4/11/2021	H & Design	Heeling Sports Limited Heeling No Management Corp., a Texas corporation	No
TMK 14-01259	12/16/2014	8/10/2021	H X2 (Stylized)	Heeling Sports Limited Heeling Management Corp., a Texas corporation	No
TMK 14-01252	12/15/2014	4/9/2025	ELMET	ELMET TECHNOLOGIES, INC.	No

CBP IPR RECORDATION — DECEMBER 2014

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 14-01260	12/16/2014	12/8/2019	HEELYS	Heeling Sports Limited Heeling Management Corp	No
TMK 14-01261	12/16/2014	7/3/2021	THE COLOR ORANGE AS APPLIED TO FLUID PUMP PISTONS	SOUTHWEST OILFIELD PRODUCTS, INC.	No
TMK 14-01262	12/23/2014	12/16/2024	C.C	Chevux Corp.	No
TMK 14-01263	12/23/2014	3/16/2025	DESIGN ONLY	Zendex Tool Corp.	No
TMK 14-01264	12/23/2014	7/19/2021	N & Design	Heeling Sports Limited Heeling Management Corp.	No
COP 14-00255	12/23/2014	12/10/2034	FLIP JACK Packaging	Telebrands Corp.	No
TMK 14-01265	12/23/2014	8/5/2018	DESIGN ONLY	David Austin Roses Limited	No
COP 14-00254	12/23/2014	12/9/2034	AMISH SECRET Packaging	T elebrands Corp.	No
TMK 14-01266	12/29/2014	7/12/2021	GLEENER	Cole, Kim	No

Total Records: 140

Date as of: 12/01/2014

MODIFICATION OF NATIONAL CUSTOMS AUTOMATION PROGRAM (NCAP) TEST CONCERNING THE USE OF THE PARTNER GOVERNMENT AGENCY MESSAGE SET THROUGH THE AUTOMATED COMMERCIAL ENVIRONMENT (ACE) FOR THE SUBMISSION OF CERTAIN DATA REQUIRED BY THE ENVIRONMENTAL PROTECTION AGENCY (EPA)

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

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) plan to modify the National Customs Automation Program (NCAP) test concerning the transmission of electronic filings through the Automated Commercial Environment (ACE), known as the Partner Government Agency (PGA) Message Set test. This modification expands the use of the ACE PGA Message Set to transmit Environmental Protection Agency (EPA) Notice of Arrival of Pesticides and Devices (NOA) import data in the ocean and rail modes of transportation. PGA Message Set data may be submitted only for certain entries filed at certain ports.

This modified test is in furtherance of key CBP International Trade Data System (ITDS) initiatives as provided in the Security and Accountability For Every Port Act (SAFE) of 2006 to achieve the vision of ACE as the single window for the Government and trade community by automating and enhancing the interaction between international trade partners, CBP, and PGAs by facilitating electronic collection, processing, sharing, and review of trade data and documents required by Federal agencies during the cargo import and export process. The initiatives will significantly increase efficiency and reduce costs over the manual, paper-based interactions that have been in place. The PGA Message Set will improve communication between agencies and filers regarding imports and when applicable, will allow test participants to submit the required data once rather than submitting data separately to each agency, resulting in quicker processing. During this test, participants will collaborate with CBP and EPA to examine the effectiveness of the single window capability.

This notice invites public comment concerning the test program, provides legal authority for the test, explains the purpose of the test and test participant responsibilities, identifies the regulations that will be waived under the test, provides eligibility and selection criteria for participation in the test, provides a link to a list of ports that are accepting PGA Message Set data under this test, explains the

application process, and determines the duration of the test. This document also explains the repercussions and appeals process for misconduct under the test.

DATES: The modified PGA Message Set test will commence no earlier than April 15, 2015, and will continue until concluded by way of announcement in the **Federal Register**. Comments will be accepted through the duration of the test.

