U.S. Customs and Border Protection

19 CFR PART 177

REVOCATION OF THREE RULING LETTERS, MODIFICATION OF TWO RULING LETTERS, AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF WOOD CHIPPING/SHREDDING MACHINES

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

ACTION: Notice of revocation of three ruling letters, modification of two ruling letters, and of revocation of treatment relating to the tariff classification of wood chipping/shredding machines.

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 or modifying five ruling letters concerning tariff classification of wood chipping/shredding machines 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. 58, No. 43, on October 30, 2024. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 15, 2025.

FOR FURTHER INFORMATION CONTACT: Julio Ruiz-Gomez, Electronics, Machinery, Automotive, and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0736.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 58, No. 43, on October 30, 2024, proposing to revoke or modify five ruling letters pertaining to the tariff classification of Wood Chipping/Shredding Machines. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In New York Ruling Letter ("NY") N114998, NY 807222, NY 801876, NY N297986, and NY 897172, CBP classified wood chipping/shredding machines in heading 8436, HTSUS, specifically in subheading 8436.80.0090, HTSUS, which provides for "Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders; parts thereof: Other machinery: Other." CBP has reviewed NY N114998, NY 807222, and NY 801876 and has determined the ruling letters to be in error. It is now CBP's position that wood chipping/shredding machines are properly classified, in heading 8436, HTSUS, specifically in subheading 8436.80.00, HTSUS, which provides for "Other agri-

cultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders; parts thereof: Other machinery." The subject merchandise is described by statistical reporting number 8436.80.0020, HTSUSA, as "forestry machinery."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N114998, NY 807222, and NY 801876, modifying NY N297986, and NY 897172, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H307394, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H307394
December 30, 2024
OT:RR:CTF:EMAIN H307394 JRG
CATEGORY: Classification
TARIFF NO.: 8436.80.00; 9903.88.01

MR. MATTHEW CLARK
SEKO CUSTOMS BROKERAGE
1100 ARLINGTON HEIGHTS ROAD, SUITE 600
ITASCA, ILLINOIS 60143

RE: Revocation of NY N114998 (August 5, 2010), NY 807222 (March 23, 1995), and NY 801876 (September 19, 1994), and modification of NY N297986 (July 17, 2018) and NY 897172 (May 2, 1994); Tariff classification of Wood Chipping/Shredding Machines

DEAR MR. CLARK:

This is regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of wood chipping/shredding machines (WCSMs) in New York Ruling Letter (NY) N114998, issued to you on behalf of your client on August 5, 2010. Upon review, we have concluded that NY N114998 is incorrect regarding the ten-digit statistical reporting number referenced in the ruling. We also found that NY 807222, NY 801876, NY N297986 and NY 897172 are erroneous in the same respect.

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. No. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed action was published on October 30, 2024, in Volume 58, Number 43, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

The facts of NY N114998 are as follows:

> The two articles in question are electrically powered machines designed to chip and shred small pieces of garden debris and cuttings. Model GS70014 and QS70020 are both corded devices which are designed for use in home gardens. The primary difference between the two machines is that model QS70020 uses a quieter induction motor.

The facts of NY 807222 are as follows:

> The merchandise under consideration is the 300K Posch Professional Shredder, model numbers B6, B7 and Z, along with an optional towing hitch. The B6 and B7 models are driven by gasoline motors while the Z model operates off the PTO shaft of a tractor. The LandTek correspondence states that the shredders are used for grinding garden clippings, leaves, small branch prunings, plant prunings, end of season plantings, and the like. These materials are placed in the top of the machine where they are drawn in by conveyor and are fed into the shredding compartment which consists of a 27 mallet hammer mill. The mulched material is processed and deposited on the ground, to be ultimately used for composting material. LandTek states that these machines are used widely by farmers, nurseries, vineyards, home gardeners and the like.

The facts of NY 801876 are as follows:

The wood chippers in question are the Industrial Wood Chipper Model 4 and the Model 6. The Model 4 can accommodate wood pieces up to 4 inches in diameter while the Model 6 can handle pieces up to 6 inches in diameter. The chippers are designed to operate through the PTO of a tractor and are intended for use in such areas as parks, orchards, vineyards, farms, and large estates. Wood is placed into an infeed chute where a flywheel blade cuts the material in to one-quarter inch pieces. The chips are discharged by the fins on the back of the flywheel due to the blower effect of the design. The chips are frequently used as a bedding material or as cover material.

The relevant facts of NY N297986 are as follows:

The third tractor implement is referred to as a Mulcher, Shredder and Chipper Attachment. The implement is not self-powered but rather derives its power from a tractor through a Power Take Off (PTO). It is used to reduce organic debris such as wood, plant clippings and leaves into small pieces in order to create mulch for composting. Vegetation is fed into the machine's hopper where it is pulled into a spinning grinding head. Knives then cut and reduce the vegetation into small pieces which are ejected out through a discharge chute. The resulting compost is used to enrich soil for crop production.

The relevant facts of NY 897172 are as follows:

The imported product is the Patu model DC65 woodchipper. The woodchipper has a 3-point hook, and is powered by the power-take-off of a farm tractor. The woodchipper features four knives that will efficiently chip limbs, slabs or whole trees. The knife setting ranges from 1/4 inch to 1/2 inch. The maximum infeed diameter is 6–1/2 inches (170 mm). The feed chute is on the right side of the chipper which enables the operator to work away from the road traffic. The feed chute can be folded up and latched, thus ensuring a safe road transport. The model DC65 also features an adjustable chip length that enables the production of the correct chip size for different purposes. The discharge chute rotates 360 degrees, allowing the chips to be blown in the desired direction. The DC65 woodchipper weighs 650 pounds.

ISSUE:

Whether the subject wood chipping/shredding machines are "forestry machinery" described by statistical reporting number 8436.80.0020, HTSUS Annotated (HTSUSA).

LAW AND ANALYSIS:

Classification under the HTSUS is determined in accordance with the General Rules of Interpretation (GRIs) and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation (ARIs). GRI 1 provides that the classification of goods shall be "determined according to the terms of the headings and any relative section or chapter notes." If the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, GRIs 2 through 6 may be applied in order.

The following 2024 HTSUSA provisions are under consideration:

8436	Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders; parts thereof:
8436.80.00	Other machinery:
8436.80.0020	Forestry machinery. . .
	* * *
8436.80.0090	Other. . .
	* * *

The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System also support this conclusion. The ENs represent the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). The ENs to heading 8436, in relevant part, provide:

> The heading covers machinery, not falling in headings 84.32 to 84.35, which is of the type used on farms (including agricultural schools, co-operatives or testing stations), in forestry, market gardens, or poultry-keeping or bee-keeping farms or the like. However, it excludes machines clearly of a kind designed for industrial use. . . .
>
> These [articles of heading 8436] include: . . .
>
> (H) Forestry machines, such as: . . .
>
> (5) Machines for chipping branches, twigs, etc., following pruning, delimbing, etc., using chipping blades. The chips are discharged by a blower unit...

Neither the HTSUS nor the Explanatory Notes (ENs) define the term "forestry." 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. *See Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, U.S. Customs and Border Protection (CBP) may consult "dictionaries, scientific authorities, and other reliable information sources" and "lexicographic and other materials." *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271 (C.C.P.A. 1982); *Simod*, 872 F.2d at 1576.

In its Dictionary of Forestry, the Society of American Foresters defines the term "forestry" as follows:

> ...the profession embracing the science, art, and practice of creating, managing, using, and conserving forests and associated resources for human benefit and in a sustainable manner to meet desired goals, needs, and values —*note* the broad field of forestry consists of those biological, quantitative, managerial, and social sciences that are applied to forest management and conservation; it includes specialized fields such as agroforestry, urban forestry, industrial forestry, nonindustrial forestry, and wilderness and recreation forestry...

See Society of American Foresters, Dictionary of Forestry 74 (Robert Deal, ed., 2d ed. 2018). Furthermore, the U.S. Dept of Agriculture states that the "forestry profession encompasses the science and practice of establishing, managing, using, and conserving forests, trees and associated resources in a sustainable manner to meet desired goals, needs, and values." *See* Forestry, U.S. Dep't of Agriculture, https://www.usda.gov/topics/forestry#:~:text=The%20forestry%20pro-fession%20encompasses%20the,goals%2C%20needs%2C%20and%20values (last accessed Sept. 18, 2024).

The subject WCSMs mechanically convert wood logs and branches into wood chips or strips. Wood chips have a variety of uses, including being placed in planting areas and around trees to inhibit weed growth, regulate soil temperatures, and retain water within the soil. *See* Top 10 Reasons to Choose Wood Chips Over Other Types of Mulch, leaf&limb.com, https://www.leaflimb.com/Top-Ten-Reasons-to-Choose-Wood-Chips/ (last accessed Sept. 18, 2024). Wood chips also allow for cleared trees to be disposed of more easily, boost soil health by absorbing pollutants, reduce soil compaction, and combat soil erosion. *See* Ben Raskin, The Woodchip Handbook: A Complete Guide for Farmers, Gardeners and Landscapers (2021), https://www.resilience.org/stories/2021–10–29/the-woodchip-handbook-a complete-guide-for-farmers-gardeners-and-landscapers-excerpt/ (last accessed Sept. 29, 2023). Thus, the WCSMs use and manage forest resources and, in turn, are forestry machines.

Thus, the above described WCSMs are properly classified under heading 8436, HTSUS, as forestry machines. Moreover, the ENs to heading 8436, HTSUS, support this classification by explicitly stating "[m]achines for chipping branches, twigs, etc.," are classified therein. While the subject rulings all properly classify WCSMs under subheading 8436.80.00, HTSUS, each ruling incorrectly classified WCSMs under statistical reporting number 8436.80.0090, HTSUSA, which is for "Other." Given our finding that WCSMs are forestry machines, the correct statistical reporting number is 8436.80.0020, HTSUSA, which is for "Forestry machinery." Classification of the subject WCSMs in statistical reporting number 8436.80.0020, HTSUSA, is also consistent with prior CBP rulings. Both NY N299893[1], dated September 4, 2018, and NY N108595[2], dated July 1, 2010, classified similar WCSMs

[1] In NY N299893, the "Wood Chipping Machine" was described as follows:

> The merchandise under consideration, WoodMaxx DC-1260, is identified as a wood chipping machine. It is designed to chip branches and cuttings from trees and shrubs. The wood chipper is powered by a 13.5 horsepower gasoline engine and it weighs approximately 408 pounds. The machine incorporates a 12 inch x 6 inch infeed opening that can handle material up to 4 inches in diameter. Material is inserted into the slopped infeed bin which feeds into the 10 inch diameter, 53 pound, chipper drum. The drum acts as a power feed assist system which pulls the branches in at up to 50 feet per minute. Knives incorporated inside the drum cut the material into small chips, which are then expelled through a discharge chute. The wood chipping machine is balanced on two wheels and includes a trailer hitch for attaching it to an ATV or utility vehicle for transport.

[2] In NY N108595, the "wood chipper" is described as follows:

> The machine in question is the Eliet gas powered chipper. The machine is designed to chip branches and cuttings from trees and shrubs in such a way that it is useable as compost. The rotating blade design is intended to cut with the grain of the wood as it is inserted by the user in the machine. Holes in the base of the cylinder containing the blades only allow the chips to exit when they have reached a small enough size to pass through these holes.

under statistical reporting number 8436.80.0020, HTSUSA. Based on the foregoing, NY N114998 (August 5, 2010), NY 807222 (March 23, 1995), and NY 801876 (September 19, 1994) are hereby revoked, and NY N297986 (July 17, 2018) and NY 897172 (May 2, 1994) are hereby modified only with respect to the articles classified under subheading 8436.80.00, HTSUS.

HOLDING:

By application of GRIs 1 and 6, Wood Chipping/Shredding Machines are properly classified under heading 8436, HTSUS, and specifically described by subheading 8436.80.00, HTSUS, which provides for "Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders; parts thereof: Other machinery." The general column one rate of duty for merchandise classified under this subheading is Free.The subject merchandise is described by statistical reporting number 8436.80.0020, HTSUSA, as "forestry machinery."

Pursuant to U.S. Note 20(b) to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 8436.80.00, HTSUS, unless specifically excluded, were subject to an additional 25 percent ad valorem rate of duty. At the time of importation, an importer was required to report the Chapter 99 subheading, i.e., 9903.88.01, in addition to subheading 8436.80.00, HTSUS, noted above, for products of China.

The HTSUS is subject to periodic amendment so you should exercise reasonable care in monitoring the status of goods covered by the Note cited above and the applicable Chapter 99 subheading. For background information regarding the trade remedy initiated pursuant to Section 301 of the Trade Act of 1974, including information on exclusions and their effective dates, you may refer to the relevant parts of the USTR and CBP websites, which are available at https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions and https://www.cbp.gov/trade/remedies/301-certain-products-china respectively.

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

EFFECT ON OTHER RULINGS:

NY N114998, dated August 5, 2010, is hereby REVOKED.

NY 807222, dated March 23, 1995, is hereby REVOKED.

NY 801876, dated September 19, 1994, is hereby REVOKED.

NY N297986, dated July 17, 2018, is hereby MODIFIED only with respect to the articles classified under subheading 8436.80.00, HTSUS.

NY 897172, dated May 2, 1994, is hereby MODIFIED only with respect to the articles classified under subheading 8436.80.00, HTSUS.

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

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

cc: Mr. John J. Marshall
"K" Line Air Service (USA) Inc.
40-A Broderick Road
Burlingame, CA 94010

Mr. Richard J. Housman
James J. Boyle & Co.
371 Allerton Avenue
South San Francisco, CA 94080

Mr. Kurt M. Schie
WoodMaxx Power Equipment Ltd.
42 Jackson Street
Akron, NY 14001

Mr. Richard L. Jones
John S. James, Co.
P.O. Box 1017
Charleston, SC 29402–1017

PROPOSED REVOCATION OF THREE RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF WOMEN'S UNDERWEAR

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

ACTION: Notice of proposed revocation of three ruling letters, and proposed revocation of treatment relating to the tariff classification of women's underwear.

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

DATE: Comments must be received on or before February 15, 2025.

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

FOR FURTHER INFORMATION CONTACT: Tanya J. Secor, Food, Textiles, and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0062.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke three ruling letters pertaining to the tariff classification of women's underwear. Although in this notice, CBP is specifically referring to New York Ruling Letters ("NY") N316788, dated January 20, 2021 (Attachment A), NY N317786, dated March 3, 2021 (Attachment B), and NY N322044, dated October 15, 2021 (Attachment C) this notice also covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the three identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY N316788, NY N317786, and NY N322044, CBP classified women's underwear in heading 6108, HTSUS. CBP classified Styles 2583, 2528, and 2526 in subheading 6108.21.00, HTSUS, which provides for "Women's ... briefs, panties ..., knitted or crocheted: Briefs and panties: Of cotton" and Style 2588 in subheading 6108.91.00, HTSUS, which provides for Women's ... briefs, panties ..., knitted or crocheted: Other: Of cotton." CBP has reviewed NY N316788, NY N317786, and NY N322044, and has determined the ruling letters to be in error. It is now CBP's position that Styles 2526, 2528m and 2588 of women's underwear are properly classified, in heading 9619, HT-

SUS, specifically in subheading 9619.00.64, HTSUS, which provides for "Sanitary pads (towels) and tampons, diapers (napkins), diaper liners and similar articles, of any material: Other, of textile materials: Knitted or crocheted: Of man-made fibers."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N316788, NY N317786, and NY N322044 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H328584, set forth as Attachment D to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

N316788

January 20, 2021
CLA-2–61:OT:RR:NC:N3:354
CATEGORY: Classification
TARIFF NO.: 6108.21.0010

MS. LINDA KRUEGER
JOCKEY INTERNATIONAL, INC.
2300 60TH STREET
KENOSHA, WI 53140

RE: The tariff classification of an undergarment from Thailand

DEAR MS. KRUEGER:

In your letters dated December 16, 2020, and January 6, 2021, you requested a tariff classification ruling. The sample will be returned to you under separate cover.

Style 2583, "Worry Free Brief," is a woman's hipster style panty constructed of 95% cotton, 5% spandex knit fabric. The undergarment also features a gusset with three additional layers. The liner is 94% cotton, 6% spandex over a layer of 95% cotton, 5% spandex fabric and a layer of 100% nylon. The gusset area is secured with waterproof seam tape. You state that the garment will be marketed for incontinence and minor menstrual issues. In addition, you state that advertising will claim that the garment is washable, reusable and will help reduce landfill waste by replacing pantyliners.

The applicable subheading for style 2583 will be 6108.21.0010, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: Briefs and panties: Of cotton: Women's. The duty rate will be 7.6 percent ad valorem.

In your letter, you suggest classification under either 6108.21.0010, HTSUS or 6114.20.0060, HTSUS. Since women's knit briefs and panties are specifically provided for in heading 6108, we find classification to be appropriate under that heading. Heading 6114, HTSUS, provides, in relevant part, for other garments, knitted or crocheted and is reserved for garments that are not more specifically provided for in any of the headings of Chapter 61.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, please contact National Import Specialist Karen Sikorski at karen.sikorski@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

N317786
March 3, 2021
CLA-2–61:OT:RR:NC:N3:354
CATEGORY: Classification
TARIFF NO.: 6108.21.0010

MS. LINDA KRUEGER
JOCKEY INTERNATIONAL, INC.
2300 60TH STREET
KENOSHA, WI 53140

RE: The tariff classification of an undergarment from Thailand

DEAR MS. KRUEGER:

In your letter dated February 22, 2021, you requested a tariff classification ruling.

