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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 159 and 173

USCBP-2016-0065

RIN 1515-AE16

Electronic Notice of Liquidation

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

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document proposes to amend the U.S. Customs and Border Protection (CBP) regulations to reflect that official notice of liquidation, suspension of liquidation, and extension of liquidation will be posted electronically on the CBP website. This document also proposes regulatory revisions to reflect that official notice of liquidation will no longer be posted at the customhouses or stations and that official notices of suspension of liquidation and extension of liquidation will no longer be mailed. Additionally, this document proposes to make certain technical corrections to the CBP regulations.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

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

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2016-0065.
- Mail: Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, Attention: Trade and Commercial Regulations Branch, 90 K Street, NE, 10th Floor, Washington, DC 20229-1177.

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

Docket: For access to the docket to read comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected on regular business days between the hours of 9 a.m. and 4:30 p.m. at Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Virginia McPherson, ACE Business Office, Office of Trade, 571-468-5181, or virginia.h.mcpherson@cbp.dhs.gov. Randy Mitchell, Trade Policy and Programs, Office of Trade, 202-863-6532, or randy.mitchell@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Public Participation

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

I. Background

A. Statutory Authority

Section 500 of the Tariff Act of 1930, as amended (19 U.S.C. 1500), provides CBP with the authority, under rules and regulations prescribed by the Secretary, to, among other things, give or transmit notice of liquidation pursuant to an electronic data interchange system. See 19 U.S.C. § 1500(e). Similarly, CBP is authorized to give notice of extension of liquidation in such form and manner (which may include electronic transmittal) as prescribed by regulation and notice of suspension of liquidation in such manner as considered appropriate. See 19 U.S.C. § 1504(b) and (c). Additionally, the National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, December 8, 1993), to provide for, among other things, the electronic status of liquidation. See 19 U.S.C. 1411.

B. Current Regulations and Procedures

CBP defines “liquidation” in section 159.1 of title 19 of the Code of Federal Regulations (CFR) as the final computation or ascertainment of duties on entries for consumption or drawback entries. See 19 CFR 159.1. Currently, notices of liquidation for formal entry, including notices of liquidation by operation of law, are physically posted in the customhouse or station at the port of entry on CBP Form 4333, and this physical posting is deemed the legal evidence of liquidation and provides the date of liquidation. See 19 CFR 159.9(a)-(c). The date of liquidation is important if an importer chooses to protest CBP’s decision as to the final computation or ascertainment of duties on entries for consumption or drawback entries. The protest must be filed within a specified number of days from the date of liquidation. See 19 CFR 174.12(e).

Generally, the bulletin notice of liquidation is prepared on Thursday afternoons and is placed in the public area at the customhouse or station for display so that the public may view it beginning each Friday morning. Each port has a sign posted in a conspicuous place, in accordance with 19 CFR 159.9(b), directing the public to the bulletin notice.

Courtesy notices of liquidation are sent via a CBP-authorized electronic data interchange system or physically mailed on CBP Form 4333-A. See 19 CFR 159.9(d). CBP generally sends the electronic courtesy notice before the posting of official notice. However, because a paper courtesy notice may be received at or about the time the bulletin notice of liquidation has been physically posted, there may be a delay between the official date of liquidation and when the paper courtesy notice is received. Liquidation of an entry may be extended or suspended. See 19

U.S.C. 1504; 19 CFR 159.12 and 159.51. When extension or suspension occurs, official notices are mailed on an appropriately modified CBP Form 4333-A, in accordance with 19 CFR 159.12(b) and (c), and courtesy notices of extension or suspension are provided electronically for electronic filers.

Individuals interested in perusing the bulletin notices must physically go to the customhouse. In most instances, CBP liquidates entries without changing the duties, fees or charges asserted by the importer; therefore there is generally no need to know the exact date of liquidation for most entries. However, as stated above, the exact date of liquidation is important if an importer wishes to timely file a protest challenging any of the decisions about an entry that are subsumed into the liquidation and enumerated in 19 U.S.C. § 1514(a). CBP estimates that protesters or their representatives take 2,500 trips to U.S. customhouses or stations each year to physically view the official bulletin notice. In addition, physically posting the bulletin notice of liquidation, repeated at each customhouse every week, is laborious and time-consuming.