ADDRESSES: Comments concerning this notice and any aspect of this test may be submitted at any time during the test via email to Josephine Baiamonte, ACE Business Office (ABO), Office of International Trade at josephine.baiamonte@cbp.dhs.gov. In the subject line of your email, please indicate, “*Comment on PGA Message Set Test FRN*”.

FOR FURTHER INFORMATION CONTACT: For PGA related questions, contact Elizabeth McQueen at elizabeth.mcqueen@cbp.dhs.gov. For technical questions related to the Automated Commercial Environment (ACE) or Automated Broker Interface (ABI) transmissions, contact your assigned client representative. Interested parties without an assigned client representative should direct their questions to Steven Zaccaro at steven.j.zaccaro@cbp.dhs.gov with the subject heading “*PGA Message Set EPA NOA Test FRN-Request to Participate*”.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 2013, U.S. Customs and Border Protection (CBP) published in the **Federal Register** a notice announcing a National Customs Automation Program (NCAP) test called the Partner Government Agency (PGA) Message Set test. *See* 78 FR 75931. The PGA Message Set is the data needed to satisfy the PGA reporting requirements. ACE enables the message set by acting as the “single window” for the submission of trade-related data required by the PGAs only once to CBP. This data must be submitted at any time prior to the arrival of the merchandise on the conveyance transporting the cargo to the United States as part of an ACE Cargo Release. The data will be validated and made available to the relevant PGAs involved in import, export, and transportation-related decision making. The data will be used to fulfill merchandise entry requirements and will allow for earlier release decisions and more certainty for the importer in determining the logistics of cargo delivery. Also, by virtue of being electronic, the PGA Message Set will eliminate the necessity for the submission and subsequent handling of paper documents.

The December 2013 **Federal Register** notice announced that ACE would be accepting certain PGA data elements for the Environmental Protection Agency (EPA) and the U.S. Department of Agriculture, Food Safety and Inspection Service (FSIS) for type “01” (consumption) and type “11” (informal) commercial entries filed at specified ports. These data elements are generally those found in the current paper form (EPA Forms 3520–1 and 3520–21; and FSIS Form 9540–1) and also include data submissions related to Ozone Depleting Substances (ODS) imports, which are currently handled via phone and email. The December 2013 **Federal Register** notice also provides additional background on the NCAP and the International Trade Data System (ITDS). *See* 78 FR 75931.

This document announces CBP’s plan to expand the PGA Message Set test to now also include electronic filings of the EPA Notice of Arrival of Pesticides and Devices (NOA). This new PGA Message Set capability will satisfy the EPA NOA data requirements for formal and informal consumption entries through electronic filing in ACE as opposed to filing in paper.

For the convenience of the public, a chronological listing of **Federal Register** publications detailing ACE test developments in Entry, Summary, Accounts and Revenue (ESAR) is set forth below in *Section XII*, entitled, “*Development of ACE Prototypes*”. The procedures and criteria related to participation in the previous ACE notices remain in effect unless otherwise explicitly changed by this or subsequent notices published in the **Federal Register**.

I. Authorization for the Test

The Customs Modernization provisions in the North American Free Trade Agreement Implementation Act provide the Commissioner of CBP with authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. This test is authorized pursuant to § 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) which provides for the testing of NCAP programs or procedures. *See* Treasury Decision (T.D.) 95–21.

II. Partner Government Agency Message Set

At this time, CBP is expanding the use of the PGA Message set to include electronic filings of the EPA Notice of Arrival of Pesticides and Devices (NOA) for type “01” (consumption) and type “11” (informal) commercial entries filed at specified ports. The data elements are those found in the current paper form (EPA Form 3540–1, Notice of Arrival of Pesticides and Devices). The NOA data elements are set forth in the supplemental Customs and Trade Automated Interface Requirements (CATAIR) guidelines for EPA. These technical speci-

cations, including the CATAIR chapters and applicable Harmonized Tariff Schedule of the United States (HTSUS) codes, can be found at the following link: <http://www.cbp.gov/document/forms/epa-supplemental-catair-guidelines>.