Style 2528 is a woman's underwear brief constructed of 95% cotton, 5% spandex knit fabric. The undergarment features a gusset with three additional layers that you state creates a barrier for leakage. The item will be marketed for incontinence and menstrual issues. The liner is 94% cotton, 6% spandex knit fabric with wicking over a layer of 100% polyester fabric featuring wicking and an anti-microbial finish and a final layer that you state creates a waterproof barrier, which is made up of thermoplastic polyurethane bonded to 100% polyester knit fabric. The gusset seams are secured with waterproof tape. In addition, you state that the undergarment is washable and reusable.

Style 2526 is a woman's underwear brief constructed of 95% cotton, 5% spandex knit fabric. The undergarment features a gusset with three additional layers that you state creates a barrier for leakage. The item will be marketed for incontinence and menstrual issues. The liner is 94% cotton, 6% spandex knit fabric with wicking over a layer of 100% polyester fabric featuring wicking and sanitized odor control and a final layer that you state creates a waterproof barrier, which is made up of thermoplastic polyurethane bonded to 100% polyester knit fabric. The gusset seams are secured with waterproof tape. In addition, you state that the undergarment is washable and reusable.

The applicable subheading for both styles will be 6108.21.0010, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: Briefs and panties: Of cotton: Women's. The duty rate will be 7.6 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, please contact National Import Specialist Karen Sikorski at karen.sikorski@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

N322044
October 15, 2021
CLA-2–61:OT:RR:NC:N3:354
CATEGORY: Classification
TARIFF NO.: 6108.91.0005

MS. LINDA KRUEGER
JOCKEY INTERNATIONAL, INC.
2300 60TH STREET
KENOSHA, WI 53140

RE: The tariff classification of an undergarment from Thailand

DEAR MS. KRUEGER:

In your letter dated October 5, 2021, you requested a tariff classification ruling. No sample was submitted with this ruling.

Style 2588, "Worry Free Boxer Brief," is a woman's boy leg underpant constructed of 95% cotton, 5% spandex knit fabric. The undergarment features an elastic waistband, hemmed leg openings and a floating gusset with three additional layers. The liner is 94% cotton, 6% spandex over a layer of 100% polyester fabric and a layer of 100% nylon. The gusset area is secured with waterproof seam tape. You state that the garment will be marketed for incontinence and minor menstrual issues. In addition, you state that advertising will claim that the garment is washable, reusable and will help reduce landfill waste by replacing pantyliners.

The applicable subheading for style 2588 will be 6108.91.0005, Harmonized Tariff Schedule of the United States (HTSUS), which provides for women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: other: of cotton: underwear: underpants. The rate of duty will be 8.5% ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, please contact National Import Specialist Karen Sikorski at karen.sikorski@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

HQ H328584
OT:RR:CTF:FTM H328584 TJS
CATEGORY: Classification
TARIFF NO.: 9619.00.61; 9619.00.64

MS. LINDA KRUEGER
JOCKEY INTERNATIONAL, INC.
2300 60TH STREET
KENOSHA, WI 53140

RE: Revocation of NY N316788, NY N317786, and NY N322044; Tariff classification of women's underwear

DEAR MS. KRUEGER:

This is in reference to New York Ruling Letter ("NY") N316788, issued to you on January 20, 2021, NY N317786, issued to you on March 3, 2021, and NY N322044, issued to you on October 15, 2021, concerning the tariff classification of certain women's underwear under the Harmonized Tariff Schedule of the United States ("HTSUS"). In those rulings, U.S. Customs and Border Protection ("CBP") classified the women's underwear in heading 6108, HTSUS, as women's briefs or panties. We have since reviewed NY N316788, NY N317786, and NY N322044 and determined the classification of the women's undergarments to be incorrect. For the reasons set forth below, we hereby revoke NY N316788, NY N317786, and NY N322044.

FACTS:

The merchandise in NY N316788 was described as follows:

> Style 2583, "Worry Free Brief," is a woman's hipster style panty constructed of 95% cotton, 5% spandex knit fabric. The undergarment also features a gusset with three additional layers. The liner is 94% cotton, 6% spandex over a layer of 95% cotton, 5% spandex fabric and a layer of 100% nylon. The gusset area is secured with waterproof seam tape. You state that the garment will be marketed for incontinence and minor menstrual issues. In addition, you state that advertising will claim that the garment is washable, reusable and will help reduce landfill waste by replacing pantyliners.

The merchandise in NY N317786 was described as follows:

> Style 2528 is a woman's underwear brief constructed of 95% cotton, 5% spandex knit fabric. The undergarment features a gusset with three additional layers that you state creates a barrier for leakage. The item will be marketed for incontinence and menstrual issues. The liner is 94% cotton, 6% spandex knit fabric with wicking over a layer of 100% polyester fabric featuring wicking and an anti-microbial finish and a final layer that you state creates a waterproof barrier, which is made up of thermoplastic polyurethane bonded to 100% polyester knit fabric. The gusset seams are secured with waterproof tape. In addition, you state that the undergarment is washable and reusable.
>
> Style 2526 is a woman's underwear brief constructed of 95% cotton, 5% spandex knit fabric. The undergarment features a gusset with three additional layers that you state creates a barrier for leakage. The item will be marketed for incontinence and menstrual issues. The liner is 94% cotton, 6% spandex knit fabric with wicking over a layer of 100% polyester

fabric featuring wicking and sanitized odor control and a final layer that you state creates a waterproof barrier, which is made up of thermoplastic polyurethane bonded to 100% polyester knit fabric. The gusset seams are secured with waterproof tape. In addition, you state that the undergarment is washable and reusable.

The merchandise in NY N322044 was described as:

Style 2588, "Worry Free Boxer Brief," is a woman's boy leg underpant constructed of 95% cotton, 5% spandex knit fabric. The undergarment features an elastic waistband, hemmed leg openings and a floating gusset with three additional layers. The liner is 94% cotton, 6% spandex over a layer of 100% polyester fabric and a layer of 100% nylon. The gusset area is secured with waterproof seam tape. You state that the garment will be marketed for incontinence and minor menstrual issues. In addition, you state that advertising will claim that the garment is washable, reusable and will help reduce landfill waste by replacing pantyliners.

According to the product specification sheets included in the original ruling requests, the outer layer of the gusset in each style has a film of thermoplastic polyurethane (TPU). Style 2583, which is designed for light protection can hold 25mL or 5.07 teaspoons of liquid. Styles 2528 and 2588 are intended for moderate protection and Style 2526 is intended for full protection.

CBP classified Styles 2583, 2528, and 2526 in subheading 6108.21.00, HTSUS, which provides for "Women's ... briefs, panties ... , knitted or crocheted: Briefs and panties: Of cotton." CBP classified Style 2588 in subheading 6108.91.00, which provides for, "Women's ... briefs, panties ... , knitted or crocheted: Other: Of cotton."

ISSUE:

What is the tariff classification of the women's underwear at issue under the HTSUS?

LAW AND ANALYSIS:

Classification under the HTSUS is determined 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. Pursuant to GRI 6, classification at the subheading level uses the same rules, *mutatis mutandis*, as classification at the heading level.

The 2024 HTSUS provisions under consideration are as follows:

6108:	Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted:
	Briefs and panties:
6108.21.00:	Of cotton...
	Other:
6108.91.00:	Of cotton...

* * * * *

9619.00:	Sanitary pads (towels) and tampons, diapers (napkins), diaper liners and similar articles, of any material:
	Other, of textile materials:
	Knitted or crocheted:
9619.00.61:	Of cotton...
9619.00.64:	Of man-made fibers...

* * * * *

GRI 3(a) and (b) provide 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.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

* * * * *

Note 1(u) to Section XI, HTSUS, provides:

1. This section does not cover:

...

(u) Articles of chapter 96 (for example, brushes, travel sets for sewing, slide fasteners, typewriter ribbons, sanitary pads (towels) and tampons, diapers (napkins) and diaper liners)

* * * * *

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the "official interpretation of the Harmonized System" at the international level. *See* 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989). While not legally binding nor dispositive, the ENs "provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system." *See id*.

The EN to heading 96.19 states, in pertinent part:

This heading covers sanitary towels (pads) and tampons, napkins (diapers) and napkin liners and similar articles, including absorbent hygienic nursing pads, napkins (diapers) for adults with incontinence and pantyliners, of any material.

In general, the articles of this heading are disposable. Many of these articles are composed of (a) an inner layer (e.g., of nonwovens) designed to wick fluid from the wearer's skin and thereby prevent chafing; (b) an absorbent core for collecting and storing fluid until the product can be disposed of; and (c) an outer layer (e.g., of plastics) to prevent leakage of

> fluid from the absorbent core. The articles of this heading are usually shaped so that they may fit snugly to the human body. This heading also includes similar traditional articles made up solely of textile materials, which are usually re-usable following laundering.
>
> This heading **does not cover** products such as disposable surgical drapes and absorbent pads for hospital beds, operating tables and wheelchairs or non-absorbent nursing pads or other non-absorbent articles (in general, classified according to their constituent material).

* * * * *

Heading 9619, HTSUS, was introduced into the HTSUS in 2012, providing for "Sanitary towels (pads) and tampons, diapers and diaper liners for babies and similar articles, of any material."[1] Since Note 1(u) to Section XI, HTSUS, provides that Section XI, which includes Chapters 61 and 62, HTSUS, does not cover articles of Chapter 96, HTSUS, we must first consider whether the underwear at issue is classifiable in Chapter 96, HTSUS.

The women's underwear at issue is not any of the articles named in heading 9619, HTSUS, (i.e., sanitary pads (towels), tampons, diapers (napkins), or diaper liners). The question therefore is whether the underpants are similar to these named articles. The term "and similar articles" appearing after a list of articles invokes the rule of *ejusdem generis*, which means "of the same kind." In tariff classification cases, "*ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms." *Sports Graphics, Inc., v. United States*, 24 F.3d 1390, 1392 (Fed. Cir. 1994) (citing *Nissho-Iwai Am. Corp. v. United States*, 10 C.I.T. 154, 157, 641 F. Supp. 808, 810 (1986)).

The EN are informative in understanding what constitutes "similar articles" under heading 9619, HTSUS. The EN for heading 9619, HTSUS, explains that many of the articles in this heading are composed of three layers: "(a) an inner layer (e.g., of nonwovens) designed to wick fluid from the wearer's skin and thereby prevent chafing; (b) an absorbent core for collecting and storing fluid until the product can be disposed of; and (c) an outer layer (e.g., of plastics) to prevent leakage of fluid from the absorbent core." Furthermore, articles of heading 9619, HTSUS, are usually shaped so that they may fit snugly to the human body and include similar traditional articles made up solely of textile materials, which are usually re-usable following laundering. In essence, the ENs indicate that heading 9619, HTSUS, provides for wearable absorbent articles.

We find that the underpants at issue fit the description provided by the EN as articles that are classifiable in heading 9619, HTSUS. First, all four styles of underwear contain a three-layer gusset designed to absorb liquid. The inner layer of each gusset wicks away moisture, drawing the liquid into an absorbent core. The outer layer of the gusset is composed of a man-made fabric (either nylon or polyester) bonded with TPU. The gusset area in each style is secured with waterproof seam tape. Furthermore, the presence of spandex in the body fabric of each style allows the underwear to form and fit snugly to the wearer's body.

Additionally, the women's sanitary underwear is specifically designed to be worn during the menstrual cycle. The product line is named "Worry Free,"

[1] In 2022, the heading description was changed to "Sanitary pads (towels) and tampons, diapers (napkins), diaper liners and similar articles, of any material."

suggesting that wearers need not worry about leakage. The underwear is reusable after laundering and is marketed as a replacement for disposable menstrual products. The underwear offers more absorbency compared to traditional disposable menstrual products. For example, Style 2583 offers light protection and can hold 25mL of liquid whereas a regular-absorbency tampon or sanitary pad generally holds 5mL.[2] Given their construction and purpose, we find that the women's underwear are articles similar to sanitary pads (towels) and tampons. We conclude, therefore, that all four styles are classifiable in heading 9619, HTSUS, as "similar articles."

The eight-digit subheadings within heading 9619, HTSUS, are divided according to material composition. Since each underwear style is comprised of different textile materials, the appropriate subheading for the subject merchandise cannot be determined pursuant to GRI 1. Per GRI 2(b), "[t]he classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." Applying GRI 3(a) in the context of the subheading, we find that more than two subheadings refer to only part of the materials that comprise the subject merchandise. As such, we refer to GRI 3(b), which states that "[m]ixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable."

In Headquarters Ruling Letter ("HQ") H271286, dated April 4, 2017, CBP stated that the absorbent component is essential for articles of heading 9619, HTSUS. Further, in HQ H301362, dated April 24, 2019, CBP confirmed that the essential character of diapers under GRI 3(b) was the material that absorbs the fluids away from the body, i.e., the absorbent core. More recently, in HQ H304671, dated March 28, 2022, CBP held that the essential character of babies' swimwear of subheading 9619.00, HTSUS, was based on the absorbent component. Likewise, here, the absorbent core imparts the essential character of the women's underwear, and the underwear will be classified at the eight-digit subheading level according to the constituent material of the absorbent component.

According to the product specification sheets for each the style, the middle layer of the gusset is designed to absorb and store liquid. In NY N316788, the absorbent core of Style 2583 is made of 95% cotton and 5% spandex fabric. Since the core is primarily made of cotton, Style 2583 will be classified in subheading 9619.00.61, HTSUS, which provides for "Sanitary pads (towels) and tampons, diapers (napkins), diaper liners and similar articles, of any material: Other, of textile materials: Knitted or crocheted: Of cotton." Styles 2526, 2528, and 2588 each have an absorbent core of 100% polyester. Therefore, these styles will be classified in subheading 9619.00.64, HTSUS, which provides for "Sanitary pads (towels) and tampons, diapers (napkins), diaper liners and similar articles, of any material: Other, of textile materials: Knitted or crocheted: Of man-made fibers."

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[2] Dr. Anna Targonskaya, *How much blood do you lose during your period?* Flo (Feb. 16, 2022), available at: *https://flo.health/menstrual-cycle/health/period/how-much-blood-you-lose*.

HOLDING:

By application of GRIs 1, 3(b), and 6, Style 2583 is classified under heading 9619, HTSUS, and specifically in subheading 9619.00.61, HTSUS, which provides for "Sanitary pads (towels) and tampons, diapers (napkins), diaper liners and similar articles, of any material: Other, of textile materials: Knitted or crocheted: Of cotton." The 2024 column one, general rate of duty is 10.8% *ad valorem*.

By application of GRIs 1, 3(b), and 6, Styles 2526, 2528, and 2588 are classified under heading 9619, HTSUS, and specifically in subheading 9619.00.64, HTSUS, which provides for "Sanitary pads (towels) and tampons, diapers (napkins), diaper liners and similar articles, of any material: Other, of textile materials: Knitted or crocheted: Of man-made fibers." The 2024 column one, general rate of duty is 14.9% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at https://hts.usitc.gov/current.

EFFECT ON OTHER RULINGS:

NY N316788, dated January 20, 2021, NY N317786, dated March 3, 2021, and NY N322044, dated October 15, 2021, are REVOKED.

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

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

DEPARTMENT OF HOMELAND SECURITY

8 CFR PARTS 270, 274A, AND 280

U.S. CUSTOMS AND BORDER PROTECTION

19 CFR PART 4

COAST GUARD

33 CFR PART 27

TRANSPORTATION SECURITY ADMINISTRATION

49 CFR PART 1503

RIN 1601–AB16

CIVIL MONETARY PENALTY ADJUSTMENTS FOR INFLATION

AGENCY: Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: In this final rule, DHS adjusts for inflation its civil monetary penalties for 2025, in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Executive Office of the President (EOP) Office of Management and Budget (OMB) guidance. The new penalty amounts will be effective for penalties assessed after January 2, 2025, whose associated violations occurred after November 2, 2015.

DATES: This rule is effective on January 2, 2025.

FOR FURTHER INFORMATION CONTACT: Hillary Hunnings, Attorney-Advisor, 202–282–9043, *hillary.hunnings@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION:

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I. Statutory and Regulatory Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74, sec. 701 (Nov. 2, 2015)) (2015 Act).[1] The 2015 Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) to further improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act required agencies to: (1) adjust the level of civil monetary penalties with an initial "catch-up" adjustment through issuance of an interim final rule (IFR) and (2) make subsequent annual adjustments for inflation.[2] Through the "catch-up" adjustment, agencies were required to adjust the amounts of civil monetary penalties to more accurately reflect inflation rates.[3]

For the subsequent annual adjustments, the 2015 Act requires agencies to increase the penalty amounts by a cost-of-living adjustment.[4] The 2015 Act directs OMB to provide guidance to agencies each year to assist agencies in making the annual adjustments.[5] The 2015 Act requires agencies to make the annual adjustments no later than January 15 of each year and to publish the adjustments in the **Federal Register**.[6]

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[1] The 2015 Act was part of the Bipartisan Budget Act of 2015, Public Law 114–74 (Nov. 2, 2015) (codified as amended at 28 U.S.C. 2461 note).

[2] Public Law 114–74 sec. 701(b)(1)(D)(b)(1)–(2).

[3] Public Law 114–74 sec. 701(b)(1)(D)(b)(1)(A)–(B).

[4] Public Law 114–74 sec. 701(b)(1)(D)(b)(2).

[5] Public Law 114–74 sec. 701(b)(2)(4)(a).

[6] Public Law 114–74 sec. 701(b)(1)(A)(a).