II. Modernizing Notice of Liquidation

A. Electronic Notice

In this document, CBP is proposing to post official notice of liquidation for all entries, including entries filed in paper form, as well as official notices regarding the extension or suspension of liquidation, at www.cbp.gov. This proposed electronic posting will replace both the physical posting or lodging of bulletin notices in the customhouse as the legal evidence of liquidation and the mailed notices of extension or suspension as official notice. The information will be accessible via a conspicuous link on the www.cbp.gov website, labeled Bulletin Notices of Liquidation. Accordingly, upon the effective date of these regulations, CBP would no longer

physically post bulletin notice of liquidation in the customhouse or station or mail notices of suspension or extension.

The electronic bulletin notices will be searchable on the CBP website by using two or more of the following data elements:

1. Entry Number
2. Filer
3. Importer of Record Number
4. Port of Entry
5. Liquidation Date (with searchable date range)
6. Posted Date (date of posting of event with searchable date range)
7. Entry Date (with searchable date range)
8. Event Type (such as, Liquidated, Re-liquidated, Suspended, Extended)
9. Basis (Reason for the liquidation, suspension or extension)
10. Action (CBP's final determination of the duties, taxes, and fees due on the entry, i.e.,
No Change; Change Increase; Change Decrease)

For example, conducting a search by entering the port of entry and selecting a posted date would return results for all notices posted for that port for that date. However, searching with the fields specific to an interested party, such as entry number or importer of record number, will return more targeted results. When viewing the results of a search, importer of record numbers will not be displayed on the CBP website. CBP may add more search fields as additional capabilities are deployed.

The liquidation information posted electronically will be updated daily. When liquidation notices are posted on www.cbp.gov, there will no longer be a need for importers or their

representatives to go to the customhouse or station to obtain the official date of liquidation. Once it has been posted electronically, the information will be available on www.cbp.gov for a minimum of 15 months. Notices that are no longer available on the CBP website will be accessible by CBP personnel. Requests for notices that have been removed from the CBP website may be directed to the relevant port of entry.

Electronic filers, using their ACE Portal Account, would be able to access historical liquidation information that is no longer available on the CBP website, run queries for information on recent liquidations, extensions, and suspensions, run targeted reports to conduct in-house audits, identify systemic errors, and provide insight into entries under review by CBP, all in support of improved compliance with trade laws. Obtaining an ACE Portal Account is free, and registration information is available at: <https://www.cbp.gov/document/guidance/ace-secure-data-portal-account-application>. For more general information on ACE Portal Accounts, please see: <https://www.cbp.gov/trade/automated/getting-started/using-ace-secure-data-portal>.

In addition to posting the official notice of liquidation on www.cbp.gov, CBP intends to continue sending electronic courtesy notices of liquidation, extension, and suspension via a CBP-authorized electronic data interchange system to the electronic filer when entries liquidate or are extended or suspended. However, paper courtesy notices of liquidation and paper notices of extension or suspension of liquidation will no longer be mailed.

B. Explanation of Proposed Amendments

This section of the document explains the proposed amendments to various parts of title 19 of the Code of Federal Regulations (19 CFR) to implement the above-described changes regarding the electronic posting of notice. Accordingly, the following sections are proposed to be revised as follows:

CBP is proposing to amend section 159.9 throughout, with one exception in paragraph (c)(2)(iii), discussed below, to provide for the proposed changes discussed above by replacing references to the physical posting or lodging bulletin notice of liquidation, CBP Form 4333, with references to electronic notice provided on www.cbp.gov, including for entries liquidated by operation of law. We propose to amend paragraph (c)(1) by removing the last sentence stating that “CBP will endeavor to provide the filer with electronic notification of this date as an informal, courtesy notice of liquidation” because this sentence is redundant as paragraph (d) deals with courtesy notices of liquidation. This document proposes to also amend paragraph (c)(2)(i) by adding the phrase “and will be posted on www.cbp.gov within a reasonable period after each liquidation by operation of law and will be dated with the date of liquidation by operation of law” at the end of the paragraph. CBP further proposes deleting paragraph (c)(2)(ii) because the proposed changes to paragraph (c)(2)(i) make it redundant. This document proposes to renumber paragraph (c)(2)(iii) as (c)(2)(ii) and to revise it by adding the phrase “For liquidation notices posted or lodged in the customhouse,” to the beginning of the paragraph to ensure protestants are clear on the responsibility to file a timely protest based on the method of posting of notice of liquidation if posted in the customhouse prior to the effective date of these proposed amendments.