At this time, a limited number of ports will be accepting PGA Message Set data. A list of those ports is provided on the following Web site: <http://www.cbp.gov/document/guidance/list-aceitds-pga-message-set-pilot-ports>. CBP may expand to additional ports in the future. Test participants should monitor the Web site for updates to the list of ports accepting PGA Message Set data.

III. The Environmental Protection Agency (EPA) Notice of Arrival of Pesticides and Devices

Section 17(c) of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 1360(c), provides that the Secretary of the Treasury [CBP] shall notify the Administrator of EPA of the arrival of pesticides and devices into the United States. 19 CFR § 12.112 states that an importer desiring to import pesticides into the United States shall submit a Notice of Arrival of Pesticides and Devices (EPA Form 3540–1) to the Administrator of EPA. In practice, importers or brokers file the notice of arrival for these products. The NOA requires the identification and contact information of parties involved in the importation of the pesticide or device as well as information on the identity of the imported pesticide or device.

Importers of pesticides or devices are required to file a copy of the NOA prior to arrival of the shipment, generally on paper. Most of the time prior to arrival, the NOA is first filed with an EPA Import Coordinator in the region where the Port of Entry is located. Delivery costs are incurred. EPA staff review the NOA and make a determination as to whether the shipment should be released, detained, or refused. This involves manual checking of key information against EPA data bases. The NOA is signed and returned to the importer. It is presented to the CBP official at the time of entry along with other required documentation. The current process is costly and inefficient because it relies on paper and ink signatures, and manual data validation and error correction. The review process can take several days during which more costs may be incurred for storage.

This document announces CBP's plan to allow the use of the PGA Message Set for electronic filings of the EPA Notice of Arrival of Pesticides and Devices (NOA) to satisfy the NOA data requirements for formal and informal consumption entries as opposed to filing in paper.

The electronic NOA will be filed once through the single window with both EPA and CBP for pre-arrival using the PGA Message Set.

This will eliminate these separate paperwork filings to both agencies for participating importers and as a result, reduce the overall paperwork burden on the importer and port associated with these EPA regulated shipments. It will also significantly reduce the initial processing/review time for the NOAs (often from days to minutes), provide consistency of this review across all EPA regions, and eliminate the delivery service charges for the paper form. The electronic filing will also allow electronic checks of certain mandatory information including registration numbers which facilitates pre-arrival admissibility verifications, thereby focusing CBP and EPA resources on shipments of interest, as well as providing feedback to the filer.

At this time, the test will include only entries originating in the ocean and rail environment. Truck and air modes of transportation will be included in later stages of the test. Upon acceptance into this test, participants will be required to transmit the NOA data elements for entries originating in the ocean and rail environments, as specified in this notice.

IV. Test Participant Responsibilities

PGA Message Set test participants will be required to:

Transmit the applicable data with the ports that are accepting the ACE PGA Message Set data. A current list of those ports are posted on the following Web site: <http://www.cbp.gov/document/guidance/list-aceitds-pga-message-set-pilot-ports>.

- Transmit, when applicable, the data elements contained in the Notice of Arrival of Pesticides and Devices (NOA—EPA Form 3540–1) form using the PGA Message Set. This information must be electronically transmitted to ACE using the ACE Entry Summary at any time prior to the arrival of the merchandise on the conveyance transporting the cargo to the United States;
- Transmit PGA Message Set import filings only as part of an ACE Entry Summary certified for cargo release;
- Transmit import filings to CBP via ABI in response to a request for documentation or in response to a request for release information for certified ACE Cargo Release;
- Only transmit to CBP information that has been requested by CBP or the EPA; and
- Take part in a CBP evaluation of this test.