Pursuant to the 2015 Act, DHS undertook a review of the civil penalties that DHS and its components administer.[7] On July 1, 2016, DHS published an IFR adjusting the maximum civil monetary penalties with an initial "catch-up" adjustment, as required by the 2015 Act.[8] DHS calculated the adjusted penalties based upon nondiscretionary provisions in the 2015 Act and upon guidance that OMB issued to agencies on February 24, 2016.[9] The adjusted penalties were effective for civil penalties assessed after August 1, 2016 (the effective date of the IFR), whose associated violations occurred after November 2, 2015 (the date of enactment of the 2015 Act).[10] In 2017 and in every year since, DHS published a final rule making the annual inflation adjustment.[11]

II. Overview of the Final Rule

This final rule makes the 2025 annual inflation adjustments to civil monetary penalties pursuant to the 2015 Act and pursuant to guidance OMB issued to agencies on December 17, 2024.[12] The penalty amounts in this final rule will be effective for penalties assessed after January 2, 2025 where the associated violation occurred after November 2, 2015. Consistent with OMB guidance, the 2015 Act does not retrospectively change previously assessed penalties that the agency is actively collecting or has collected.

We discuss civil penalties by DHS component in Section III below. For each component identified in Section III, below, we briefly describe the relevant civil penalty (or penalties), and we provide a table showing the increase in the penalties for 2025. In the table for each component, we show (1) the penalty name, (2) the penalty statutory

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[7] The 2015 Act applies to all agency civil penalties except for any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*) and the Tariff Act of 1930 (19 U.S.C. 1202 *et seq.*). *See* sec. 4(a)(1) of the 2015 Act. In the case of DHS, several civil penalties that are assessed by U.S. Customs and Border Protection (CBP) and the U.S. Coast Guard (USCG) fall under the Tariff Act of 1930, and therefore DHS did not adjust those civil penalties in this rulemaking.

[8] 81 FR 42987 (July 1, 2016).

[9] *Id.;* Office of Mgmt. & Budget, Exec. Office of The President, M–16–06, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Table A: 2016 Civil Monetary Penalty Catch-Up Adjustment Multiplier by Calendar Year, (Feb. 24, 2016) (*https://www.whitehouse.gov/omb/information-for-agencies/memoranda/#memoranda-2016*).

[10] 81 FR at 42987 (July 1, 2016).

[11] 82 FR 8571 (Jan. 27, 2017); 83 FR 13826 (Apr. 2, 2018); 84 FR 13499 (Apr. 5, 2019); 85 FR 36469 (June 17, 2020); 86 FR 57532 (Oct. 18, 2021); 87 FR 1317 (Jan. 11, 2022); 88 FR 2175 (Jan. 13, 2023); 89 FR 53849 (June 28, 2024).

[12] Office of Mgmt. and Budget, Exec. Office of the President, M–25–02, Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 17, 2024) (*https://www.whitehouse.gov/wp-content/uploads/2024/12/M-25–02.pdf*).

and or regulatory citation, (3) the penalty amount as adjusted in the 2024 final rule, (4) the cost-of-living adjustment multiplier for 2025 that OMB provided in its December 17, 2024, guidance, and (5) the new 2025 adjusted penalty. The 2015 Act instructs agencies to round penalties to the nearest multiple of $1.[13] For a more complete discussion of the method used for calculating the initial "catch-up" inflation adjustments and a component-by-component breakdown to the nature of the civil penalties and relevant legal authorities, please see the IFR preamble at 81 FR 42987–43000.

Finally, in issuing this final rule, it is DHS's intention that the rule's penalty provisions be considered severable from one another to the greatest extent possible. For example, if a court of competent jurisdiction were to hold that a particular penalty amount could not be applied as adjusted for inflation to particular persons or in particular circumstances, DHS would intend for the court to leave the remainder of the rule in place with respect to all other penalties as adjusted for inflation and covered persons and circumstances.

III. Adjustments by Component

In the following sections, we briefly describe the civil penalties that DHS and its components, the Cybersecurity and Infrastructure Security Agency (CISA), the U.S. Customs and Border Protection (CBP), the U.S. Immigration and Customs Enforcement (ICE), the U.S. Coast Guard (USCG), and the Transportation Security Administration (TSA), assess. Other components not mentioned do not impose any civil monetary penalties for 2025. At the end of each section, we include tables that list the individual adjustments for each penalty.

A. Cybersecurity and Infrastructure Security Agency

The Cybersecurity and Infrastructure Security Agency (CISA) administers the Chemical Facility Anti-Terrorism Standards (CFATS). CFATS is a program that regulates the security of chemical facilities that, in the discretion of the Secretary, present high levels of security risk. DHS established the CFATS program in 2007 pursuant to section 550 of the Department of Homeland Security Appropriations Act of 2007 (Pub. L. 109–295).[14] Pursuant to section 5 of the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014

[13] Public Law 114–74 sec. 701(b)(2)(A).

[14] Section 550 has since been superseded by the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (Pub. L. 113–254). The new legislation codified the statutory authority for the CFATS program within Title XXI of the Homeland Security Act of 2002, as amended. *See* 6 U.S.C. 621 *et seq.* Public Law 113–254 authorized the CFATS program from January 18, 2015, to January 17, 2019. Public Law 116–150 extends the CFATS program authorization to July 27, 2023.

(Pub. L. 113–254, as amended by Pub. L. 116–150; 6 U.S.C. 621 note), authorization had been granted for CFATS until July 27, 2023. Congress did not act to reauthorize the program in time and, as such, the authorization expired on July 28, 2023. Therefore, regulations written pursuant to CFATS authority are not currently active. While regulatory text for the CFATS regulation, including a civil penalty, is located in part 27 of title 6 of the Code of Federal Regulations (CFR), the text is inactive due to the lapse in authority. For that reason, we are not adjusting the maximum civil penalty amount that CISA may assess at this time.

B. U.S. Customs and Border Protection

The U.S. Customs and Border Protection (CBP) assesses civil monetary penalties under various titles of the United States Code (U.S.C.) and the CFR. These include penalties for certain violations of title 8 of the CFR regarding the Immigration and Nationality Act of 1952 (Pub. L. 82–414, as amended) (INA). The INA contains provisions that impose penalties on persons, including carriers and noncitizens, who violate specified provisions of the INA. The relevant penalty provisions appear in numerous sections of the INA; however, CBP has enumerated these penalties in regulation in one location—8 CFR

280.53. For a complete list of the INA sections for which penalties are assessed, in addition to a brief description of each violation, see the 2016 IFR preamble at 81 FR 42989–42990. For a complete list and brief description of the non-INA civil monetary penalties assessed by CBP subject to adjustment and a discussion of the history of the DHS and CBP adjustments to the non-INA penalties, see the 2019 annual inflation adjustment final rule preamble at 84 FR 13499, 13500 (April 5, 2019).

Table 1 shows the 2025 adjustment for the penalties that CBP administers.

TABLE 1—U.S. CUSTOMS AND BORDER PROTECTION CIVIL PENALTIES ADJUSTMENTS

Penalty name	Citation	Penalty amount as adjusted in the 2024 FR	Multiplier *	New penalty as adjusted by this final rule
Penalties for non-compliance with arrival and departure manifest requirements for passengers, crewmembers, or occupants transported on commercial vessels or aircraft arriving to or departing from the United States.	8 U.S.C. 1221(g); 8 CFR 280.53(b)(1) (INA section 231(g)).	$1,696	1.02598	$1,740.
Penalties for non-compliance with landing requirements at designated ports of entry for aircraft transporting aliens.	8 U.S.C. 1224; 8 CFR 280.53(b)(2) (INA section 234).	$4,610	1.02598	$4,730.
Penalties for failure to depart voluntarily	8 U.S.C. 1229c(d); 8 CFR 280.53(b)(3) (INA section 240B(d)).	$1,942–$9,718	1.02598	$1,992–$9,970.
Penalties for violations of removal orders relating to aliens transported on vessels or aircraft under section 241(d) of the INA, or for costs associated with removal under section 241(e) of the INA.	8 U.S.C. 1253(c)(1)(A); 8 CFR 280.53(b)(4) (INA section 243(c)(1)(A)).	$3,887	1.02598	$3,988.
Penalties for failure to remove alien stowaways under section 241(d)(2) of the INA.	8 U.S.C. 1253(c)(1)(B); 8 CFR 280.53(b)(5) (INA section 243(c)(1)(B)).	$9,718	1.02598	$9,970.
Penalties for failure to report an illegal landing or desertion of alien crewmen, and for each alien not reported on arrival or departure manifest or lists required in accordance with section 251 of the INA.	8 U.S.C. 1281(d); 8 CFR 280.53(b)(6) (INA section 251(d)).	$460 for each alien	1.02598	$472 for each alien.
Penalties for use of alien crewmen for longshore work in violation of section 251(d) of the INA.	8 U.S.C. 1281(d); 8 CFR 280.53(b)(6) (INA section 251(d)).	$11,524	1.02598	$11,823.
Penalties for failure to control, detain, or remove alien crewmen.	8 U.S.C. 1284(a); 8 CFR 280.53(b)(7) (INA section 254(a)).	$1,152–$6,913	1.02598	$1,182–$7,093.
Penalties for employment on passenger vessels of aliens afflicted with certain disabilities.	8 U.S.C. 1285; 8 CFR 280.53(b)(8) (INA section 255).	$2,304	1.02598	$2,364.
Penalties for discharge of alien crewmen	8 U.S.C. 1286; 8 CFR 280.53(b)(9) (INA section 256).	$3,457–$6,913	1.02598	$3,547–$7,093.

Penalty name	Citation	Penalty amount as adjusted in the 2024 FR	Multiplier *	New penalty as adjusted by this final rule
Penalties for bringing into the United States alien crewmen with intent to evade immigration laws.	8 U.S.C. 1287; 8 CFR 280.53(b)(10) (INA section 257).	$23,048	1.02598	$23,647.
Penalties for failure to prevent the unauthorized landing of aliens.	8 U.S.C. 1321(a); 8 CFR 280.53(b)(11) (INA section 271(a)).	$6,913	1.02598	$7,093.
Penalties for bringing to the United States aliens subject to denial of admission on a health-related ground.	8 U.S.C. 1322(a); 8 CFR 280.53(b)(12) (INA section 272(a)).	$6,913	1.02598	$7,093.
Penalties for bringing to the United States aliens without required documentation.	8 U.S.C. 1323(b); 8 CFR 280.53(b)(13) (INA section 273(b)).	$6,913	1.02598	$7,093.
Penalties for failure to depart	8 U.S.C. 1324d; 8 CFR 280.53(b)(14) (INA section 274D).	$973	1.02598	$998.
Penalties for improper entry	8 U.S.C. 1325(b); 8 CFR 280.53(b)(15) (INA section 275(b)).	$97–$487	1.02598	$100–$500.
Penalty for dealing in or using empty stamped imported liquor containers.	19 U.S.C. 469	$645	1.02598	$662.**
Penalty for employing a vessel in a trade without a required Certificate of Documentation.	19 U.S.C. 1706a; 19 CFR 4.80(i)	$1,617	1.02598	$1,659.
Penalty for transporting passengers coastwise for hire by certain vessels (known as Bowaters vessels) that do not meet specified conditions.	46 U.S.C. 12118(f)(3)	$645	1.02598	$662.**
Penalty for transporting passengers between coastwise points in the United States by a noncoastwise qualified vessel.	46 U.S.C. 55103(b); 19 CFR 4.80(b)(2).	$971	1.02598	$996.
Penalty for towing a vessel between coastwise points in the United States by a noncoastwise qualified vessel.	46 U.S.C. 55111(c); 19 CFR 4.92 ..	$1,132–$3,558 plus $193 per ton.	1.02598	$1,161–$3,650 plus $198 per ton.

* Office of Mgmt. and Budget, Exec. Office of the President, M–25–02, Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 17, 2024) (*https://www.whitehouse.gov/wp-content/uploads/2024/12/M-25-02.pdf*).
** No applicable conforming edit to regulatory text.

C. U.S. Immigration and Customs Enforcement

U.S. Immigration and Customs Enforcement (ICE) assesses civil monetary penalties for certain employment-related violations arising from the INA. ICE's civil penalties are located in title 8 of the CFR.

There are three different sections in the INA that impose civil monetary penalties for violations of the laws that relate to employment actions: sections 274A, 274B, and 274C. ICE has primary enforcement responsibilities for two of these civil penalty provisions (sections 274A and 274C), and the Department of Justice (DOJ) has enforcement responsibilities for one of these civil penalty provisions (section 274B). The INA, in sections 274A and 274C, provides for imposition of civil penalties for various specified unlawful acts pertaining to the employment eligibility verification process (Form I– 9, Employment Eligibility Verification), the employment of unauthorized noncitizens, and document fraud.

Because both DHS and DOJ implement the three employment-related penalty sections in the INA, both Departments' implementing regulations reflect the civil penalty amounts. For a complete description of the civil money penalties assessed and a discussion of DHS's and DOJ's efforts to update the penalties in years past, see the IFR preamble at 81 FR 42991. Table 2 shows the 2025 adjustment for the penalties that ICE administers.[15]

TABLE 2—U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT CIVIL PENALTIES ADJUSTMENTS

Penalty name	Citation	Penalty amount as adjusted in the 2024 FR	Multiplier *	New penalty as adjusted by this final rule
Civil penalties for failure to depart voluntarily, INA section 240B(d).	8 U.S.C. 1229c(d); 8 CFR 280.53(b)(3).	$1,942–$9,718	1.02598	$1,992–$9,970.
Civil penalties for violation of INA sections 274C(a)(1)–(a)(4), penalty for first offense.	8 CFR 270.3(b)(1)(ii)(A)	$575–$4,610	1.02598	$590–$4,730.
Civil penalties for violation of INA sections 274C(a)(5)–(a)(6), penalty for first offense.	8 CFR 270.3(b)(1)(ii)(B)	$487–$3,887	1.02598	$500–$3,988.

[15] Table 3 also includes two civil penalties that are also listed as penalties administered by CBP. These are penalties for failure to depart voluntarily, INA section 240B(d), and failure to depart after a final order of removal, INA section 274D. Both CBP and ICE may administer these penalties, but as ICE is the DHS component primarily responsible for assessing and collecting them, they are also listed among the penalties ICE administers.

Penalty name	Citation	Penalty amount as adjusted in the 2024 FR	Multiplier *	New penalty as adjusted by this final rule
Civil penalties for violation of INA sections 274C(a)(1)–(a)(4), penalty for subsequent offenses.	8 CFR 270.3(b)(1)(ii)(C)	$4,610–$11,524	1.02598	$4,730–$11,823.
Civil penalties for violation of INA sections 274C(a)(5)–(a)(6), penalty for subsequent offenses.	8 CFR 270.3(b)(1)(ii)(D)	$3,887–$9,718	1.02598	$3,988–$9,970.
Violation/prohibition of indemnity bonds	8 CFR 274a.8(b)	$2,789	1.02598	$2,861.
Civil penalties for knowingly hiring, recruiting, referral, or retention of unauthorized aliens—Penalty for first offense (per unauthorized alien).	8 CFR 274a.10(b)(1)(ii)(A)	$698–$5,579	1.02598	$716–$5,724.
Penalty for second offense (per unauthorized alien).	8 CFR 274a.10(b)(1)(ii)(B)	$5,579–$13,946	1.02598	$5,724–$14,308.
Penalty for third or subsequent offense (per unauthorized alien).	8 CFR 274a.10(b)(1)(ii)(C)	$8,369–$27,894	1.02598	$8,586–$28,619.
Civil penalties for I–9 paperwork violations	8 CFR 274a.10(b)(2)	$281–$2,789	1.02598	$288–$2,861.
Civil penalties for failure to depart, INA section 274D.	8 U.S.C. 1324d; 8 CFR 280.53(b)(14).	$973	1.02598	$998.

* Office of Mgmt. and Budget, Exec. Office of the President, M–25–02, Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 17, 2024) (*https://www.whitehouse.gov/wp-content/uploads/2024/12/M-25-02.pdf*).

D. U.S. Coast Guard

The Coast Guard is authorized to assess the following penalties involving maritime safety and security and environmental stewardship that are critical to the continued success of Coast Guard missions. Various statutes in titles 14, 16, 19, 33, 42, 46, and 49 of the U.S.C. authorize these penalties. Titles 33 and 46 authorize the vast majority of these penalties as these statutes deal with navigation, navigable waters, and shipping. For a more detailed discussion of the civil monetary penalties assessed by the Coast Guard, see the 2016 IFR preamble at 81 FR 42992.

The Coast Guard has identified the penalties it administers and adjusted those penalties for inflation in a table located in the CFR—specifically, Table 1 in 33 CFR 27.3. Table 1 in 33 CFR 27.3 identifies the statutes that provide the Coast Guard with civil monetary penalty authority and sets out the inflation-adjusted maximum penalty that the Coast Guard may impose pursuant to each statutory provision. Table 1 in 33 CFR 27.3 provides the current maximum penalty for violations that occurred after November 2, 2015. The applicable

civil monetary penalty amounts for violations occurring on or before November 2, 2015, are set forth in previously published regulations amending 33 CFR part 27. To find the applicable penalty amount for a violation that occurred on or before November 2, 2015, look to the prior versions of the CFR that pertain to the date on which the violation occurred. Table 3 below shows the 2025 adjustment for the penalties that the Coast Guard administers.