CBP is proposing to add a new paragraph (c)(2)(iii) for liquidation notices posted on www.cbp.gov regarding protests of decisions of entries liquidated by operation of law. Further, we propose to amend paragraph (d) of section 159.9 to state that courtesy notice of liquidation will be provided electronically only for entries that were filed electronically.

Because bulletin notices of liquidation will not be physically posted at the customhouse or the station, CBP is proposing to amend section 159.10 by removing the words “posting or lodging of” in paragraph (b), removing the words “on CBP Form 4333 posted or lodged” in paragraph (c)(1), and by removing the words “on a bulletin notice of liquidation, CBP Form 4333,” in paragraph (c)(3).

Also, because bulletin notices of liquidation will not be physically posted at the customhouse or the station, we propose to amend section 159.11 at paragraph (a) by replacing the words “on the bulletin notice of liquidation, CBP Form 4333,” with “electronically”.

Additionally, CBP proposes to amend section 159.12 at paragraphs (b) and (c) to state that official notice of extension and suspension, and the reasons therefor, will be posted on www.cbp.gov and that courtesy notice will be sent through a CBP-authorized electronic data interchange system. This document proposes to amend paragraph (d)(2) of section 159.12 to state that, if the port director finds good cause, notice of extension will be posted on www.cbp.gov and a courtesy notice will be sent through a CBP-authorized electronic system. CBP further proposes to amend paragraph (f)(1) of section 159.12 by removing the word “bulletin” from the last sentence. This document proposes to remove paragraph (g) of section 159.12 because sections 159.9 and 159.10 already deal with notice of liquidation.

C. Technical Corrections

CBP is also proposing to make certain technical corrections in this document. These proposed amendments update the regulatory language to reflect statutory changes.

Sections 159.11(a) and 159.12(f) refer to the timing of liquidation. In addition to the changes made to these sections regarding the electronic posting of notice, these sections are also being modified to reflect updated language that aligns with 19 U.S.C. 1504, which was amended in 2004 by the Miscellaneous Trade and Technical Corrections Act (Pub. L. 108-429, 118 Stat. 683, December 3, 2004) to provide that entries are deemed liquidated based on the rate of duty, value, quantity, and amount of duties asserted by the importer of record regardless of when asserted. The current regulations state that an entry may only be deemed liquidated based on the rate, duty, value, quantity, and amount of duties asserted by the importer at the time of entry. Accordingly, this document proposes to update the regulatory language of §§ 159.11(a) and 159.12(f)(1) to reflect this amendment. Also, as 19 U.S.C. 1504(d) no longer requires CBP, when liquidation of an entry continues to be suspended beyond four years due to a statute or court order, to liquidate the entry within 90 days from when the suspension is removed, CBP is proposing to remove section 159.12(f)(2).

Section 173.4a provides for the correction of clerical errors prior to liquidation. The section implements section 520 of the Tariff Act of 1930, as amended (19 U.S.C. 1520). Section 1635 of the Pension Protection Act of 2006 (Pub. L. 109-280, 170 Stat. 780, August 17, 2006) modified 19 U.S.C. 1520. Prior to this amendment, 19 U.S.C. 1520 authorized refunds prior to

liquidation of an entry or reconciliation, whenever it is ascertained that excess duties, fees, or exactions have been deposited or paid by reason of clerical error. Under the 2006 amendment, the clause, “by reason of clerical error,” was deleted from the statute. This document proposes to revise the section heading for § 173.4a and updates the regulatory language to reflect this amendment.

III. Statutory and Regulatory Requirements

A. Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation.

B. Regulatory Flexibility Act

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

qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

Background

Most goods imported into the United States are subject to duty assessments, which CBP conducts during a process known as liquidation. During this liquidation process, CBP performs a final computation of duties (not including vessel repair duties) on the entry covering the imported merchandise and then closes out the entry. In accordance with current regulations, CBP officially notifies importers,¹ as well as the public, of a formal entry's liquidation by posting a weekly bulletin notice of liquidation in a readily-located and consulted place in the customhouse or station at each port of entry.² These notices are available for importers and the public to peruse for nearly two weeks before they are placed in CBP storage. CBP provides the same official notice of liquidation for informal entries where a duty cannot be determined at the time of entry and for reliquidated dutiable entries.³ For other informal, mail, and baggage entries, CBP furnishes official notice of liquidation to an importer (and their sureties when required) by a suitable printed statement appearing on the receipt issued for duties collected, by release of the merchandise under a free entry, or by acceptance of the free entry after release under a special permit for immediate delivery.⁴ Once CBP provides official notice of liquidation or reliquidation,

¹¹ For the purposes of this analysis, "importers" can also refer to agents, such as brokers, who act on behalf of importers.