Participants are reminded that they should only file documents that CBP can accept electronically. The documents CBP can accept elec-

tronically are set forth in the **Federal Register** (79 FR 36083) notice announcing expansion of the Document Image System (DIS) Test (see Section XIV below) and in the PGA Message Set part of the CATAIR using the Automated Broker Interface. If CBP cannot accept the additional information electronically, the filer must file the additional information by paper. See 78 FR 75931 at 75934–35 (December 13, 2013), for information on Confidentiality (Section XIII) and Misconduct under the PGA Message Set Test (Section XIV).

V. Waiver of Regulation under the Test

For purposes of this test, 19 CFR 12.110–12.117 will be waived for test participants only insofar as eliminating any requirement that may appear in these regulations to file a paper version of EPA Form 3540–1 (Notice of Arrival of Pesticides and Devices). In its place, test participants are required to transmit electronically the data, elements contained in EPA Form 3540–1 (Notice of Arrival of Pesticides and Devices). This document does not waive any recordkeeping requirements found in part 163 of title 19 of the CFR (19 CFR part 163) and the Appendix to part 163 (commonly known as the “(a)(1)(A) list”).

VI. Eligibility Criteria

As announced in this notice, the use of the PGA Message Set test is expanding to accept EPA NOA data elements. All other eligibility criteria as specified in prior PGA Message Set test notices remain the same. To be eligible to apply for this test, the applicant must:

- Be a self-filing importer who has the ability to file ACE Entry Summaries certified for cargo release or a broker who has the ability to file ACE Entry Summaries certified for cargo release; and
- File entries for EPA commodities that are the subject of this test at the ports that are accepting PGA Message Set data.

Except for those interested in participating in the Ozone Depleting Substances portion of the test (announced in 78 FR 75931, December 13, 2013), CBP will accept an unlimited number of participants for the test.

Test applicants must meet the eligibility criteria described in this document to participate in the test program.

VII. Application Process

Any party seeking to participate in the modified PGA Message Set test, including those previously accepted into the PGA Message Set test announced in December 2013 (78 FR 75931), should email their CBP Client Representative, ACE Business Office (ABO), Office of International Trade to request participation in the modified test. Interested parties without an assigned client representative should submit an email to Steven Zaccaro at steven.j.zaccaro@cbp.dhs.gov with the subject heading “PGA Message Set EPA NOA Test FRN-Request to Participate”.

Emails sent to the CBP client representative or to Steven Zaccaro must include the applicant’s filer code and the port(s) at which they are interested in filing the appropriate PGA Message Set information. At this time, PGA Message Set data may be submitted only for entries filed at certain ports. A current listing of those ports may be found on the following Web site: <http://www.cbp.gov/document/guidance/ace-cargo-release-pilot-ports>.

Client representatives will work with test participants to provide information regarding the transmission of this data. CBP will begin to accept applications upon the date of publication of this notice and will continue to accept applications throughout the duration of the test. CBP will notify the selected applicants by email of their selection and the starting date of their participation. Selected participants may have different starting dates. Anyone providing incomplete information, or otherwise not meeting participation requirements, will be notified by email and given the opportunity to resubmit their application.

VIII. Test Duration

The modified test will begin no earlier than March 6, 2015 and is intended to last approximately two years from the date of this notice. At the conclusion of the test, an evaluation will be conducted to assess the effect that the PGA Message Set has on expediting the submission of EPA and importation-related data elements and the processing of EPA entries. The final results of the evaluation will be published in the **Federal Register** and the *Customs Bulletin* as required by section 101.9(b)(2) of the CBP regulations (19 CFR 101.9(b)(2)).

IX. Comments

All interested parties are invited to comment on any aspect of this test at any time. CBP requests comments and feedback on all aspects of this test, including the design, conduct and implementation of the

test, in order to determine whether to modify, alter, expand, limit, continue, end, or fully implement this program.