TABLE 3—U.S. COAST GUARD CIVIL PENALTIES ADJUSTMENTS

Penalty name	Citation	Penalty amount as adjusted in the 2024 FR	Multiplier *	New penalty as adjusted by this final rule
Saving Life and Property	14 U.S.C. 521(c)	$12,958	1.02598	$13,295.
Saving Life and Property; Intentional Interference with Broadcast.	14 U.S.C. 521(e)	$1,330	1.02598	$1,365.
Confidentiality of Medical Quality Assurance Records (first offense).	14 U.S.C. 936(i); 33 CFR 27.3	$6,508	1.02598	$6,677.
Confidentiality of Medical Quality Assurance Records (subsequent offenses).	14 U.S.C. 936(i); 33 CFR 27.3	$43,394	1.02598	$44,521.
Obstruction of Revenue Officers by Masters of Vessels.	19 U.S.C. 70; 33 CFR 27.3	$9,704	1.02598	$9,956.
Obstruction of Revenue Officers by Masters of Vessels—Minimum Penalty.	19 U.S.C. 70; 33 CFR 27.3	$2,264	1.02598	$2,323.
Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge.	19 U.S.C. 1581(d)	$5,000 **	N/A	$5,000.**
Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge-Minimum Penalty.	19 U.S.C. 1581(d)	$1,000 **	N/A	$1,000.**
Anchorage Ground/Harbor Regulations General.	33 U.S.C. 471; 33 CFR 27.3	$14,069	1.02598	$14,435.
Anchorage Ground/Harbor Regulations St. Mary's River.	33 U.S.C. 474; 33 CFR 27.3	$971	1.02598	$996.
Bridges/Failure to Comply with Regulations	33 U.S.C. 495(b); 33 CFR 27.3	$35,516	1.02598	$36,439.
Bridges/Drawbridges	33 U.S.C. 499(c); 33 CFR 27.3	$35,516	1.02598	$36,439.
Bridges/Failure to Alter Bridge Obstructing Navigation.	33 U.S.C. 502(c); 33 CFR 27.3	$35,516	1.02598	$36,439.
Bridges/Maintenance and Operation	33 U.S.C. 533(b); 33 CFR 27.3	$35,516	1.02598	$36,439.

Penalty name	Citation	Penalty amount as adjusted in the 2024 FR	Multiplier *	New penalty as adjusted by this final rule
Bridge to Bridge Communication; Master, Person in Charge or Pilot.	33 U.S.C. 1208(a); 33 CFR 27.3	$2,587	1.02598	$2,654.
Bridge to Bridge Communication; Vessel	33 U.S.C. 1208(b); 33 CFR 27.3	$2,587	1.02598	$2,654.
Oil/Hazardous Substances: Discharges (Class I per violation).	33 U.S.C. 1321(b)(6)(B)(i); 33 CFR 27.3.	$23,048	1.02598	$23,647.
Oil/Hazardous Substances: Discharges (Class I total under paragraph).	33 U.S.C. 1321(b)(6)(B)(i); 33 CFR 27.3.	$57,617	1.02598	$59,114.
Oil/Hazardous Substances: Discharges (Class II per day of violation).	33 U.S.C. 1321(b)(6)(B)(ii); 33 CFR 27.3.	$23,048	1.02598	$23,647.
Oil/Hazardous Substances: Discharges (Class II total under paragraph).	33 U.S.C. 1321(b)(6)(B)(ii); 33 CFR 27.3.	$288,080	1.02598	$295,564.
Oil/Hazardous Substances: Discharges (per day of violation) Judicial Assessment.	33 U.S.C. 1321(b)(7)(A); 33 CFR 27.3.	$57,617	1.02598	$59,114.
Oil/Hazardous Substances: Discharges (per barrel of oil or unit discharged) Judicial Assessment.	33 U.S.C. 1321(b)(7)(A); 33 CFR 27.3.	$2,305	1.02598	$2,365.
Oil/Hazardous Substances: Failure to Carry Out Removal/Comply With Order (Judicial Assessment).	33 U.S.C. 1321(b)(7)(B); 33 CFR 27.3.	$57,617	1.02598	$59,114.
Oil/Hazardous Substances: Failure to Comply with Regulation Issued Under 1321(j) (Judicial Assessment).	33 U.S.C. 1321(b)(7)(C); 33 CFR 27.3.	$57,617	1.02598	$59,114.
Oil/Hazardous Substances: Discharges, Gross Negligence (per barrel of oil or unit discharged) Judicial Assessment.	33 U.S.C. 1321(b)(7)(D); 33 CFR 27.3.	$6,913	1.02598	$7,093.
Oil/Hazardous Substances: Discharges, Gross Negligence—Minimum Penalty (Judicial Assessment).	33 U.S.C. 1321(b)(7)(D); 33 CFR 27.3.	$230,464	1.02598	$236,451.
Marine Sanitation Devices; Operating	33 U.S.C. 1322(j); 33 CFR 27.3	$9,704	1.02598	$9,956.
Marine Sanitation Devices; Sale or Manufacture.	33 U.S.C. 1322(j); 33 CFR 27.3	$25,871	1.02598	$26,543.
International Navigation Rules; Operator	33 U.S.C. 1608(a); 33 CFR 27.3	$18,139	1.02598	$18,610.
International Navigation Rules; Vessel	33 U.S.C. 1608(b); 33 CFR 27.3	$18,139	1.02598	$18,610.

Penalty name	Citation	Penalty amount as adjusted in the 2024 FR	Multiplier *	New penalty as adjusted by this final rule
Pollution from Ships; General	33 U.S.C. 1908(b)(1); 33 CFR 27.3	$90,702	1.02598	$93,058.
Pollution from Ships; False Statement	33 U.S.C. 1908(b)(2); 33 CFR 27.3	$18,139	1.02598	$18,610.
Inland Navigation Rules; Operator	33 U.S.C. 2072(a); 33 CFR 27.3	$18,139	1.02598	$18,610.
Inland Navigation Rules; Vessel	33 U.S.C. 2072(b); 33 CFR 27.3	$18,139	1.02598	$18,610.
Shore Protection; General	33 U.S.C. 2609(a); 33 CFR 27.3	$63,991	1.02598	$65,653.
Shore Protection; Operating Without Permit	33 U.S.C. 2609(b); 33 CFR 27.3	$25,597	1.02598	$26,262.
Oil Pollution Liability and Compensation	33 U.S.C. 2716a(a); 33 CFR 27.3	$57,617	1.02598	$59,114.
Clean Hulls; Civil Enforcement	33 U.S.C. 3852(a)(1)(A); 33 CFR 27.3.	$52,753	1.02598	$54,124.
Clean Hulls—related to false statements	33 U.S.C. 3852(a)(1)(A); 33 CFR 27.3.	$70,337	1.02598	$72,164.
Clean Hulls—Recreational Vessel	33 U.S.C. 3852(c); 33 CFR 27.3	$7,034	1.02598	$7,217.
Hazardous Substances, Releases, Liability, Compensation (Class I).	42 U.S.C. 9609(a); 33 CFR 27.3	$69,733	1.02598	$71,545.
Hazardous Substances, Releases, Liability, Compensation (Class II).	42 U.S.C. 9609(b); 33 CFR 27.3	$69,733	1.02598	$71,545.
Hazardous Substances, Releases, Liability, Compensation (Class II subsequent offense).	42 U.S.C. 9609(b); 33 CFR 27.3	$209,202	1.02598	$214,637.
Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment).	42 U.S.C. 9609(c); 33 CFR 27.3	$69,733	1.02598	$71,545.
Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment subsequent offense).	42 U.S.C. 9609(c); 33 CFR 27.3	$209,202	1.02598	$214,637.
Safe Containers for International Cargo	46 U.S.C. 80509; 33 CFR 27.3	$7,622	1.02598	$7,820.
Suspension of Passenger Service	46 U.S.C. 70305; 33 CFR 27.3	$76,230	1.02598	$78,210.
Vessel Inspection or Examination Fees	46 U.S.C. 2110(e); 33 CFR 27.3	$11,524	1.02598	$11,823.
Alcohol and Dangerous Drug Testing	46 U.S.C. 2115; 33 CFR 27.3	$9,380	1.02598	$9,624.
Negligent Operations: Recreational Vessels	46 U.S.C. 2302(a); 33 CFR 27.3	$8,485	1.02598	8,705.
Negligent Operations: Other Vessels	46 U.S.C. 2302(a); 33 CFR 27.3	$42,425	1.02598	$43,527.

Penalty name	Citation	Penalty amount as adjusted in the 2024 FR	Multiplier *	New penalty as adjusted by this final rule
Operating a Vessel While Under the Influence of Alcohol or a Dangerous Drug.	46 U.S.C. 2302(c)(1); 33 CFR 27.3	$9,380	1.02598	$9,624.
Vessel Reporting Requirements: Owner, Charterer, Managing Operator, or Agent.	46 U.S.C. 2306(a)(4); 33 CFR 27.3	$14,608	1.02598	$14,988.
Vessel Reporting Requirements: Master	46 U.S.C. 2306(b)(2); 33 CFR 27.3	$2,922	1.02598	$2,998.
Immersion Suits	46 U.S.C. 3102(c)(1); 33 CFR 27.3	$14,608	1.02598	$14,988.
Master Key Control System	46 U.S.C. 3106(d)	$1,032	1.02598	$1,059.
Inspection Permit	46 U.S.C. 3302(i)(5); 33 CFR 27.3	$3,047	1.02598	$3,126.
Vessel Inspection; General	46 U.S.C. 3318(a); 33 CFR 27.3	$14,608	1.02598	$14,988.
Vessel Inspection; Nautical School Vessel	46 U.S.C. 3318(g); 33 CFR 27.3	$14,608	1.02598	$14,988.
Vessel Inspection; Failure to Give Notice in accordance with (IAW) 3304(b).	46 U.S.C. 3318(h); 33 CFR 27.3	$2,922	1.02598	$2,998.
Vessel Inspection; Failure to Give Notice IAW 3309(c).	46 U.S.C. 3318(i); 33 CFR 27.3	$2,922	1.02598	$2,998.
Vessel Inspection; Vessel ≥1600 Gross Tons	46 U.S.C. 3318(j)(1); 33 CFR 27.3	$29,221	1.02598	$29,980.
Vessel Inspection; Vessel <1600 Gross Tons (GT).	46 U.S.C. 3318(j)(1); 33 CFR 27.3	$5,844	1.02598	$5,996.
Vessel Inspection; Failure to Comply with 3311(b).	46 U.S.C. 3318(k); 33 CFR 27.3	$29,221	1.02598	$29,980.
Vessel Inspection; Violation of 3318(b)–3318(f).	46 U.S.C. 3318(l); 33 CFR 27.3	$14,608	1.02598	$14,988.
List/count of Passengers	46 U.S.C. 3502(e); 33 CFR 27.3	$304	1.02598	$312.
Notification to Passengers	46 U.S.C. 3504(c); 33 CFR 27.3	$30,461	1.02598	$31,252.
Notification to Passengers; Sale of Tickets	46 U.S.C. 3504(c); 33 CFR 27.3	$1,522	1.02598	$1,562.
Copies of Laws on Passenger Vessels; Master.	46 U.S.C. 3506; 33 CFR 27.3	$609	1.02598	$625.
Passenger Vessel Security and Safety; Daily Penalty & Maximum Penalty.	46 U.S.C. 3507(h)(1)(A)	Daily $25,810/ Maximum $51,621.	1.02598	Daily $26,481/ Maximum $52,962.
Passenger Vessel Security and Safety; Crewmembers Crime Scene Preservation Training; Maximum Penalty.	46 U.S.C. 3508(d)	$51,621	1.02598	$52,962.

Penalty name	Citation	Penalty amount as adjusted in the 2024 FR	Multiplier *	New penalty as adjusted by this final rule
Liquid Bulk/Dangerous Cargo	46 U.S.C. 3718(a)(1); 33 CFR 27.3	$76,155	1.02598	$78,134.
Uninspected Vessels	46 U.S.C. 4106; 33 CFR 27.3	$12,799	1.02598	$13,132.
Recreational Vessels (maximum for related series of violations).	46 U.S.C. 4311(b)(1); 33 CFR 27.3	$402,920	1.02598	$413,388.
Recreational Vessels; Violation of 4307(a)	46 U.S.C. 4311(b)(1); 33 CFR 27.3	$8,058	1.02598	$8,267.
Engine Cut-Off Switches; Violation of 4312(b), First Offense.	46 U.S.C. 4311(c)	$103	1.02598	$106.
Engine Cut-Off Switches; Violation of 4312(b), Second Offense.	46 U.S.C. 4311(c)	$258	1.02598	$265.
Engine Cut-Off Switches; Violation of 4312(b), Subsequent to Second Offense.	46 U.S.C. 4311(c)	$516	1.02598	$529.
Recreational vessels	46 U.S.C. 4311(d); 33 CFR 27.3	$3,047	1.02598	$3,126.
Uninspected Commercial Fishing Industry Vessels.	46 U.S.C. 4507; 33 CFR 27.3	$12,799	1.02598	$13,132.
Abandonment of Barges	46 U.S.C. 4703; 33 CFR 27.3	$2,168	1.02598	$2,224.
Load Lines	46 U.S.C. 5116(a); 33 CFR 27.3	$13,946	1.02598	$14,308.
Load Lines; Violation of 5112(a)	46 U.S.C. 5116(b); 33 CFR 27.3	$27,894	1.02598	$28,619.
Load Lines; Violation of 5112(b)	46 U.S.C. 5116(c); 33 CFR 27.3	$13,946	1.02598	$14,308.
Reporting Marine Casualties	46 U.S.C. 6103(a); 33 CFR 27.3	$48,586	1.02598	$49,848.
Reporting Marine Casualties; Violation of 6104.	46 U.S.C. 6103(b); 33 CFR 27.3	$12,799	1.02598	$13,132.
Manning of Inspected Vessels; Failure to Report Deficiency in Vessel Complement.	46 U.S.C. 8101(e); 33 CFR 27.3	$2,305	1.02598	$2,365.
Manning of Inspected Vessels	46 U.S.C. 8101(f); 33 CFR 27.3	$23,048	1.02598	$23,647.
Manning of Inspected Vessels; Employing or Serving in Capacity not Licensed by U.S. Coast Guard (USCG).	46 U.S.C. 8101(g); 33 CFR 27.3	$23,048	1.02598	$23,647.
Manning of Inspected Vessels; Freight Vessel <100 GT, Small Passenger Vessel, or Sailing School Vessel.	46 U.S.C. 8101(h); 33 CFR 27.3	$3,047	1.02598	$3,126.
Watchmen on Passenger Vessels	46 U.S.C. 8102(a)	$3,047	1.02598	$3,126.

Penalty name	Citation	Penalty amount as adjusted in the 2024 FR	Multiplier *	New penalty as adjusted by this final rule
Citizenship Requirements	46 U.S.C. 8103(f)	$1,522	1.02598	$1,562.
Watches on Vessels; Violation of 8104(a) or (b).	46 U.S.C. 8104(i)	$23,048	1.02598	$23,647.
Watches on Vessels; Violation of 8104(c), (d), (e), or (h).	46 U.S.C. 8104(j)	$23,048	1.02598	$23,647.
Employing Qualified Available U.S. Citizens or Residents.	46 U.S.C. 8106(f)(2)–(3)	Daily $10,324/ Maximum $103,241.	1.02598	Daily $10,592/ Maximum $105,923.
Staff Department on Vessels	46 U.S.C. 8302(e)	$304	1.02598	$312.
Officer's Competency Certificates	46 U.S.C. 8304(d)	$304	1.02598	$312.
Coastwise Pilotage; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge.	46 U.S.C. 8502(e)	$23,048	1.02598	$23,647.
Coastwise Pilotage; Individual	46 U.S.C. 8502(f)	$23,048	1.02598	$23,647.
Federal Pilots	46 U.S.C. 8503	$73,045	1.02598	$74,943.
Merchant Mariners Documents	46 U.S.C. 8701(d)	$1,522	1.02598	$1,562.
Crew Requirements	46 U.S.C. 8702(e)	$23,048	1.02598	$23,647.
Small Vessel Manning	46 U.S.C. 8906	$48,586	1.02598	$49,848.
Pilotage: Great Lakes; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge.	46 U.S.C. 9308(a)	$23,048	1.02598	$23,647.
Pilotage: Great Lakes; Individual	46 U.S.C. 9308(b)	$23,048	1.02598	$23,647.
Pilotage: Great Lakes; Violation of 9303	46 U.S.C. 9308(c)	$23,048	1.02598	$23,647.
Requirement to Report Sexual Assault and Harassment; Mandatory Reporting by Responsible Entity of a Vessel.	46 U.S.C. 10104(a)(2)	$51,621	1.02598	$52,962.
Requirement to Report Sexual Assault and Harassment; Company After Action Summary, violation of 10104(d)(1).	46 U.S.C. 10104(d)(2)	$25,810	1.02598	$26,481.
Requirement to Report Sexual Assault and Harassment; Company After Action Summary, daily noncompliance penalty.	46 U.S.C. 10104(d)(2)	$516	1.02598	$529.
Requirement to Report Sexual Assault and Harassment; Company After Action Summary, Civil Penalty Maximum.	46 U.S.C. 10104(d)(2)	$51,621	1.02598	$52,962.