² See 19 CFR 159.9(b).

³ See 19 CFR 159.10.

⁴ See 19 CFR 159.10.

importers generally have 180 days to file a protest challenging certain aspects of their entry's liquidation.⁵ In addition to these official notices, CBP endeavors to provide importers (and their sureties) informal, courtesy notices of liquidation and reliquidation for entries scheduled to be liquidated or deemed liquidated by operation of law. For the majority of importers filing entries, who actually file electronically, CBP generally sends these filers (and their sureties) courtesy notices of liquidation and reliquidation via a CBP-authorized electronic data interchange system before the official notice (and protest period's start date). For the small portion of importers who file entries by paper, CBP typically mails paper courtesy notices of liquidation and reliquidation using CBP Form 4333-A to these filers on or around the date of the official notice's posting. These courtesy notices are not direct, formal, and decisive notices of liquidation or reliquidation; however, based on anecdotal evidence, most importers rely on these courtesy notices to determine liquidations and reliquidations to avoid the time and resource costs incurred to view official bulletin notices at U.S. customhouses or stations.

Some liquidations may be extended or suspended. If liquidation is extended or suspended, CBP officially notifies the importer and his/her surety by mail using CBP Form 4333-A, as appropriately modified.⁶ CBP also provides importers who file entries electronically and their sureties with electronic courtesy notices of extension and suspension, which are generally sent in advance of mailed notifications. Although these courtesy notices are not direct, formal, and

⁵ For entries filed before December 18, 2004, the time limit is within 90 days after liquidation, but for entries filed on or after that date, it is now 180 days (see CFR part 174; see 19 USC 1514(c)(3) as amended by section 2103(2)(B), Pub. L. 108-429).

⁶ See 19 CFR 159.12.

decisive notices of extension or suspension, CBP believes that most importers (and all sureties) rely on them to determine extensions and suspensions because importers receive them before the official notice and they contain the same information. Importers who file entries by paper do not receive electronic or paper courtesy notices of extension and suspension.

In an effort to modernize the liquidation, reliquidation, extension, and suspension notification processes, CBP, through this rulemaking, proposes to discontinue physically posting official bulletin notices of liquidation and reliquidation at U.S. port of entry customhouses and stations. Instead, CBP would post these official notices in a readily-located, conspicuous place on the CBP website: www.cbp.gov. Additionally through this rule, CBP would begin posting electronically on www.cbp.gov official notices of extension and suspension that are currently mailed. CBP would tie all electronic notices directly to an already-developed, automated process by which entries are liquidated, reliquidated, extended, or suspended, ensuring that these actions and CBP's official notifications of these actions occur simultaneously. This rule would not change the method in which CBP provides electronic courtesy notices of liquidation, reliquidation, extension, or suspension, but it would discontinue the practice of mailing any paper notices. For other informal, mail, and baggage entries, CBP would continue to furnish official notices of liquidation and reliquidation to importers (and their sureties when required) by a suitable printed statement appearing on the receipt issued for duties collected, by release of the merchandise under a free entry, or by acceptance of the free entry after release under a special permit for immediate delivery. As described next, these regulatory changes would introduce benefits and costs to importers, including small entities.

For most importers (and their sureties), this rule would simply change the way in which they can access official notices of liquidation, reliquidation, extension, and suspension. Instead of posting weekly official bulletin notices of liquidation and reliquidation at each U.S. customhouse and station and mailing official notices of extension and suspension, CBP would publish these notices on the CBP website once this rule is in effect. CBP would also discontinue mailing all paper courtesy notices of liquidation and reliquidation with this rule. Because the vast majority of importers (and all their sureties) already rely on the electronic courtesy notices of liquidation, reliquidation, extension, and suspension that CBP provides, this rule's transition to electronic official notice publications would presumably only affect a small portion of importers. Specifically, this transition to electronic notice publications would only affect those importers who currently rely on official bulletin notices physically posted at U.S. customhouses and stations and those importers who receive and rely on paper courtesy notifications of liquidation and reliquidation and paper official notices of extension and suspension due to their paper entry filings.