X. Paperwork Reduction Act

The collections of information in this test modification, EPA Form 3540–1 (Notice of Arrival of Pesticides and Devices), have been reviewed by OMB in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 2070–0020. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

XI. List of PGA Programs Currently Accepting Data Through the ACE PGA Message Set Test

- Environmental Protection Agency (EPA) Ozone Depleting Substances (ODS) program data.
- EPA Vehicle and Engine (V&E) program data.
- EPA Notice of Arrival of Pesticides and Devices (NOA—EPA Form 3540–1) data. (Ocean and Rail Modes Only)
- U.S. Department of Agriculture (USDA), Food Safety and Inspection Service (FSIS), meat, poultry, and egg products data.

XII. Development of ACE Prototypes

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004); 70 FR 5199 (February 1, 2005).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).

- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).
- Modification of NCAP Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE), 78 FR 44142, published July 23, 2013.
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction; 78 FR 53466, published August 29, 2013.
- Modification of NCAP Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039, published November 4, 2013.
- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434, published November 19, 2013.

- National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers: 79 FR 6210 (February 3, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release To Allow Importers and Brokers To Certify From ACE Entry Summary 79 FR 24744 (May 1, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Truck Carriers 79 FR 25142 (May 2, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment Document Image System 79 FR 36083 (June 25, 2014).
- Announcement of eBond Test: 79 FR 70881 (November 28, 2014).
- eBond Test Modifications and Clarifications: Continuous Bond Executed Prior to or Outside the eBond Test May Be Converted to an eBond by the Surety and Principal, Termination of an eBond, Identification of Principal on an eBond by Filing Identification Number, and Email Address Correction: 80 Fed Reg 899 (January 7, 2015).

Dated: January 30, 2015.

BRENDA SMITH,
Assistant Commissioner,
Office of International Trade.

[Published in the Federal Register, February 4, 2015 (80 FR 6098)]

MODIFICATION OF NATIONAL CUSTOMS AUTOMATION PROGRAM (NCAP) TEST CONCERNING AUTOMATED COMMERCIAL ENVIRONMENT (ACE) DOCUMENT IMAGE SYSTEM (DIS) RELATING TO ANIMAL AND PLANT HEALTH INSPECTION SERVICE (APHIS) DOCUMENT SUBMISSIONS

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

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) plan to modify part of the National Customs Automation Program (NCAP) test concerning document imaging, known as Phase III of the Document Image System (DIS) test. Phase III of the DIS test allows Automated Commercial Environment (ACE) participants to submit electronic images of a specific set of CBP and Partner Government Agency (PGA) forms and supporting information to CBP via a CBP-approved Electronic Data Interchange (EDI). This notice announces that ACE participating importers and brokers may now submit DIS test-supported Animal and Plant Health Inspection Service (APHIS) documents, in Portable Document Format (PDF) file format, via email, to *docs@cbp.dhs.gov*.

DATES: The modified DIS test will commence no earlier than February 17, 2015, and will continue until concluded by way of announcement in the **Federal Register**

ADDRESSES: Comments concerning this notice and any aspect of the test may be submitted at any time during the test via email to Monica Crockett at *monica.v.crockett@cbp.dhs.gov*. In the subject line of your email, please indicate "*Comment on Document Image System (DIS)*".

FOR FURTHER INFORMATION CONTACT: For policy-related questions, contact Monica Crockett at *monica.v.crockett@cbp.dhs.gov*. For technical questions related to ABI transmissions, contact your assigned client representative. Any partner government agency (PGA) interested in participating in DIS should contact Elizabeth McQueen at *elizabeth.mcqueen@cbp.dhs.gov*. Interested parties without an assigned client representative should direct their questions to Steven Zaccaro at *steven.j.zaccaro@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