Penalty name	Citation	Penalty amount as adjusted in the 2024 FR	Multiplier *	New penalty as adjusted by this final rule
Pay Advances to Seamen	46 U.S.C. 10314(a)(2)	$1,522	1.02598	$1,562.
Pay Advances to Seamen; Remuneration for Employment.	46 U.S.C. 10314(b)	$1,522	1.02598	$1,562.
Allotment to Seamen	46 U.S.C. 10315(c)	$1,522	1.02598	$1,562.
Seamen Protection; General	46 U.S.C. 10321	$10,557	1.02598	$10,831.
Coastwise Voyages: Advances	46 U.S.C. 10505(a)(2)	$10,557	1.02598	$10,831.
Coastwise Voyages: Advances; Remuneration for Employment.	46 U.S.C. 10505(b)	$10,557	1.02598	$10,831.
Coastwise Voyages: Seamen Protection; General.	46 U.S.C. 10508(b)	$10,557	1.02598	$10,831.
Effects of Deceased Seamen	46 U.S.C. 10711	$609	1.02598	$625.
Complaints of Unfitness	46 U.S.C. 10902(a)(2)	$1,522	1.02598	$1,562.
Proceedings on Examination of Vessel	46 U.S.C. 10903(d)	$304	1.02598	$312.
Permission to Make Complaint	46 U.S.C. 10907(b)	$1,522	1.02598	$1,562.
Accommodations for Seamen	46 U.S.C. 11101(f)	$1,522	1.02598	$1,562.
Medicine Chests on Vessels	46 U.S.C. 11102(b)	$1,522	1.02598	$1,562.
Destitute Seamen	46 U.S.C. 11104(b)	$304	1.02598	$312.
Wages on Discharge	46 U.S.C. 11105(c)	$1,522	1.02598	$1,562.
Log Books; Master Failing to Maintain	46 U.S.C. 11303(a)	$609	1.02598	$625.
Log Books; Master Failing to Make Entry	46 U.S.C. 11303(b)	$609	1.02598	$625.
Log Books; Late Entry	46 U.S.C. 11303(c)	$457	1.02598	$469.
Carrying of Sheath Knives	46 U.S.C. 11506	$153	1.02598	$157.
Vessel Documentation	46 U.S.C. 12151(a)(1)	$19,950	1.02598	$20,468.
Documentation of Vessels—Related to Activities involving mobile offshore drilling units.	46 U.S.C. 12151 (a)(2)	$33,252	1.02598	$34,116.
Vessel Documentation; Fishery Endorsement	46 U.S.C. 12151(c)	$152,461	1.02598	$156,422.
Numbering of Undocumented Vessels—Willful violation.	46 U.S.C. 12309(a)	$15,232	1.02598	$15,628.
Numbering of Undocumented Vessels	46 U.S.C. 12309(b)	$3,047	1.02598	$3,126.
Vessel Identification System	46 U.S.C. 12507(b)	$25,597	1.02598	$26,262.

Penalty name	Citation	Penalty amount as adjusted in the 2024 FR	Multiplier *	New penalty as adjusted by this final rule
Measurement of Vessels	46 U.S.C. 14701	$55,789	1.02598	$57,238.
Measurement; False Statements	46 U.S.C. 14702	$55,789	1.02598	$57,238.
Commercial Instruments and Maritime Liens	46 U.S.C. 31309	$25,597	1.02598	$26,262.
Commercial Instruments and Maritime Liens; Mortgagor.	46 U.S.C. 31330(a)(2)	$25,597	1.02598	$26,262.
Commercial Instruments and Maritime Liens; Violation of 31329.	46 U.S.C. 31330(b)(2)	$63,991	1.02598	$65,653.
Vessel Escort Operations and Towing Assistance.	46 U.S.C. 55112(d); 33 CFR 27.3	$10,324	1.02598	$10,592.
Ports and Waterway Safety Regulations	46 U.S.C. 70036(a); 33 CFR 27.3	$114,630	1.02598	$117,608.
Vessel Navigation: Regattas or Marine Parades; Unlicensed Person in Charge.	46 U.S.C. 70041(d)(1)(B); 33 CFR 27.3.	$11,524	1.02598	$11,823.
Vessel Navigation: Regattas or Marine Parades; Owner Onboard Vessel.	46 U.S.C. 70041(d)(1)(C); 33 CFR 27.3.	$11,524	1.02598	$11,823.
Vessel Navigation: Regattas or Marine Parades; Other Persons.	46 U.S.C. 70041(d)(1)(D); 33 CFR 27.3.	$5,761	1.02598	$5,911.
Regulation of Vessels in Territorial Waters of the United States.	46 U.S.C. 70052(c)	$25,810	1.02598	$26,481.
Port Security	46 U.S.C. 70119(a)	$42,425	1.02598	$43,527.
Port Security—Continuing Violations	46 U.S.C. 70119(b)	$76,230	1.02598	$78,210.
Maritime Drug Law Enforcement; Penalties	46 U.S.C. 70506	$7,034	1.02598	$7,217.
Hazardous Materials: Related to Vessels Maximum Penalty.	49 U.S.C. 5123(a)(1)	$99,756	1.02598	$102,348.
Hazardous Materials: Related to Vessels—Penalty from Fatalities, Serious Injuries/Illness or Substantial Damage to Property.	49 U.S.C. 5123(a)(2)	$232,762	1.02598	$238,809.
Hazardous Materials: Related to Vessels; Training.	49 U.S.C. 5123(a)(3)	$601	1.02598	$617.

* Office of Mgmt. and Budget, Exec. Office of the President, M–25–02, Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 17, 2024) (*https://www.whitehouse.gov/wp-content/uploads/2024/12/M-25-02.pdf*).
** Enacted under the Tariff Act; exempt from inflation adjustments.

E. Transportation Security

The Transportation Security Administration (TSA) is updating its civil penalties regulation in accordance with the 2015 Act. Pursuant to its statutory authority in 49 U.S.C. 46301(a)(1), (4), (5), (6), 49 U.S.C. 46301(d)(2), (8), and 49 U.S.C. 114(u), TSA may impose penalties for violations of statutes that TSA administers, including penalties for violations of implementing regulations or orders. Note that pursuant to division K, title I, sec. 1904(b)(1)(I), of Public Law 115–254, 132 Stat. 3186, 3545 (Oct. 5, 2018), the TSA Modernization Act—part of the FAA Reauthorization Act of 2018—the former 49 U.S.C. 114(v), which relates to penalties, was redesignated as 49 U.S.C. 114(u).

TSA assesses these penalties for a wide variety of aviation and surface security requirements, including violations of TSA's requirements applicable to Transportation Worker Identification Credentials (TWIC),[16] as well as violations of requirements described in chapter 449 of title 49 of the U.S.C. These penalties can apply to a wide variety of situations, as described in the statutory and regulatory provisions, as well as in guidance that TSA publishes. Table 4 shows the 2025 adjustment for the penalties that TSA administers.

TABLE 4—TRANSPORTATION SECURITY ADMINISTRATION CIVIL PENALTIES ADJUSTMENTS

Penalty name	Citation	Penalty amount as adjusted in the 2024 FR	Multiplier *	New penalty as adjusted by this final rule
Violation of 49 U.S.C. ch. 449 (except secs. 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303, a regulation prescribed, or order issued thereunder by a person operating an aircraft for the transportation of passengers or property for compensation.	49 U.S.C. 46301(a)(1), (4), (5), (6); 49 U.S.C. 46301(d)(2), (8); 49 CFR 1503.401(c)(3).	$41,577 (up to a total of $665,226 per civil penalty action).	1.02598	$42,657 (up to a total of $682,509 per civil penalty action).

[16] *See, e.g.*, 46 U.S.C. 70105, 49 U.S.C. 46302 and 46303, and 49 U.S.C. chapter 449.

Penalty name	Citation	Penalty amount as adjusted in the 2024 FR	Multiplier *	New penalty as adjusted by this final rule
Violation of 49 U.S.C. ch. 449 (except secs. 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303, a regulation prescribed, or order issued thereunder by an individual (except an airman serving as an airman), any person not operating an aircraft for the transportation of passengers or property for compensation, or a small business concern.	49 U.S.C. 46301(a)(1), (4), (5); 49 U.S.C. 46301(d)(8); 49 CFR 1503.401(c).	$16,630 (up to a total of $83,154 for individuals or small businesses, $665,226 for others).	1.02598	$17,062 (up to a total of $85,314 for individuals or small businesses, $682,509 for others).
Violation of any other provision of title 49 U.S.C. or of 46 U.S.C. ch. 701, a regulation prescribed, or order issued thereunder.	49 U.S.C. 114(u); 49 CFR 1503.401(b).	$14,232 (up to a total of $71,162 total for individuals or small businesses, $569,288 for others).	1.02598	$14,602 (up to a total of $73,011 total for individuals or small businesses, $584,078 for others).

* Office of Mgmt. and Budget, Exec. Office of the President, M–25–02, Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 17, 2024) (*https://www.whitehouse.gov/wp-content/uploads/2024/12/M-25-02.pdf*).

IV. Administrative Procedure Act

The Administrative Procedure Act ("APA") (5 U.S.C. 551 *et seq.*) require agencies, when conducting rulemaking, to provide advance public notice, seek public comment, and provide a thirty-day delayed effective date. An agency may issue a rule without first providing an opportunity for notice and comment if the agency makes a finding of good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Notice and comment procedures are unnecessary, for example, if Congress requires non-discretionary action of an agency, leaving the agency without discretion to vary its action in response to the views or suggestions of public commenters.

DHS finds that notice and comment procedures are not required for these annual inflation adjustments. The 2015 Act had instructed agencies to make the required annual adjustments "notwithstanding section 553 of title 5 of the U.S.C." (See 28 U.S.C. 2461 note). Furthermore, DHS has good cause to forgo notice and comment procedures because such procedures would be unnecessary due to DHS's lack of discretion in updating the penalties. As required by the 2015 Act, DHS is updating the penalty amounts by applying the cost-of-living adjustment multiplier that OMB has provided to agencies. For the same reasons, DHS also finds that it has good cause to forgo a delayed effective date under section 553(d) of the APA.

V. Regulatory Analyses

A. Executive Orders 12866 and 13563

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

OMB has not designated this final rule a "significant regulatory action" under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, OMB has not reviewed this rule. This final rule makes nondiscretionary adjustments to existing civil monetary penalties in accordance with the 2015 Act and OMB guidance.[17] DHS therefore did not consider alternatives and does not have the flexibility to alter the adjustments of the civil monetary penalty amounts as provided in this rule. To the extent this final rule increases civil monetary penalties, it would result in an increase in transfers from persons or entities assessed a civil monetary penalty to the government.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). See 5 U.S.C. 601–612. The Regulatory Flexibility Act does not apply to this final rule because a notice of proposed rulemaking was not required for the reasons stated above.

C. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in

[17] Office of Mgmt. and Budget, Exec. Office of the President, M–25–02, Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 17, 2024) (*https://www.whitehouse.gov/wp-content/uploads/2024/12/M-25–02.pdf*).

the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. This final rule will not result in such an expenditure.

D. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule, because this final rule does not trigger any new or revised recordkeeping or reporting.

List of Subjects

8 CFR Part 270

Administrative practice and procedure, Aliens, Employment, Fraud, Penalties.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 280

Administrative practice and procedure, Immigration, Penalties.

19 CFR Part 4

Exports, Freight, Harbors, Maritime carriers, Oil pollution, Reporting and recordkeeping requirements, Vessels.

33 CFR Part 27

Administrative practice and procedure, Penalties.

49 CFR Part 1503

Administrative practice and procedure, Investigations, Law enforcement, Penalties.

Amendments to the Regulations

Accordingly, for the reasons stated in the preamble, DHS is amending 8 CFR parts 270, 274a, and 280, 19 CFR part 4, 33 CFR part 27, and 49 CFR part 1503 as follows:

Title 8—Aliens and Nationality

PART 270—PENALTIES FOR DOCUMENT FRAUD

■ 1. The authority citation for part 270 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, and 1324c; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321 and Pub. L. 114–74, 129 Stat. 599.

■ 2. In § 270.3, revise paragraphs (b)(1)(ii)(A) through (D) to read as follows:

§ 270.3 Penalties.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) *First offense under section 274C(a)(1) through (4).* Not less than $275 and not exceeding $2,200 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (4) of the Act before March 27, 2008; not less than $375 and not exceeding $3,200 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (4) of the Act on or after March 27, 2008, and on or before November 2, 2015; and not less than $590 and not exceeding $4,730 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (4) of the Act after November 2, 2015.

(B) *First offense under section 274C(a)(5) or (6).* Not less than $250 and not exceeding $2,000 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (6) of the Act before March 27, 2008; not less than $275 and not exceeding $2,200 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (6) of the Act on or after March 27, 2008, and on or before November 2, 2015; and not less than $500 and not exceeding $3,988 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (6) of the Act after November 2, 2015.

(C) *Subsequent offenses under section 274C(a)(1) through (4).* Not less than $2,200 and not more than $5,500 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (4) of the Act before March 27, 2008; not less than $3,200 and not exceeding $6,500 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (4) of the Act occurring on or after March 27, 2008 and on or before November 2, 2015; and not less than $4,730 and not more than $11,823 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (4) of the Act after November 2, 2015.

(D) *Subsequent offenses under section 274C(a)(5) or (6).* Not less than $2,000 and not more than $5,000 for each fraudulent document

or each proscribed activity described in section 274C(a)(5) or (6) of the Act before March 27, 2008; not less than $2,200 and not exceeding $5,500 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (6) of the Act occurring on or after March 27, 2008, and on or before November 2, 2015; and not less than $3,988 and not more than $9,970 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (6) of the Act after November 2, 2015.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 3. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1105a, 1324a; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599.

■ 4. In § 274a.8, revise paragraph (b) to read as follows:

§ 274a.8 Prohibition of indemnity bonds.

* * * * *

(b) *Penalty.* Any person or other entity who requires any individual to post a bond or security as stated in this section shall, after notice and opportunity for an administrative hearing in accordance with section 274A(e)(3)(B) of the Act, be subject to a civil monetary penalty of $1,000 for each violation before September 29, 1999, of $1,100 for each violation occurring on or after September 29, 1999, but on or before November 2, 2015, and of $2,861 for each violation occurring after November 2, 2015, and to an administrative order requiring the return to the individual of any amounts received in violation of this section or, if the individual cannot be located, to the general fund of the Treasury.

■ 5. In § 274a.10, revise paragraphs (b)(1)(ii)(A) through (C) and the first sentence of paragraph (b)(2) introductory text to read as follows:

§ 274a.10 Penalties.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) First offense—not less than $275 and not more than $2,200 for each unauthorized alien with respect to whom the offense occurred

before March 27, 2008; not less than $375 and not exceeding $3,200, for each unauthorized alien with respect to whom the offense occurred occurring on or after March 27, 2008, and on or before November 2, 2015; and not less than $716 and not more than $5,724 for each unauthorized alien with respect to whom the offense occurred occurring after November 2, 2015;

(B) Second offense—not less than $2,200 and not more than $5,500 for each unauthorized alien with respect to whom the second offense occurred before March 27, 2008; not less than $3,200 and not more than $6,500, for each unauthorized alien with respect to whom the second offense occurred on or after March 27, 2008, and on or before November 2, 2015; and not less than $5,724 and not more than $14,308 for each unauthorized alien with respect to whom the second offense occurred after November 2, 2015; or

(C) More than two offenses—not less than $3,300 and not more than $11,000 for each unauthorized alien with respect to whom the third or subsequent offense occurred before March 27, 2008; not less than $4,300 and not exceeding $16,000, for each unauthorized alien with respect to whom the third or subsequent offense occurred on or after March 27, 2008, and on or before November 2, 2015; and not less than $8,586 and not more than $28,619 for each unauthorized alien with respect to whom the third or subsequent offense occurred after November 2, 2015; and

* * * * *

(2) A respondent determined by the Service (if a respondent fails to request a hearing) or by an administrative law judge, to have failed to comply with the employment verification requirements as set forth in § 274a.2(b), shall be subject to a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred before September 29, 1999; not less than $110 and not more than $1,100 for each individual with respect to whom such violation occurred on or after September 29, 1999, and on or before November 2, 2015; and not less than $288 and not more than $2,861 for each individual with respect to whom such violation occurred after November 2, 2015. * * *

* * * * *

PART 280—IMPOSITION AND COLLECTION OF FINES

■ 6. The authority citation for part 280 continues to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1223, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1322, 1323, 1330; 66 Stat. 173, 195, 197, 201,

203, 212, 219, 221–223, 226, 227, 230; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599.

■ 7. In § 280.53, revise paragraphs (b)(1) through (15) to read as follows:

§ 280.53 Civil monetary penalties inflation adjustment.

* * * * *

(b) * * *

(1) Section 231(g) of the Act, penalties for non-compliance with arrival and departure manifest requirements for passengers, crewmembers, or occupants transported on commercial vessels or aircraft arriving to or departing from the United States: From $1,696 to $1,740.

(2) Section 234 of the Act, penalties for non-compliance with landing requirements at designated ports of entry for aircraft transporting aliens: From $4,610 to $4,730.

(3) Section 240B(d) of the Act, penalties for failure to depart voluntarily: From $1,942 minimum/$9,718 maximum to $1,992 minimum/$9,970 maximum.

(4) Section 243(c)(1)(A) of the Act, penalties for violations of removal orders relating to aliens transported on vessels or aircraft, under section 241(d) of the Act, or for costs associated with removal under section 241(e) of the Act: From $3,887 to $3,988.

(5) Penalties for failure to remove alien stowaways under section 241(d)(2) of the Act: From $9,718 to $9,970.

(6) Section 251(d) of the Act, penalties for failure to report an illegal landing or desertion of alien crewmen, and for each alien not reported on arrival or departure manifest or lists required in accordance with section 251 of the Act: From $460 to $472; and penalties for use of alien crewmen for longshore work in violation of section 251(d) of the Act: From $11,524 to $11,823.

(7) Section 254(a) of the Act, penalties for failure to control, detain, or remove alien crewmen: From $1,152 minimum/$6,913 maximum to $1,182 minimum/$7,093 maximum.