Number of Small Entities Affected by Rule

Using historical data, CBP estimates that importers took an average of 2,500 trips to U.S. customhouses or stations each year for the single purpose of viewing official bulletin notices because the official bulletin notice's posting date was significant to a protest that importer planned to file.⁷ CBP also estimates that CBP mailed an average of 23,500 paper courtesy notices of liquidation and reliquidation and 3,100 paper notices of extension and suspension each year to

⁷ Based on the 2,500 Applications for Further Review (AFRs) filed with protests in 2015. Importers or their attorneys who file AFRs depend on the exact dates of liquidation or reliquidation to file a timely protest, and thus likely travel to a U.S. customhouse or station to physically view official bulletin notices with the official dates of liquidation and reliquidation. Using the 2015 AFR filings as a proxy for trips taken to view official bulletin notices, CBP estimates that importers or their attorneys took 2,500 trips to U.S. customhouses or stations each year for the single purpose of viewing official bulletin notices. Sources: 19 CFR 174.12(e) and email correspondence with CBP's Office of Trade on July 15, 2016.

importers who filed paper entries.⁸ Considering this historical data, CBP estimates that this rule could affect up to approximately 29,100 importers per year. To the extent that the same importer took more than one trip to the U.S. customhouse or station to view an official bulletin notice or received and relied on more than one paper notice, the number of importers affected by this rule would be lower. Nonetheless, because the majority of importers are small businesses, CBP believes this rule would affect a substantial number of small entities.

Impacts of Rule on Small Entities

This rule's transition to fully electronic notices would require the estimated 29,100 importers who currently rely on official bulletin notices physically posted at U.S. customhouses and stations and those who rely on paper notices of liquidation, reliquidation, extension, and suspension to visit the CBP website to determine entry liquidations, reliquidations, extensions, and suspensions.⁹ To view this rule's official bulletin notices on the CBP website, CBP assumes that these importers would spend an added 4 minutes (0.0667 hours)¹⁰ navigating the CBP website

⁸ Based on data received through email correspondence with CBP's Office of Trade on May 26, 2016; June 22-24, 2016; August 29, 2016; and September 21, 2016.

⁹ Importers could set up an Automated Commercial Environment (ACE) account to receive electronic courtesy notices of liquidation, reliquidation, extension, and suspension, but the time cost to do so is likely longer than the time it takes to view official notices on the CBP website. As such, CBP assumes that importers who receive and rely on paper notices of liquidation, reliquidation, extension, and suspension now would visit the CBP website for official notice rather than set up an ACE account to receive electronic courtesy notices once this rule is effective.

¹⁰ The 4-minute added time burden represents the incremental change in the time burden over the current paper notification process. Source: Email correspondence with CBP's Office of Trade on April 26, 2016.

to find a liquidation, reliquidation, extension, or suspension notice, at a time cost of \$2.01 based on the assumed hourly wage rate for importers.¹¹ Most affected importers would presumably visit the CBP website once per year to view an entry's official notice of liquidation, reliquidation, extension, or suspension, for a total cost of \$2.01 per year.¹² However, some affected importers, such as those who receive extension and suspension notices that are in effect for an unknown amount of time, could visit the CBP website more than once per year for an entry, incurring the

¹¹ The time cost estimate is equal to the assumed hourly wage for importers (\$30.09) multiplied by the hourly time burden for a trade member to navigate the CBP website to find a liquidation, reliquidation, extension, or suspension notice (0.0667 hours), and then rounded. CBP bases the \$30.09 hourly wage rate for importers on the Bureau of Labor Statistics' (BLS) 2015 median hourly wage rate for Cargo and Freight Agents (\$20.13), which CBP assumes best represents the wage for importers, by the ratio of BLS' average 2015 total compensation to wages and salaries for Office and Administrative Support occupations (1.4799), the assumed occupational group for importers, to account for non-salary employee benefits. CBP then adjusted this figure, which was in 2015 U.S. dollars, to 2016 U.S. dollars by applying a 1.0 percent annual growth rate to the figure, as recommended by the U.S. Department of Transportation's value of travel time guidance.

Source of median wage rate: U.S. Bureau of Labor Statistics. Occupational Employment Statistics, "May 2015 National Occupational Employment and Wage Estimates, United States- Median Hourly Wage by Occupation Code: 43-5011." Updated March 30, 2016. Available at <http://www.bls.gov/oes/2015/may/oes435011.htm>. Accessed June 1, 2016.