This test notice, and the Customs related electronic functions it describes, are part of the National Customs Automation Program (NCAP). NCAP was established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993) (Customs Modernization Act). *See* 19 U.S.C. 1411. Through NCAP, the initial focus of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the legacy Customs Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing. ACE will streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and all its communities of interest. The ability to meet these objectives depends upon successfully modernizing CBP’s business functions and the information technology that supports those functions. CBP’s modernization efforts are accomplished through phased releases of ACE component functionality, designed to introduce a new capability or to replace a specific legacy ACS function. Each release will begin with a test, and will end with mandatory compliance with the new ACE feature, thus retiring the legacy ACS function. Each release builds on previous releases, and sets the foundation for subsequent releases. For the convenience of the public, all **Federal Register** publications detailing ACE test developments in Entry, Summary, Accounts, and Revenue (ESAR) are listed chronologically at the end of this notice, in the section “*Development of ACE Prototypes.*”

One of the phased releases is for the Document Imaging System (DIS) feature, which allows participants to submit certain information electronically instead of submitting that information via a paper document. The DIS test allows ACE participants to submit electronic images of a specific set of CBP and Partner Government Agency (PGA) forms and supporting information to CBP. Specifically, importers and brokers are allowed to submit specified official CBP documents and specified PGA documents via a CBP-approved Electronic Data Interchange (EDI). The first phase of the DIS test, Phase I, enabled participating importers and brokers to transmit images of specified CBP and PGA forms with supporting information via a CBP approved EDI in an Extensible Markup Language (XML) file format,

in lieu of conventional paper methods. *See* 77 FR 20835 (April 6, 2012). In the second phase, Phase II, CBP reduced the number of metadata elements required for each document and specified forms that were eligible to be submitted earlier, *i.e.* at the time of manifest, or transmitted via a CBP-approved EDI to support ACE Cargo Release filings (previously known as Simplified Entry filings). In Phase II CBP also expanded the pool of eligible participants to include software providers, who only electronically transmit data that they had received for transmission to CBP. *See* 78 FR 44142 (July 23, 2013).

On June 25, 2014, CBP published in the **Federal Register** a notice announcing the third phase of the DIS test, Phase III, which added to the list of documents supported by the DIS test. *See* 79 FR 36083 (June 25, 2014). The DIS test supports certain PGA forms and supporting information, which include ones that the Animal and Plant Health Inspection Service (APHIS) requires. *See* 79 FR 36083 for the complete list of CBP and PGA documents, which the DIS test supports as of the date of this notice.

Pursuant to Phase III of the DIS test, parties who file entry summaries in ACE are allowed to submit specified CBP and PGA documents via a CBP-approved EDI. DIS capabilities will continue to be delivered in multiple phases.

CBP will continue to publish in the **Federal Register** announcements to notify ACE participants when they may submit any new CBP or PGA documents into the DIS test, or when they may send any other DIS test-supported documents via email in PDF file format. All other eligibility criteria, technical specifications, recordkeeping requirements, and rules for submitting to DIS, as specified in prior DIS test notices, remain the same. *See* 79 FR 36083.

Authorization for the Test

The Customs Modernization provisions in the North American Free Trade Agreement Implementation Act provide the Commissioner of CBP with authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. This test is authorized pursuant to § 101.9(b) of the CBP Regulations (19 CFR 101.9(b)) which provides for the testing of NCAP programs or procedures. *See* Treasury Decision (T.D.) 95–21.

Modification of Phase III of the Document Image System (DIS) Test Program

This notice announces that, as an addition to Phase III, CBP is now allowing brokers and importers, who are also ACE participants, to file DIS test-supported APHIS documents, in Portable Document Format

(PDF) file format, via email, to this email address: docs@cbp.dhs.gov.

The DIS test-supported APHIS documents, which ACE-participating brokers and importers may send in PDF file format to docs@cbp.dhs.gov, are:

- APHIS *STAT* Supporting Statement
- APHIS *Import Permit*
- APHIS Plant Protection and Quarantine (PPQ) Form 368, *Notice of Arrival* (of a restricted article at the port of entry)
- APHIS PPQ Form 203, *Foreign Site Certificate of Inspection and/or Treatment*
- APHIS PPQ Form 586, *Application for Permit to Transit Plants and/or Plant Products, Plant Pests, and/or Associated Soil through the United States*
- APHIS PPQ Form 587, *Application for Permit to Import Plants or Plant Products*
- APHIS *Transit Permit*
- Foreign Government Sanitary Certificate (Veterinary Health Certificate) (used by APHIS)
- Ingredients List (used by APHIS)
- Phytosanitary Certificates (used by APHIS)
- Proof of origin (for origin shipments of milk and milk products) (used by APHIS)