(8) Section 255 of the Act, penalties for employment on passenger vessels of aliens afflicted with certain disabilities: From $2,304 to $2,364.

(9) Section 256 of the Act, penalties for discharge of alien crewmen: From $3,457 minimum/$6,913 maximum to $3,547 minimum/$7,093 maximum.

(10) Section 257 of the Act, penalties for bringing into the United States alien crewmen with intent to evade immigration laws: From $23,048 maximum to $23,647 maximum.

(11) Section 271(a) of the Act, penalties for failure to prevent the unauthorized landing of aliens: From $6,913 to $7,093.

(12) Section 272(a) of the Act, penalties for bringing to the United States aliens subject to denial of admission on a health-related ground: From $6,913 to $7,093.

(13) Section 273(b) of the Act, penalties for bringing to the United States aliens without required documentation: From $6,913 to $7,093.

(14) Section 274D of the Act, penalties for failure to depart: From $973 maximum to $998 maximum, for each day the alien is in violation.

(15) Section 275(b) of the Act, penalties for improper entry: From $97 minimum/$487 maximum to $100 minimum/$500 maximum, for each entry or attempted entry.

Title 19—Customs Duties

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 8. The authority citation for part 4 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1415, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

* * * * *

Sections 4.80, 4.80a, and 4.80b also issued under 19 U.S.C. 1706a; 28 U.S.C. 2461 note; 46 U.S.C. 12112, 12117, 12118, 50501–55106, 55107, 55108, 55110, 55114, 55115, 55116, 55117, 55119, 56101, 55121, 56101, 57109; Pub. L. 108–7, Division B, Title II, § 211;

* * * * *

Section 4.92 also issued under 28 U.S.C. 2461 note; 46 U.S.C. 55111;

* * * * *

■ 9. In § 4.80, revise paragraphs (b)(2) and (i) to read as follows:

§ 4.80 Vessels entitled to engage in coastwise trade.

* * * * *

(b) * * *

(2) The penalty imposed for the unlawful transportation of passengers between coastwise points is $300 for each passenger so transported and landed on or before November 2, 2015, and $996 for each passenger so transported and landed after November 2, 2015 (46

U.S.C. 55103, as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015).

* * * * *

(i) Any vessel, entitled to be documented and not so documented, employed in a trade for which a Certificate of Documentation is issued under the vessel documentation laws (see § 4.0(c)), other than a trade covered by a registry, is liable to a civil penalty of $500 for each port at which it arrives without the proper Certificate of Documentation on or before November 2, 2015, and $1,659 for each port at which it arrives without the proper Certificate of Documentation after November 2, 2015 (19 U.S.C. 1706a, as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015). If such a vessel has on board any foreign merchandise (sea stores excepted), or any domestic taxable alcoholic beverages, on which the duty and taxes have not been paid or secured to be paid, the vessel and its cargo are subject to seizure and forfeiture.

■ 10. In § 4.92, revise the third sentence to read as follows:

§ 4.92 Towing.

* * * The penalties for violation of this section occurring after November 2, 2015, are a fine of from $1,161 to $3,650 against the owner or master of the towing vessel and a further penalty against the towing vessel of $198 per ton of the towed vessel (46 U.S.C. 55111, as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015).

Title 33—Navigation and Navigable Waters

PART 27—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 11. The authority citation for part 27 continues to read as follows:

Authority: Secs. 1–6, Pub. L. 101–410, 104 Stat. 890, as amended by Sec. 31001(s)(1), Pub. L. 104–134, 110 Stat. 1321 (28 U.S.C. 2461 note); Department of Homeland Security Delegation No. 0170.1, sec. 2 (106).

■ 12. In § 27.3, revise the third sentence of the introductory text and table 1 to read as follows:

§ 27.3 Penalty adjustment table.

* * * The adjusted civil penalty amounts listed in Table 1 to this section are applicable for penalty assessments issued after January 2, 2025, with respect to violations occurring after November 2, 2015. * * *

TABLE 1 TO § 27.3—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Civil monetary penalty description	2025 Adjusted maximum penalty amount ($)
14 U.S.C. 521(c)	Saving Life and Property	$13,295
14 U.S.C. 521(e)	Saving Life and Property; Intentional Interference with Broadcast	1,365
14 U.S.C. 936(i)	Confidentiality of Medical Quality Assurance Records (first offense)	6,677
14 U.S.C. 936(i)	Confidentiality of Medical Quality Assurance Records (subsequent offenses)	44,521
19 U.S.C. 70	Obstruction of Revenue Officers by Masters of Vessels	9,956
19 U.S.C. 70	Obstruction of Revenue Officers by Masters of Vessels—Minimum Penalty	2,323
19 U.S.C. 1581(d)	Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge 1	5,0
19 U.S.C. 1581(d)	Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge—Minimum Penalty 1.	1,0
33 U.S.C. 471	Anchorage Ground/Harbor Regulations General	14,435
33 U.S.C. 474	Anchorage Ground/Harbor Regulations St. Mary's River	996
33 U.S.C. 495(b)	Bridges/Failure to Comply with Regulations	36,439
33 U.S.C. 499(c)	Bridges/Drawbridges	36,439
33 U.S.C. 502(c)	Bridges/Failure to Alter Bridge Obstructing Navigation	36,439
33 U.S.C. 533(b)	Bridges/Maintenance and Operation	36,439
33 U.S.C. 1208(a)	Bridge to Bridge Communication; Master, Person in Charge or Pilot	2,654
33 U.S.C. 1208(b)	Bridge to Bridge Communication; Vessel	2,654
33 U.S.C. 1321(b)(6)(B)(i)	Oil/Hazardous Substances: Discharges (Class I per violation)	23,647
33 U.S.C. 1321(b)(6)(B)(i)	Oil/Hazardous Substances: Discharges (Class I total under paragraph)	59,114
33 U.S.C. 1321(b)(6)(B)(ii)	Oil/Hazardous Substances: Discharges (Class II per day of violation)	23,647
33 U.S.C. 1321(b)(6)(B)(ii)	Oil/Hazardous Substances: Discharges (Class II total under paragraph)	295,564
33 U.S.C. 1321(b)(7)(A)	Oil/Hazardous Substances: Discharges (per day of violation) Judicial Assessment	59,114
33 U.S.C. 1321(b)(7)(A)	Oil/Hazardous Substances: Discharges (per barrel of oil or unit discharged) Judicial Assessment.	2,365
33 U.S.C. 1321(b)(7)(B)	Oil/Hazardous Substances: Failure to Carry Out Removal/Comply With Order (Judicial Assessment).	59,114
33 U.S.C. 1321(b)(7)(C)	Oil/Hazardous Substances: Failure to Comply with Regulation Issued Under 1321(j) (Judicial Assessment).	59,114
33 U.S.C. 1321(b)(7)(D)	Oil/Hazardous Substances: Discharges, Gross Negligence (per barrel of oil or unit discharged) Judicial Assessment.	7,093
33 U.S.C. 1321(b)(7)(D)	Oil/Hazardous Substances: Discharges, Gross Negligence—Minimum Penalty (Judicial Assessment).	236,451

U.S. Code citation	Civil monetary penalty description	2025 Adjusted maximum penalty amount ($)
33 U.S.C. 1322(j)	Marine Sanitation Devices; Operating	9,956
33 U.S.C. 1322(j)	Marine Sanitation Devices; Sale or Manufacture	26,543
33 U.S.C. 1608(a)	International Navigation Rules; Operator	18,610
33 U.S.C. 1608(b)	International Navigation Rules; Vessel	18,610
33 U.S.C. 1908(b)(1)	Pollution from Ships; General	93,058
33 U.S.C. 1908(b)(2)	Pollution from Ships; False Statement	18,610
33 U.S.C. 2072(a)	Inland Navigation Rules; Operator	18,610
33 U.S.C. 2072(b)	Inland Navigation Rules; Vessel	18,610
33 U.S.C. 2609(a)	Shore Protection; General	65,653
33 U.S.C. 2609(b)	Shore Protection; Operating Without Permit	26,262
33 U.S.C. 2716a(a)	Oil Pollution Liability and Compensation	59,114
33 U.S.C. 3852(a)(1)(A)	Clean Hulls; Civil Enforcement	54,124
33 U.S.C. 3852(a)(1)(A)	Clean Hulls; related to false statements	72,164
33 U.S.C. 3852(c)	Clean Hulls; Recreational Vessels	7,217
42 U.S.C. 9609(a)	Hazardous Substances, Releases, Liability, Compensation (Class I)	71,545
42 U.S.C. 9609(b)	Hazardous Substances, Releases, Liability, Compensation (Class II)	71,545
42 U.S.C. 9609(b)	Hazardous Substances, Releases, Liability, Compensation (Class II subsequent offense)	214,637
42 U.S.C. 9609(c)	Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment)	71,545
42 U.S.C. 9609(c)	Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment subsequent offense).	214,637
46 U.S.C. 80509(a)	Safe Containers for International Cargo	7,820
46 U.S.C. 70305(c)	Suspension of Passenger Service	78,210
46 U.S.C. 2110(e)	Vessel Inspection or Examination Fees	11,823
46 U.S.C. 2115	Alcohol and Dangerous Drug Testing	9,624
46 U.S.C. 2302(a)	Negligent Operations: Recreational Vessels	8,705
46 U.S.C. 2302(a)	Negligent Operations: Other Vessels	43,527
46 U.S.C. 2302(c)(1)	Operating a Vessel While Under the Influence of Alcohol or a Dangerous Drug	9,624
46 U.S.C. 2306(a)(4)	Vessel Reporting Requirements: Owner, Charterer, Managing Operator, or Agent	14,988
46 U.S.C. 2306(b)(2)	Vessel Reporting Requirements: Master	2,998
46 U.S.C. 3102(c)(1)	Immersion Suits	14,988
46 U.S.C. 3106(d)	Master Key Control System	1,059
46 U.S.C. 3302(i)(5)	Inspection Permit	3,126
46 U.S.C. 3318(a)	Vessel Inspection; General	14,988
46 U.S.C. 3318(g)	Vessel Inspection; Nautical School Vessel	14,988
46 U.S.C. 3318(h)	Vessel Inspection; Failure to Give Notice in accordance with (IAW) 3304(b)	2,998
46 U.S.C. 3318(i)	Vessel Inspection; Failure to Give Notice IAW 3309(c)	2,998
46 U.S.C. 3318(j)(1)	Vessel Inspection; Vessel ≥1600 Gross Tons	29,980

U.S. Code citation	Civil monetary penalty description	2025 Adjusted maximum penalty amount ($)
46 U.S.C. 3318(j)(1)	Vessel Inspection; Vessel <1600 Gross Tons (GT)	5,996
46 U.S.C. 3318(k)	Vessel Inspection; Failure to Comply with 3311(b)	29,980
46 U.S.C. 3318(l)	Vessel Inspection; Violation of 3318(b)-3318(f)	14,988
46 U.S.C. 3502(e)	List/count of Passengers	312
46 U.S.C. 3504(c)	Notification to Passengers	31,252
46 U.S.C. 3504(c)	Notification to Passengers; Sale of Tickets	1,562
46 U.S.C. 3506	Copies of Laws on Passenger Vessels; Master	625
46 U.S.C. 3507(h)(1)(A)	Passenger Vessel Security and Safety; Daily Penalty & Maximum Penalty	26,481 Daily/ $52,962 Maximum
46 U.S.C. 3508(d)	Passenger Vessel Security and Safety; Crewmembers Crime Scene Preservation Training; Maximum Penalty.	52,962
46 U.S.C. 3718(a)(1)	Liquid Bulk/Dangerous Cargo	78,134
46 U.S.C. 4106	Uninspected Vessels	13,132
46 U.S.C. 4311(b)(1)	Recreational Vessels (maximum for related series of violations)	413,388
46 U.S.C. 4311(b)(1)	Recreational Vessels; Violation of 4307(a)	8,267
46 U.S.C. 4311(c)	Engine Cut-Off Switches; Violation of 4312(b), First Offense	106
46 U.S.C. 4311(c)	Engine Cut-Off Switches; Violation of 4312(b), Second Offense	265
46 U.S.C. 4311(c)	Engine Cut-Off Switches; Violation of 4312(b), Subsequent to Second Offense	529
46 U.S.C. 4311(d)	Recreational Vessels	3,126
46 U.S.C. 4507	Uninspected Commercial Fishing Industry Vessels	13,132
46 U.S.C. 4703	Abandonment of Barges	2,224
46 U.S.C. 5116(a)	Load Lines	14,308
46 U.S.C. 5116(b)	Load Lines; Violation of 5112(a)	28,619
46 U.S.C. 5116(c)	Load Lines; Violation of 5112(b)	14,308
46 U.S.C. 6103(a)	Reporting Marine Casualties	49,848
46 U.S.C. 6103(b)	Reporting Marine Casualties; Violation of 6104	13,132
46 U.S.C. 8101(e)	Manning of Inspected Vessels; Failure to Report Deficiency in Vessel Complement	2,365
46 U.S.C. 8101(f)	Manning of Inspected Vessels	23,647
46 U.S.C. 8101(g)	Manning of Inspected Vessels; Employing or Serving in Capacity not Licensed by U.S. Coast Guard (USCG).	23,647
46 U.S.C. 8101(h)	Manning of Inspected Vessels; Freight Vessel <100 GT, Small Passenger Vessel, or Sailing School Vessel.	3,126
46 U.S.C. 8102(a)	Watchmen on Passenger Vessels	3,126
46 U.S.C. 8103(f)	Citizenship Requirements	1,562
46 U.S.C. 8104(i)	Watches on Vessels; Violation of 8104(a) or (b)	23,647
46 U.S.C. 8104(j)	Watches on Vessels; Violation of 8104(c), (d), (e), or (h)	23,647
46 U.S.C. 8106(f)	Employing Qualified Available U.S. Citizens or Residents	10,592 Daily/ $105,923 Maximum
46 U.S.C. 8302(e)	Staff Department on Vessels	312

U.S. Code citation	Civil monetary penalty description	2025 Adjusted maximum penalty amount ($)
46 U.S.C. 8304(d)	Officer's Competency Certificates	312
46 U.S.C. 8502(e)	Coastwise Pilotage; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge.	23,647
46 U.S.C. 8502(f)	Coastwise Pilotage; Individual	23,647
46 U.S.C. 8503	Federal Pilots	74,943
46 U.S.C. 8701(d)	Merchant Mariners Documents	1,552
46 U.S.C. 8702(e)	Crew Requirements	23,647
46 U.S.C. 8906	Small Vessel Manning	49,848
46 U.S.C. 9308(a)	Pilotage: Great Lakes; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge.	23,647
46 U.S.C. 9308(b)	Pilotage: Great Lakes; Individual	23,647
46 U.S.C. 9308(c)	Pilotage: Great Lakes; Violation of 9303	23,647
46 U.S.C. 10104(a)(2)	Requirement to Report Sexual Assault and Harassment; Mandatory Reporting by Responsible Entity of a Vessel.	51,621
46 U.S.C. 10104(d)(2)	Requirement to Report Sexual Assault and Harassment; Company After Action Summary, violation of 10104(d)(1).	25,810
46 U.S.C. 10104(d)(2)	Requirement to Report Sexual Assault and Harassment; Company After Action Summary, Daily Noncompliance Penalty.	516
46 U.S.C. 10104(d)(2)	Requirement to Report Sexual Assault and Harassment; Company After Action Summary, Civil Penalty Maximum..	51,621
46 U.S.C. 10314(a)(2)	Pay Advances to Seamen	1,562
46 U.S.C. 10314(b)	Pay Advances to Seamen; Remuneration for Employment	1,562
46 U.S.C. 10315(c)	Allotment to Seamen	1,562
46 U.S.C. 10321	Seamen Protection; General	10,831
46 U.S.C. 10505(a)(2)	Coastwise Voyages: Advances	10,831
46 U.S.C. 10505(b)	Coastwise Voyages: Advances; Remuneration for Employment	10,831
46 U.S.C. 10508(b)	Coastwise Voyages: Seamen Protection; General	10,831
46 U.S.C. 10711	Effects of Deceased Seamen	625
46 U.S.C. 10902(a)(2)	Complaints of Unfitness	1,562
46 U.S.C. 10903(d)	Proceedings on Examination of Vessel	312
46 U.S.C. 10907(b)	Permission to Make Complaint	1,562
46 U.S.C. 11101(f)	Accommodations for Seamen	1,562
46 U.S.C. 11102(b)	Medicine Chests on Vessels	1,562
46 U.S.C. 11104(b)	Destitute Seamen	312
46 U.S.C. 11105(c)	Wages on Discharge	1,562
46 U.S.C. 11303(a)	Log Books; Master Failing to Maintain	625
46 U.S.C. 11303(b)	Log Books; Master Failing to Make Entry	625
46 U.S.C. 11303(c)	Log Books; Late Entry	469
46 U.S.C. 11506	Carrying of Sheath Knives	157
46 U.S.C. 12151(a)(1)	Vessel Documentation	20,468
46 U.S.C. 12151(a)(2)	Documentation of Vessels—Related to activities involving mobile offshore drilling units.	34,116

U.S. Code citation	Civil monetary penalty description	2025 Adjusted maximum penalty amount ($)
46 U.S.C. 12151(c)	Vessel Documentation; Fishery Endorsement	156,422
46 U.S.C. 12309(a)	Numbering of Undocumented Vessels—Willful violation	15,628
46 U.S.C. 12309(b)	Numbering of Undocumented Vessels	3,126
46 U.S.C. 12507(b)	Vessel Identification System	26,262
46 U.S.C. 14701	Measurement of Vessels	57,238
46 U.S.C. 14702	Measurement; False Statements	57,238
46 U.S.C. 31309	Commercial Instruments and Maritime Liens	26,262
46 U.S.C. 31330(a)(2)	Commercial Instruments and Maritime Liens; Mortgagor	26,262
46 U.S.C. 31330(b)(2)	Commercial Instruments and Maritime Liens; Violation of 31329	65,653
46 U.S.C. 55112(d)	Vessel Escort Operations and Towing Assistance	10,592
46 U.S.C. 70036(a)	Ports and Waterways Safety Regulations	117,608
46 U.S.C. 70041(d)(1)(B)	Vessel Navigation: Regattas or Marine Parades; Unlicensed Person in Charge	11,823
46 U.S.C. 70041(d)(1)(C)	Vessel Navigation: Regattas or Marine Parades; Owner Onboard Vessel	11,823
46 U.S.C. 70041(d)(1)(D)	Vessel Navigation: Regattas or Marine Parades; Other Persons	5,911
46 U.S.C. 70052(c)	Regulation of Vessels in Territorial Waters of the United States	26,481
46 U.S.C. 70119(a)	Port Security	43,527
46 U.S.C. 70119(b)	Port Security—Continuing Violations	78,210
46 U.S.C. 70506	Maritime Drug Law Enforcement; Penalties	7,217
49 U.S.C. 5123(a)(1)	Hazardous Materials: Related to Vessels—Maximum Penalty	102,348
49 U.S.C. 5123(a)(2)	Hazardous Materials: Related to Vessels—Penalty from Fatalities, Serious Injuries/Illness or Substantial Damage to Property.	238,809
49 U.S.C. 5123(a)(3)	Hazardous Materials: Related to Vessels—Training	617

[1] Enacted under the Tariff Act of 1930 exempt from inflation adjustments.