The total compensation to wages and salaries ratio is equal to the calculated average of the 2015 quarterly estimates (shown under Mar., June, Sep., Dec.) of the total compensation cost per hour worked for Office and Administrative Support occupations (\$24.9475) divided by the calculated average of the 2015 quarterly estimates (shown under Mar., June, Sep., Dec.) of wages and salaries cost per hour worked for the same occupation category (\$16.8575). Source of total compensation to wages and salaries ratio data: U.S. Bureau of Labor Statistics. Employer Costs for Employee Compensation. *Employer Costs for Employee Compensation Historical Listing March 2004 – March 2016*, "Table 3. Civilian workers, by occupational group: employer costs per hours worked for employee compensation and costs as a percentage of total compensation, 2004-2016 by Respondent Type: Office and administrative support occupations." June 9, 2016. Available at <http://www.bls.gov/ncs/ect/sp/ececcqrtn.pdf>. Accessed June 14, 2016.

Source of suggested growth rate: U.S. Department of Transportation, Office of Transportation Policy. *The Value of Travel Time Savings: Departmental Guidance for Conducting Economic Evaluations Revision 2 (2015 Update)*, "Table 4 (Revision 2-corrected): Recommended Hourly Values of Travel Time Savings." April 29, 2015.

<http://www.transportation.gov/sites/dot.gov/files/docs/Revised%20Departmental%20Guidance%20on%20Valuation%20of%20Travel%20Time%20in%20Economic%20Analysis.pdf>. Accessed June 1, 2016.

¹² Importers would likely access the CBP website once a year to determine whether CBP has officially liquidated, reliquidated, extended, or suspended their entry. If CBP liquidates or reliquidates an entry, which would be the case for the importers who currently take 2,500 trips to U.S. customhouses or stations to view official bulletin notices and who receive 23,500 paper courtesy notices of liquidation and reliquidation annually, the importer would likely not have to access the CBP website again after the initial website visit to determine the entry's liquidation status.

However, in a small number of cases, an importer may have to access the website more than once per year, over the course of more than one year to determine his/her entry's reliquidation status. If CBP extends or suspends an entry, which would be the case for the importers who receive 3,100 paper notices of extension and suspension annually, the importer may have to access the CBP website more than once per year, over the course of more than one year to determine the status of his/her entry's extension or suspension. However, considering the typical timeframes of extensions and suspensions, importers are most likely to access the CBP website only once per year for information on their entry's extension or suspension. Moreover, importers would likely receive information from CBP indicating whether CBP has reliquidated their entry or their extension or suspension has ended.

access cost of \$2.01 each time they visit the CBP website. Even if an importer accesses the CBP website twice a month for an entry, or 24 times per year, he/she would incur only a \$48.24 cost to do so. The average value per entry was \$69,300 in FY 2015.¹³ The range of annual importer costs for this rule (\$2.01 to \$48.24) amounts to between 0.003 percent and 0.07 percent of this average entry value. Likewise, if an importer processes multiple entries per year, his/her total costs from this rule would be higher but the value of their entries would also be higher, meaning that the average cost to the importer would be between 0.003 percent and 0.07 percent of the entry value regardless of the number of entries the importer files per year. CBP does not consider this to be a significant economic impact.

Along with the minor website access cost imposed by this rule, this rule would provide benefits to importers who currently rely on official bulletin notices physically posted at U.S. customhouses and stations. This rule's electronic publication of official bulletin notices of liquidation and reliquidation would allow these importers to avoid visiting U.S. customhouses and stations for formal entry liquidation and reliquidation information, which typically occur 2,500 times a year. For each trip to a U.S. customhouse or station avoided, importers would save an estimated 45 minutes (0.75 hours), which would result in a time cost saving of \$22.57 using the average hourly wage for importers of \$30.09.¹⁴ Importers would also save \$16.20 in travel costs per trip based on the estimated distance members sustain from traveling to and from a U.S.

¹³ Based on fiscal year 2015 U.S. entry and import value data. Source of entry data: U.S. Customs and Border Protection. *Summary of Performance and Financial Information Fiscal Year 2015*. May 2016. Available at <https://www.cbp.gov/sites/default/files/assets/documents/2016-May/summary-performance-financial-info-2015.pdf>. Accessed September 22, 2016. Source of import value data: U.S. Census Bureau. *FT920: U.S. Merchandise Trade Selected Highlights – October 2014 through September 2015 Releases*, “Exhibit 3: U.S. Imports - U.S. Customs District of Entry- Total General Customs Value by Month.” December 5, 2014-November 4, 2015. Available at https://www.census.gov/foreign-trade/Press-Release/ft920_index.html. Accessed September 22, 2016.