Test Participation

All other eligibility criteria, technical specifications, recordkeeping requirements, and rules for submitting to DIS remain the same. For more information about the eligibility criteria, technical specifications, recordkeeping requirements, and rules for submitting to DIS, see 79 FR 36083.

Development of ACE Prototypes

A chronological listing of **Federal Register** publications, which describe ESAR ACE test developments, is provided, below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004); 70 FR 5199 (February 1, 2005).

- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).
- Modification of NCAP Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE): 78 FR 44142 (July 23, 2013).

- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction: 78 FR 53466 (August 29, 2013).
- Modification of NCAP Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013).
- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434 (November 19, 2013).
- National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers: 79 FR 6210 (February 3, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release To Allow Importers and Brokers To Certify From ACE Entry Summary: 79 FR 24744 (May 1, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Truck Carriers: 79 FR 25142 (May 2, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment Document Image System: 79 FR 36083 (June 25, 2014).
- eBond Test: 79 FR 70881 (November 28, 2014); 80 FR 899 (January 7, 2015).

Dated: January 27, 2015.

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

[Published in the Federal Register, January 30, 2015 (80 FR 5126)]

AGENCY INFORMATION COLLECTION ACTIVITIES:**Crew Member's Declaration**

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

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Crew Member's Declaration (CBP Form 5129). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before March 5, 2015 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (79 FR 69516) on November 21, 2014, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/ or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Crew Member's Declaration.

OMB Number: 1651-0021.

Form Number: Form 5129.

Abstract: CBP Form 5129, *Crew Member's Declaration*, is a declaration made by crew members listing all goods acquired abroad which are in his/her possession at the time of arrival in the United States. The data collected on CBP Form 5129 is used for compliance with currency reporting requirements, supplemental immigration documentation, agricultural quarantine matters, and the importation of merchandise by crew members who complete the individual declaration. This form is authorized by 19 U.S.C. 1431 and provided for by 19 CFR 4.7, 4.81, 122.44, 122.46, 122.83, 122.84 and 148.61-148.67. CBP Form 5129 is accessible at <http://www.cbp.gov/sites/default/files/documents/CBP%20Form%205129.pdf>.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Form 5129.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 6,000,000.

Estimated Number of Total Annual Responses: 6,000,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 996,000.

Dated: January 27, 2015.

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

AGENCY INFORMATION COLLECTION ACTIVITIES:**Crew's Effects Declaration**

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

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Crew's Effects Declaration (CBP Form 1304). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before March 5, 2015 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to ira_submission@omb.eop.gov or faxed to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (79 FR 69516) on November 21, 2014, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/ or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3507). The comments should address: (a)

Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Crew's Effects Declaration.

OMB Number: 1651-0020.

Form Number: Form 1304.

Abstract: CBP Form 1304, *Crew's Effects Declaration*, was developed through an agreement by the United Nations' Intergovernmental Maritime Consultative Organization (IMCO) in conjunction with the United States and various other countries. The form is used as part of the entrance and clearance of vessels pursuant to the provisions of 19 CFR 4.7 and 4.7a, 19 U.S.C. 1431, and 19 U.S.C. 1434. CBP Form 1304 is completed by the master of the arriving carrier to record and list the crew's effects that are onboard the vessel. This form is accessible at http://forms.cbp.gov/pdf/CBP_Form_1304.pdf.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Form 1304.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 9,000.

Estimated Number of Total Annual Responses: 206,100.

Estimated Time per Response: 60 minutes.

Estimated Total Annual Burden Hours: 206,100.

Dated: January 27, 2015.

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