Title 49—Transportation

PART 1503—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 13. The authority citation for part 1503 continues to read as follows:

Authority: 6 U.S.C. 1142; 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 114, 20109, 31105, 40113–40114, 40119, 44901–44907, 46101–46107, 46109–46110, 46301, 46305, 46311, 46313–46314; Pub. L. 104–134, as amended by Pub. L. 114–74.

■ 14. In § 1503.401, revise paragraphs (b)(1) and (2) and (c)(1) through (3) to read as follows:

§ 1503.401 Maximum penalty amounts.

* * * * *

(b) * * *

(1) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $50,000 per civil penalty action, in the case of an individual or small business concern ("small business concern" as defined in section 3 of the Small Business Act (15 U.S.C. 632)). For violations that occurred after November 2, 2015, $14,602 per violation, up to a total of $73,011 per civil penalty action, in the case of an individual or small business concern; and

(2) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $400,000 per civil penalty action, in the case of any other person. For violations that occurred after November 2, 2015, $14,602 per violation, up to a total of $584,078 per civil penalty action, in the case of any other person.

(c) * * *

(1) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $50,000 per civil penalty action, in the case of an individual or small business concern ("small business concern" as defined in section 3 of the Small Business Act (15 U.S.C. 632)). For violations that occurred after November 2, 2015, $17,062 per violation, up to a total of $85,314 per civil penalty action, in the case of an individual (except an airman serving as an airman), or a small business concern.

(2) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $400,000 per civil penalty action, in the case of any other person (except an airman serving as an airman) not operating an aircraft for the transportation of passengers or property for compensation. For violations that occurred after November 2, 2015, $17,062 per violation, up to a total of $682,509 per civil penalty action, in the case of any other person (except an airman serving as an airman) not operating an aircraft for the transportation of passengers or property for compensation.

(3) For violations that occurred on or before November 2, 2015, $25,000 per violation, up to a total of $400,000 per civil penalty action, in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman). For violations that occurred after November 2, 2015, $42,657 per violation, up to a total of $682,509 per civil penalty action, in the case of a person (except an individual serving as an airman) operating an aircraft for the transportation of passengers or property for compensation.

KARA LYNUM,
Acting General Counsel,
U.S. Department of Homeland Security.

U.S. Court of International Trade

Slip Op.25–01

TUBE FORGINGS OF AMERICA, INC. AND MILLS IRON WORKS, INC., Consolidated Plaintiffs, v. UNITED STATES, Defendant, and NORCA INDUSTRIAL COMPANY, LLC AND INTERNATIONAL PIPING & PROCUREMENT GROUP, LP, Consolidated Defendant-Intervenors.

Before: Jennifer Choe-Groves, Judge
Consol. Court No. 23–00231

[Remanding the U.S. Department of Commerce's final scope ruling in a covered merchandise scope referral request that certain carbon steel butt-weld pipe fittings produced using fittings from China that underwent subsequent production in Vietnam are excluded from the scope of the antidumping order on carbon steel butt-weld pipe fittings.]

Dated: January 2, 2025

Lawrence J. Bogard and *John B. Totaro, Jr.*, Neville Peterson, LLP, of Washington, D.C., for Consolidated Plaintiffs Tube Forgings of America, Inc. and Mills Iron Works, Inc.

L. Misha Preheim, Assistant Director, and *Anne M. Delmare*, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for Defendant United States. With them on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, and *Patricia M. McCarthy*, Director. Of counsel on the brief was *Jared Michael Cynamon*, Attorney, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, D.C. Also of counsel was *Ruslan N. Klafehn*, Attorney, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, D.C.

Jeremy W. Dutra, Squire Patton Boggs (US) LLP, of Washington, D.C., for Defendant-Intervenors Norca Industrial Company, LLC and International Piping & Procurement Group, LP.

OPINION AND ORDER

Choe-Groves, Judge:

This case raises an issue of first impression regarding the Court's jurisdiction—specifically whether a challenge to a covered merchandise scope referral is moot after an investigation under the Enforce and Protect Act ("EAPA") has already been resolved and finally adjudicated. For the reasons discussed below, the Court holds that it has jurisdiction.

Plaintiffs argue that more than 30 years after the antidumping duty order for carbon steel butt-weld pipe fittings went into effect, Commerce suddenly changed course in 2023 by deciding that "rough fittings," which are cut to length pipe in the form of elbows, tees, or

reducers, were no longer included in the antidumping duty order, and only products that are heat-treated and processed were in scope. For the reasons discussed below, the Court remands the covered merchandise scope referral determination by the U.S. Department of Commerce ("Commerce") for further explanation or reconsideration.

The EAPA investigation resulted in a negative evasion determination that was sustained by this Court in a separate litigation. In the covered merchandise scope referral that is the focus of this case, Commerce determined that "rough fittings" purchased in the People's Republic of China ("China") were not "unfinished" products within the scope of the antidumping order, and only became equivalent to in-scope "unfinished" products after further processing in the Socialist Republic of Vietnam ("Vietnam"). Thus, Commerce determined that the subject merchandise ("rough fittings" in the form of elbows, tees, or reducers) were out of scope. The domestic manufacturers here challenge Commerce's covered merchandise scope referral determination, arguing that the products should be considered within the scope of the antidumping order.

Consolidated Plaintiffs Tube Forgings of America, Inc. ("Tube Forgings of America") and Mills Iron Works, Inc. ("Mills Iron Works") (collectively, "Plaintiffs" or "Tube Forgings") filed a Complaint in Court No. 23–00236[1] pursuant to 19 U.S.C. § 1675, contesting the final covered merchandise referral determination of Commerce that Chinese-origin "rough fittings" that undergo the second and third stages of production in Vietnam are not subject to the scope of the antidumping order on butt-weld pipe fittings from China. *See Certain Carbon Steel Butt-Weld Pipe Fittings from People's Republic of China* ("*Final Determination*"), 88 Fed. Reg. 69,909 (Dep't of Commerce Oct. 10, 2023) (final determ. covered merchandise inquiry) and accompanying Decision Memorandum for Final Results of Covered Merchandise Inquiry ("Final IDM"), PR 83[2]; *see also Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value; Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China*, 57 Fed. Reg. 29,702 ("*Order*") (Dep't of Commerce July 6, 1992).

Before the Court is Plaintiffs' Rule 56.2 Motion for Judgment on the Record. Rule 56.2 Mot. [Consol. Pls.'] J. Agency R. ("Plaintiffs' Motion"), ECF Nos. 23, 24; Mem. Supp. Mot. [Consol. Pls.'] J. Upon

[1] Three complaints were filed in Court No. 23–00231, Court No. 23–00232, and Court No. 23–00236, which were consolidated into the above-captioned Consolidated Court No. 23–00231. Subsequently, this Court dismissed the complaints in Court No. 23–00231 and Court No. 23–00232, leaving pending only the complaint in Court No. 23–00236 under Consolidated Court No. 23–00231.

[2] Citations to the administrative record reflect the public record ("PR"), ECF No. 36.

Admin. R. ("Pls.' Br."), ECF Nos. 23, 24. Defendant United States ("Defendant") filed Defendant's Response to Consolidated Plaintiffs' Rule 56.2 Motion for Judgment on the Agency Record. Def.'s Resp. Consol. Pls.' Rule 56.2 Mot. J. Agency R. ("Def.'s Resp."), ECF No. 30. Consolidated Defendant-Intervenors Norca Industrial Company, LLC ("Norca") and International Piping & Procurement Group, LP ("IPPG") (collectively, "Defendant-Intervenors") filed Defendant-Intervenors' Response to Consolidated Plaintiffs' Motion for Judgment on the Agency Record. Def.-Intervs.' Resp. Consol. Pl.'s Mot. J. Agency R. ("Def.-Intervs.' Resp."), ECF No. 29. Plaintiffs filed their reply brief. Reply Mem. [Consol. Pls.] ("Pls.' Reply"), ECF No. 38.

Oral argument was held on September 4, 2024. Oral Arg. (Sept. 4, 2024), ECF No. 41. The Court ordered supplemental briefing regarding a jurisdictional challenge raised by the Government during oral argument. Order (Sept. 5, 2024), ECF No. 42; Suppl. Br. Consol. Def.-Intervs. ("Def.-Intervs.' Suppl. Br."), ECF No. 44; Def.'s Suppl. Br., ECF No. 45; Suppl. Resp. Br. Consol. [Pls.] ("Pls.' Suppl. Br."), ECF No. 46.

For the following reasons, the Court remands the *Final Determination*.

BACKGROUND

Legal Framework for Scope Determination

The descriptions of merchandise covered by the scope of an antidumping or countervailing duty order must be written in general terms, and questions may arise as to whether a particular product is included within the scope of an order. *See* 19 C.F.R. § 351.225(a). When such questions arise, Commerce's regulations direct it to issue scope rulings that clarify whether the product is in scope. *Id.* Although there are no specific statutory provisions that govern Commerce's interpretation of the scope of an order, Commerce is guided by case law and agency regulations. *See Meridian Prods., LLC v. United States*, ("*Meridian Products*"), 851 F.3d 1375 (Fed. Cir. 2017); 19 C.F.R. § 351.225.

Commerce's inquiry must begin with the relevant scope language. *See*, *e.g.*, *OMG, Inc. v. United States*, 972 F.3d 1358, 1363 (Fed. Cir. 2020). If the scope language is unambiguous, "the plain meaning of the language governs." *Id.* If the language is ambiguous, however, Commerce interprets the scope with the aid of the sources set forth in 19 C.F.R. § 351.225(k)(1). *Meridian Prods.*, 851 F.3d at 1382. If the (k)(1) sources do not dispositively answer the question, Commerce may consider the (k)(2) factors under 19 C.F.R. § 351.225(k)(2). *Id.*

Commerce may consider the following interpretive sources under 19 C.F.R. § 351.225(k)(1) to determine whether merchandise is covered by the scope of an order:

> (A) The descriptions of the merchandise contained in the petition pertaining to the order at issue;
>
> (B) The descriptions of the merchandise contained in the initial investigation pertaining to the order at issue;
>
> (C) Previous or concurrent determinations of the Secretary, including prior scope rulings, memoranda, or clarifications pertaining to both the order at issue, as well as other orders with same or similar language as that of the order at issue; and
>
> (D) Determinations of the Commission pertaining to the order at issue, including reports issued pursuant to the Commission's initial investigation.

19 C.F.R. § 351.255(k)(1)(i).

Secondary interpretive sources include any other determinations of the Secretary or the Commission not identified above, rulings or determinations by U.S. Customs and Border Protection ("Customs"), industry usage, dictionaries, and any other relevant record evidence. *Id.* § 351.255(k)(1)(ii). If there is a conflict between these secondary interpretive sources and the primary interpretive sources of this section, the primary interpretive sources will normally govern in determining whether a product is covered by the scope of the order at issue. *Id.*

It is well-established that "Commerce cannot 'interpret' an antidumping order so as to change the scope of th[e] order, nor can Commerce 'interpret' an order in a manner contrary to its terms." *Eckstrom Indus., Inc. v. United States*, 254 F.3d 1068, 1072 (Fed. Cir. 2001). When a party challenges a scope determination, the Court must determine whether the scope of the order "contain[s] language that specifically includes the subject merchandise or may be reasonably interpreted to include it." *Duferco Steel, Inc. v. United States*, ("Duferco"), 296 F.3d 1087, 1089 (Fed. Cir. 2002).

Plain Language of the Scope Order

The scope language of the *Order* in this case states in relevant part:

> The products covered by this order are carbon steel butt-weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or

> forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (*e.g.*, threaded, grooved, or bolted fittings). Carbon steel butt-weld pipe fittings are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Order, 57 Fed. Reg. at 29,702.

Commerce defined the subject merchandise at issue as "rough and unfinished fittings originating in China and processed into butt-weld pipe fittings through two production scenarios in Vietnam," with the first production scenario involving "Chinese-origin unfinished butt-weld pipe fittings [that] undergo the final stage (*i.e.*, finishing processes) of three production stages in Vietnam" and the second production scenario involving "Chinese-origin rough butt-weld pipe fittings [that] undergo the second and third stages of production in Vietnam." Final IDM at 3.

Administrative Proceedings and Procedural History

EAPA Litigation

In a separate litigation, *Norca Industrial Company, LLC et al. v. United States*, Consol. Court No. 21–00192 ("EAPA Litigation"), this Court sustained a negative evasion determination under the EAPA, 19 U.S.C. § 1517. *Norca Indus. Co. v. United States* ("*Norca II*"), 48 CIT __, 680 F. Supp. 3d 1343 (2024). The EAPA Litigation concerned potential evasion of the *Order* by Defendant-Intervenors Norca and IPPG, importers of butt-weld pipe fittings from Vietnam. *See Norca Indus. Co., LLC et al. v. United States*, Consol. Court No. 21–00192.

During the underlying EAPA investigation, Customs issued a covered merchandise referral request to Commerce. Customs' Covered Merchandise Referral Request for Merchandise Under EAPA Consolidated Case Number 7335 (Remand Number 7717), Imported by Norca Industrial Company, LLC and International Piping & Procurement Group, LP: Antidumping Duty Order on Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China ("Covered Merchandise Referral Request") (Sept. 6, 2022), PR 7.

After Commerce published its final determination in the covered merchandise referral, Customs made a negative evasion determination in the EAPA Litigation, which this Court sustained in a final

judgment issued on February 7, 2024. *Norca II*, 48 CIT __, 680 F. Supp. 3d at 1346; Order (Feb. 7, 2024), ECF No. 64. The deadline to appeal the final judgment expired on April 8, 2024. No party filed an appeal and then the entries were liquidated.

Covered Merchandise Referral Request

In the Covered Merchandise Referral Request that is at issue in this case, Customs stated that the record showed contradicting information provided by Norca and BW Fittings, and described the production of Norca's and IPPG's carbon steel butt-weld pipe fittings as involving three stages of production:

1. Converting seamless pipe into the rough shape of an elbow, tee, reducer, etc., through a cold- or hot-forming (or forging) process;
2. Reforming or sizing the rough fitting so that the fitting will match the pipe it is destined to be welded to; and
3. Undergoing finishing processes such as shot blasting or other cleaning, machine beveling, boring and tapering, grinding, die stamping, inspection, and painting.

Covered Merchandise Referral Request at 3–4.

Norca claimed that its merchandise exported by BW Fittings into the United States underwent at least the second and third stages of production in Vietnam, and that the rough fittings imported by BW Fittings from China were not "unfinished" carbon steel butt-weld pipe fittings covered by the *Order*. *Id.* at 4. However, BW Fittings reported that it phased in its production capabilities for carbon steel butt-weld pipe fittings. *Id.* BW Fittings reported that production records demonstrated that in some cases, it performed only the third stage of production, while in other cases, it performed both the second and third stages of production. *Id.* Customs requested that Commerce determine whether Norca's and IPPG's "Chinese-origin rough fittings" purchased from BW Fittings were covered by the *Order* in two scenarios: (1) Chinese-origin rough fittings that only underwent the third stage of production (*i.e.,* finishing processes) in Vietnam and (2) Chinese-origin rough fittings that underwent both the second and third stages of production in Vietnam. *Id.*

Commerce issued a preliminary covered merchandise determination on June 23, 2023, in which it determined that "rough butt-weld pipe fittings from China that are processed in Vietnam into finished butt-weld pipe fittings in the final two stages of production are not subject to the scope of the *Order*" and "that unfinished butt-weld pipe fittings from China that are processed in Vietnam into finished butt-

weld pipe fittings are subject to the scope of the *Order*." *Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China* ("Preliminary Determination"), 88 Fed. Reg. 41,075 (Dep't of Commerce June 23, 2023) (preliminary results of covered merchandise inquiry) and accompanying Decision Memorandum for Preliminary Results ("PDM"), PR 63, 66.