¹⁴ The time cost estimate is equal to the assumed hourly wage for importers (\$30.09) multiplied by the estimated hourly time burden for a trade member to travel to and from a U.S. customhouse or station (0.75 hours), and then rounded.

customhouse or station—30 miles—and the IRS’s \$0.54 standard mileage rate for business purposes.¹⁵ To the extent that some trips are taken for multiple purposes, not just for viewing an official bulletin notice of liquidation or reliquidation, fewer costs would be avoided and the benefits of this rule per trip would be lower.

The electronic bulletin notices introduced with this rule would also provide benefits of eased access, relatively quicker notification, and extended viewing to importers. In particular, this electronic transition would allow importers to easily view and query a complete, consolidated list of U.S. entry liquidations, reliquidations, extensions, and suspensions, thus facilitating the process by which these individuals obtain such entry information. For importers who typically rely on paper courtesy notices for liquidation and reliquidation information, which they receive by mail after the official notice’s posting, this electronic posting would provide the added benefit of more timely notice and additional protest time. Importers who receive and rely on paper courtesy notices would also benefit from this rule’s consolidated electronic notice posting. This change would allow importers and their agents to view liquidation, reliquidation, extension, and suspension notices simultaneously instead of individually as they currently do through paper notices. Furthermore, importers would have almost 14 more months to view official liquidation, reliquidation, extension, and suspension notices before having to request access to the notices through CBP.

Conclusion

Although CBP believes that this rule would affect a substantial number of small entities, specifically importers, CBP does not believe that the (negative) economic impact of this rule on

¹⁵ Source of miles traveled: Based on estimates from CBP’s Office of Trade on May 2, 2016. Source of mileage rate: Internal Revenue Service. *2016 Standard Mileage Rates for Business, Medical and Moving Announced*. IR-2015-137, December 17, 2015. Available at <https://www.irs.gov/uac/Newsroom/2016-Standard-Mileage-Rates-for-Business-Medical-and-Moving-Announced>. Accessed April 19, 2016.

small entities would be significant. Accordingly, CBP certifies that this regulation would not have a significant economic impact on a substantial number of small entities. CBP welcomes any comments on this conclusion.

C. Paperwork Reduction Act

As there is no collection of information proposed in this document, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 159

Antidumping, Countervailing duties, Customs duties and inspection, Foreign currencies.

19 CFR Part 173

Administrative practice and procedure, Customs duties and inspection.

Proposed Amendments to the CBP Regulations

For the reasons given above, parts 159 and 173 of title 19 of the Code of Federal Regulations (19 CFR parts 159 and 173) are proposed to be amended as set forth below:

PART 159 – LIQUIDATION OF DUTIES

- 1. The general authority citations for part 159 continues to read as follows:

Authority: 19 U.S.C. 66, 1500, 1504, 1624.

* * * * *

- 2. Section 159.9 is revised to read as follows:

§ 159.9 Notice of liquidation and date of liquidation for formal entries.

(a) Notice of liquidation. Notice of liquidation of formal entries will be provided on CBP's public website, www.cbp.gov.

(b) Posting of notice. The notice of liquidation will be posted for the information of importers in a conspicuous place on www.cbp.gov in such a manner that it can readily be located and consulted by all interested persons.

(c) Date of liquidation— (1) Generally. The notice of liquidation will be dated with the date it is posted electronically on www.cbp.gov for the information of importers. This electronic posting will be deemed the legal evidence of liquidation.

(2) Exception: Entries liquidated by operation of law. (i) Entries liquidated by operation of law at the expiration of the time limitations prescribed in section 504, Tariff Act of 1930, as amended (19 U.S.C. 1504), and set out in §§ 159.11 and 159.12, will be deemed liquidated as of the date of expiration of the appropriate statutory period and will be posted on www.cbp.gov within a reasonable period after each liquidation by operation of law and will be dated with the date of liquidation by operation of law.

(ii) For liquidation notices posted or lodged in the customhouse, pursuant to section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) and part 174 of this chapter, a protest of a decision relating to an entry made before December 18, 2004, must be filed within 90 days from the date of liquidation of an entry by operation of law or within 90 days from the date the bulletin notice thereof is posted or lodged in the customhouse, or, in the case of a protest of a decision relating to an entry made on or after December 18, 2004, within 180 days from the date of liquidation of an entry by operation of law.

(iii) For liquidation notices posted on www.cbp.gov, pursuant to section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) and part 174 of this chapter, a protest of a decision relating to an entry made before December 18, 2004, must be filed within 90 days from the date of liquidation of an entry by operation of law or within 90 days from the date notice thereof is posted on www.cbp.gov, or, in the case of a protest of a decision relating to an entry made on or after December 18, 2004, within 180 days from the date of liquidation of an entry by operation of law.

(d) Courtesy notice of liquidation. CBP will endeavor to provide importers or their agents with a courtesy notice of liquidation for all electronically filed entries liquidated by CBP or deemed liquidated by operation of law. The courtesy notice of liquidation that CBP will endeavor to provide will be electronically transmitted pursuant to a CBP authorized electronic data interchange system if the entry was filed electronically in accordance with part 143 of this chapter. This notice will serve as an informal, courtesy notice and not as a direct, formal, and decisive notice of liquidation.

§ 159.10 [amended]

3. Section 159.10 is amended as follows:

- a. By removing the words “posting or lodging of” from the last sentence in paragraph (b);
- b. By removing the words “on CBP Form 4333 posted or lodged” from the last sentence of paragraph (c)(1); and
- c. By removing the words “on a bulletin notice of liquidation, CBP Form 4333,” from the last sentence of paragraph (c)(3).

4. Paragraph (a) of § 159.11 is revised to read as follows:

§ 159.11 Entries liquidated by operation of law.

(a) Time limit generally. Except as provided in § 159.12, an entry not liquidated within one year from the date of entry of the merchandise, or the date of final withdrawal of all

merchandise covered by a warehouse entry, will be deemed liquidated by operation of law at the rate of duty, value, quantity, and amount of duties asserted by the importer of record. Notice of liquidation will be given electronically as provided in §§ 159.9 and 159.10(c)(3). CBP will endeavor to provide a courtesy notice of liquidation in accordance with § 159.9(d).

* * * * *

5. In § 159.12, remove paragraph (g) and revise paragraphs (b), (c), (d)(2), and (f) to read as follows:

§ 159.12 Extension of time for liquidation.

* * * * *

(b) Notice of extension. If the port director extends the time for liquidation, as provided in paragraph (a)(1) of this section, the official notice of extension and reasons therefor will be posted on www.cbp.gov. The port director will also endeavor to transmit a courtesy notice of extension to the entry filer and surety through a CBP-authorized electronic data interchange system.

(c) Notice of suspension. If the liquidation of an entry is suspended as required by statute or court order, as provided in paragraph (a)(2) of this section, the official notice of suspension will be posted on www.cbp.gov. The port director will also endeavor to transmit a courtesy notice of suspension to the entry filer and surety through a CBP-authorized electronic data interchange system.

(d) * * *

(1) * * *

(2) At importer's request. If the statutory period has been extended for one year at the importer's request, and the importer thereafter determines that additional time is necessary, it may

request another extension in writing before the original extension expires, giving reasons for its request. If the port director finds that good cause (as defined in paragraph (a)(1)(ii) of this section) exists, the official notice of extension extending the time for liquidation for an additional period not to exceed one year will be posted on www.cbp.gov, and CBP will endeavor to transmit a courtesy notice of the extension through a CBP-authorized electronic data interchange system.

* * * * *

(f) Time limitation. An entry not liquidated within four years from either the date of entry, or the date of final withdrawal of all the merchandise covered by a warehouse entry, will be deemed liquidated by operation of law at the rate of duty, value, quantity, and amount of duty asserted by the importer of record, unless liquidation continues to be suspended by statute or court order. CBP will endeavor to provide a courtesy notice of liquidation, in accordance with § 159.9(d), in addition to the notice specified in §159.9(c)(2)(ii).

PART 173 – ADMINISTRATIVE REVIEW IN GENERAL

6. The general authority citations for part 173 continues to read as follows:

Authority: 19 U.S.C. 66, 1501, 1520, 1624.

7. Revise §173.4a to read as follows:

§ 173.4a Refund of excess duties, fees, charges, or exaction paid prior to liquidation.

Pursuant to section 520(a)(4), Tariff Act of 1930, as amended (19 U.S.C. 1520(a)(4)), whenever an importer of record declares or it is ascertained that excess duties, fees, charges, or exactions have been deposited or paid, the port director may, prior to liquidation of an entry or reconciliation, take appropriate action to refund the deposit or payment of excess duties, fees, charges, or exactions.

R. Gil Kerlikowske

Commissioner
U.S. Customs and Border Protection

Approved: October 11, 2016

Timothy E. Skud

Deputy Assistant Secretary of the Treasury

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