On October 10, 2023, Commerce issued its final covered merchandise determination, explaining that a "rough fitting" is merely a material input used in the production of an unfinished fitting and does not become covered merchandise (or an unfinished fitting) until after the second stage of production. *Final Determination*, 88 Fed. Reg. 69,909. Commerce continued to determine that "rough butt-weld pipe fittings from China that undergo the second and third stages of production in Vietnam are not subject to the scope of the *Order*." Final IDM at 27.

On November 1, 2023, Norca filed this action pursuant to 28 U.S.C. § 1581(c) contesting certain aspects of Commerce's *Final Determination*. *See* Compl., ECF No. 6. On January 9, 2024, this Court consolidated the three cases. Order (Jan. 9, 2024), ECF No. 22. This Court later granted Norca's and IPGG's motions to voluntarily dismiss their complaints. *See* Order (Mar. 18, 2024), ECF Nos. 27, 28. Plaintiffs remained as Consolidated Plaintiffs, whereas Norca and IPPG remained as Consolidated Defendant-Intervenors in this suit (and were dismissed as Plaintiffs when their complaints were dismissed).

JURISDICTION AND STANDARD OF REVIEW

The Court of International Trade ("CIT") has subject matter jurisdiction pursuant to section 516A(a)(2)(B)(vi) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1516a(a)(2)(B)(vi), and 28 U.S.C. § 1581(c). The Court will hold unlawful "any determination, finding, or conclusion [that] is unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B)(i).

Article III of the U.S. Constitution limits federal courts to hearing actual, ongoing "cases" and "controversies." U.S. CONST. art. III, § 2, cl. 1 ("The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, [or] the Laws of the United States . . . [and] to Controversies to which the United States shall be a Party."). An actual case or controversy must be extant at all stages of review, not merely at the time the complaint is filed. *Davis v. FEC*, 554 U.S. 724, 732–33 (2008).

The Court acknowledges that the prior EAPA Litigation became final when this Court issued a judgment in that case. Thus, any decision from this Court in the covered merchandise scope ruling

would not affect the outcome of the EAPA Litigation, and there are no longer entries that can be affected by a decision from this Court, which raises mootness concerns.

Norca and IPPG argue that this covered merchandise scope referral case is moot because the Court entered final judgment in the EAPA Litigation, which is no longer a live controversy, and the scope referral inquiry only exists to address the specific question asked by Customs in the EAPA Litigation. Def.-Intervs.' Suppl. Br. at 3–5. Norca and IPPG assert that a "ruling in this case on the scope of the [*Order]* would be purely hypothetical, divorced from any factual dispute capable of being remedied. The absence of a live issue renders this action moot, thus depriving this Court of subject matter jurisdiction." *Id.* at 5. Norca and IPPG contend that Plaintiffs could instead file a new petition for an antidumping duty investigation or could request that Commerce initiate a scope inquiry or a circumvention inquiry, in order to address whether finished carbon steel butt-weld pipe fittings manufactured in Vietnam using Chinese-origin rough parts are subject to the *Order*. *Id.*

The Court disagrees, however, with Defendant-Intervenors' arguments regarding mootness because harm is still possible if the covered merchandise referral determination is relied upon by Commerce in future proceedings, as discussed below, and thus a live case or controversy still exists.

As an initial matter, the Government notes correctly that the issue "whether a plaintiff maintains constitutional standing in a case challenging a covered merchandise determination after the underlying EAPA case that gave rise to the covered merchandise determination has reached judgment and the entries have been liquidated appears to be an issue of first impression before this Court." Def.'s Suppl. Br. at 4. The Government states that both "the EAPA and covered merchandise inquiries under 19 C.F.R. § 351.227 involve relatively new regulatory schemes." *Id.*

The Government explains that 19 C.F.R. § 351.225(k), which describes the substantive basis for Commerce's scope rulings, was revised in 2021. *Id.* One (k)(1) source that Commerce may rely on as a primary source pursuant to 19 C.F.R. § 351.225(k) is a previous or concurrent Commerce scope determination pertaining to both the order at issue and other orders with same or similar language. *Id.* at 5. Significantly, the Government notes that:

> The language in 19 C.F.R. § 351.225(k)(1) does not delineate or limit Commerce's consideration of prior scope determinations based on the origination of the scope determination (*i.e.*, a referral arising from an EAPA investigation or a scope ruling

> application from an interested party). . . . Thus, going forward, Commerce may consider this scope determination—like any other scope determination made by Commerce—as a primary interpretive source pursuant to 19 C.F.R. § 351.225(k)(1).

Id. In other words, the Government explains in its supplemental brief on jurisdiction that Commerce will treat the covered merchandise scope referral ruling in the same substantive manner as a scope ruling application. The significance is that the covered merchandise scope referral ruling can be relied on by Commerce in future scope proceedings involving all imports of butt-weld pipe fittings, and thus a litigant's rights could be affected by the covered merchandise scope referral ruling.

Plaintiffs frame the issue in terms of injury. As discussed in their supplemental brief on jurisdiction, Plaintiffs maintain an "interest in preventing the unlawful Covered Merchandise Determination at issue here from serving as a primary—indeed, governing—interpretive source for any interpretation of the [*Order*'s] scope and to maintain the scope of the [*Order*] consistent with its unambiguous scope language and Petitioner's intent." Pls.' Suppl. Br. at 2. Tube Forgings explains further that "the controversy here concerns Commerce's scope ruling that [Tube Forgings] contends is unlawful and deprives the domestic butt-weld fittings industry of the full, intended protection of the [*Order*]. That controversy is very much alive." *Id.* at 3.

The Court agrees with the Government and Plaintiffs that this case is not moot because the Government has indicated that Commerce intends to rely on the covered merchandise scope ruling as a primary interpretative (k)(1) source in future scope cases affecting all imports of butt-weld pipe fittings. Thus, the issue whether Commerce's covered merchandise scope ruling is in accordance with law and supported by substantial evidence is still a live issue. The Court concludes that the challenge to the covered merchandise scope ruling, despite the conclusion of the underlying EAPA investigation, is still a live case or controversy for Article III jurisdiction, and therefore the Court will consider the merits.

DISCUSSION

Whether an ambiguity exists in an antidumping order is a question of law that the Court considers de novo. *Meridian Prods.*, 851 F.3d at 1382. The plain scope language "carbon steel butt-weld pipe fittings in either finished or unfinished form" does not mention "rough fittings" that were further processed, which were the products identified by Customs in the covered merchandise scope referral request. The

scope language also does not define what "unfinished" means, nor does the scope language provide a definition for "butt-weld pipe fittings."

Thus, because the plain scope language does not mention the subject merchandise that were the focus of the covered merchandise scope referral, the Court concludes that the scope language is ambiguous with respect to whether "unfinished" fittings include further processed "rough fittings," and is also ambiguous as to what the definition of "unfinished" fittings means.

At the heart of this case is the distinction between "rough," "unfinished," and "finished" fittings, as well as the fundamental question of what is a "butt-weld pipe fitting."

Plaintiffs contend that the language of the *Order* "states plainly that it applies to *all* pipe fittings that are sufficiently formed as to be identifiable as such, regardless of the extent to which they may have been processed toward completion." Pls.' Br. at 18. Plaintiffs assert that "nothing in the [*Order*'s] scope language supports Commerce's division of 'butt-weld pipe fittings in unfinished form' into subcategories based on the extent to which they have been processed to completion." *Id.* at 20.

Commerce identified the relevant questions as whether a "rough fitting" is the same as an "unfinished fitting" (which Commerce viewed as subject to the *Order*), or whether a "rough fitting" is instead simply a precursor product before becoming an "unfinished fitting" (which Commerce viewed as outside the scope of the *Order*). Final IDM at 17. Commerce determined that the latter was the case, which Tube Forgings challenges here in this litigation.

The Court directs Commerce on remand to answer the fundamental question whether a "rough fitting," also known as a pipe that has been formed into the rough shape of an elbow, tee, or reducer, is identifiable as a "butt-weld pipe fitting," which follows the language in the *Order*. Commerce may continue to examine whether a "rough fitting" is an "unfinished" fitting, but must also answer the more relevant and direct question whether a "rough fitting" is identifiable as a "butt-weld pipe fitting."

The questions referred by Customs to Commerce in the covered merchandise scope referral focused on the production continuum from raw seamless pipe being transformed into "unfinished" and "finished" products, following three production stages:

1. Converting seamless pipe into the rough shape of an elbow, tee, reducer, etc., through a cold- or hot-forming (or forging) process;

2. Reforming or sizing the rough fitting so that the fitting will match the pipe it is destined to be welded to; and
3. Undergoing finishing processes such as shot blasting or other cleaning, machine beveling, boring and tapering, grinding, die stamping, inspection, and painting.

Covered Merchandise Referral Request at 3–4; Final IDM at 3.

Commerce determined that "rough fittings" and "unfinished fittings" were distinct and separate. Final IDM at 19. Specifically, Commerce determined that an unfinished fitting that underwent the first and second production stages in China (first, converting seamless pipe; and second, reforming/sizing, as noted above) was covered by the scope of the *Order*, and was not removed from the *Order* when the third production stage (undergoing finishing processes) took place outside of China in Vietnam. *Id.* Commerce also determined that a "rough fitting" was a fitting that only underwent the first stage of production (converting seamless pipe) and was not covered by the *Order* when exported from China. *Id.* Commerce explained that the "rough fitting," which only underwent the first stage of production (converting seamless pipe), was a mere "material input" (*i.e.,* precursor) and was not considered an "unfinished fitting" subject to the *Order*. *Id.*

Plaintiffs challenge Commerce's determination that "rough fittings" that were further processed in Vietnam are not covered by the *Order*. Pls.' Br. at 18–24, 44; Pls.' Reply at 3–10; *see also* Pls.' Br. at 18 ("[The *Order*] unambiguously . . . covers 'carbon steel butt-weld pipe fittings in either finished or unfinished form' without limitation or qualification" and "states plainly that it applies to all pipe fittings that are sufficiently formed as to be identifiable as such, regardless of the extent to which they may have been processed toward completion.").

Plaintiffs argue that the scope language "clearly establishes that any Chinese-origin merchandise identifiable as a butt-weld pipe fitting is subject to the *Order* without regard to the degree to which it might have been processed toward being a finished product." Pls.' Br. at 24. Plaintiffs assert that "a product is identifiable as a butt-weld pipe fitting when it has been formed into the rough shape of, for example, an elbow, tee, or reducer because, once it is formed, it is dedicated to use as a butt-weld pipe fitting and has no other use." *Id.*

The Court does not agree with Plaintiffs that the scope language is plain and unambiguous as to what is meant by "unfinished" fittings. The *Order* does not define "unfinished" or "butt-weld pipe fittings." Plaintiffs' own argument, that a product is identifiable as a butt-weld pipe fitting when it has been formed into the rough shape of an elbow, tee, or reducer, is not clearly demonstrated based on the plain lan-

guage of the *Order*. The *Order* merely states that "products covered by this order are carbon steel butt-weld pipe fittings, . . . imported in either finished or unfinished form." *Order*, 57 Fed. Reg. at 29,702. It is not clear based on this plain language whether "unfinished" form or "butt-weld pipe fittings" includes products that have been formed into the rough shape of an elbow, tee, or reducer, as Plaintiffs contend. Therefore, the Court concludes that the language in the *Order* is ambiguous.

Although Commerce did not describe the scope language as ambiguous, Commerce expressed confusion with the plain language of the *Order* in its scope determination. For example, while Commerce acknowledged that unfinished butt-weld pipe fittings were covered under the scope, it sought to define "what constitutes an 'unfinished butt-weld pipe fitting' in the first instance." Final IDM at 17 (Commerce stated that, "[t]he salient question is not whether unfinished butt-weld pipe fittings are within the scope (they are), but rather what constitutes an 'unfinished butt-weld pipe fitting' in the first instance. Is a rough fitting the same as an 'unfinished fitting'? Or is it instead simply a precursor product? The scope is silent on this point."). Commerce disagreed that "the phrase 'butt-weld pipe fittings . . . in either finished or unfinished form,' plainly establishes that all merchandise identifiable as a butt-weld pipe fitting is subject merchandise regardless of the degree to which it might be processed." *Id.* Commerce determined that it was necessary to consider the (k)(1) primary and secondary interpretative sources to answer the referred scope inquiry. *See id.*

As noted above, the Court concludes that the scope language is ambiguous as to the definition of an unfinished butt-weld pipe fitting. It is well-settled that when scope language is ambiguous, Commerce may interpret the scope with the aid of the sources set forth in 19 C.F.R. § 351.225(k)(1). *Meridian Prods.*, 851 F.3d at 1382. Because the scope language is ambiguous with respect to whether further processed rough fittings were included in "unfinished" products, Commerce's examination of the (k)(1) sources was in accordance with law.

As discussed more fully below, the Court remands Commerce's determination as not in accordance with law on other grounds and unsupported by substantial evidence. Commerce may examine the (k)(1) sources on remand if Commerce continues to take the position that the *Order* is ambiguous. The Court recognizes, however, that it is possible on remand that Commerce may change its determination and conduct its analysis based on the plain language of the *Order*.

Use of Interpretative Sources Under 19 C.F.R. § 351.225(k)(1)

The Court next turns to the question whether Commerce's determination was supported by substantial evidence of the (k)(1) sources.

Petition

Commerce reviewed descriptions of the merchandise contained in the Petition pertaining to the *Order* at issue, which is a permissible (k)(1) source. 19 C.F.R. § 351.225(k)(1)(i)(A)–(B); Petitioners' CMI Questionnaire Resp. at Ex. 5 ("Petition"). For purposes of the covered merchandise inquiry, Commerce determined that the terms "rough fitting" and "unfinished fitting" are distinct and separate, as well as "crucial" to its determination because "consistent terminology is necessary in discussing the distinction between the different stages of production." Final IDM at 19.

In the covered merchandise scope ruling, Commerce cited the Petition for descriptions of the three-step production process of butt-weld pipe fittings, which mirrored the three production stages set forth in the Covered Merchandise Referral Request.[3] Commerce defined each type of "fitting" with its corresponding production stage: a "rough fitting" only underwent the first production stage, an "unfinished fitting" underwent both the first and second production stages, and a "finished fitting" underwent all three stages of production. *See* Final IDM at 18–27; PDM at 9–12.[4]

The Court observes that the Petition does not mention the term "rough fitting," which detracts from Commerce's determination that the Petition defines "rough fitting" as a product that only underwent the first production stage. Commerce must address this issue on remand.

In the Final IDM, Commerce explained that the Petition discussed the reforming process as "necessary," the importance of heat treatment and the coining process, and the difference between an unfinished "tee" or unfinished "reducer." Final IDM at 23 (citing Petition at 5–6).

The Court observes that the Petition discussed the production process leading up to an "unfinished" pipe fitting, starting when:

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[3] Commerce may look to the descriptions of the production process in its scope analysis. *See Valeo N. Am., Inc. v. United States*, 610 F. Supp. 3d 1322, 1339 (2022).

[4] An unfinished fitting is "a fitting that has undergone production stages one and two and is covered by the scope of the *Order* when it is exported from China and is not removed from the *Order* when it undergoes finishing processes in Vietnam." Final IDM at 19. A "rough fitting" is "a fitting that has only undergone the first stage of production and is not covered by the scope of the *Order* when exported from China." *Id.* "Rough fitting" means "a product that has undergone the first stage of production but not the second and third stages; however, this product is a material input to the production of unfinished and finished fittings, not an unfinished fitting in its own right." *Id.* at 19–20.

> In integrated operations, producers begin with seamless pipe as their raw material and perform both forming and machining operations. . . . The stages of integrated production can be traced as follows: Where "elbows" (typically 90° or 45°) are concerned, the pipe is first cut to the proper length. The pipe is lubricated internally, and fastened onto a draw bench where it is heated until it is soft and then pushed over a mandrel. . . . The bent pipe drops off the mandrel and is examined for correctness of size and shape. Often, the bent pipe must undergo a "reforming" or "coining" operation in which it is placed in a vertical/horizontal press and subjected to great pressure, bending the pipe slightly to achieve "true" circularity of its cross section and precise outside diameter. The operation is necessary to ensure that the fitting will match the pipe to which it is attached. Fittings that are formed at a temperature under 1,200°F or above 1,800°F must also undergo heat treatment which relieves stress build-up within the fitting during the forming process. After these processes, the bent pipe is considered to be an unfinished "elbow."

Petition at 5–6. The Petition demonstrates that the second stage of production, which involves reforming or sizing the rough fitting, is significant because it is at this stage that the fitting will match the pipe to which it will be welded. *Id.*

The Court observes that notwithstanding the Petition's lack of using the term "rough fitting," the Petition tends to support Commerce's determination that only after the raw metal pipe undergoes the first production stage (converting seamless pipe, cutting to the proper length) and the second production stage (hot- or cold-forming, reforming/sizing), it then becomes an "unfinished" product. *Id.* at 5–7. By describing the production process starting from raw material, then cutting, hot- or cold-forming, and reforming or sizing to match the pipe it is destined to be welded to, the Petition articulates an intent that a product becomes an "unfinished" pipe only after undergoing this process. *Id.*

On remand, Commerce should address the Petition's lack of reference to the term "rough fitting," and should analyze whether the Petition answers the question whether a carbon steel pipe that has been cut to length in the rough shape of an elbow, tee, or reducer, is identifiable as a butt-weld pipe fitting.

ITC Report

Commerce reviewed descriptions of the merchandise contained in the ITC Report pertaining to the *Order* at issue, which is a permis-

sible (k)(1) source. 19 C.F.R. § 351.225(k)(1)(i)(A)–(B); *see also* Petitioners' CMI Questionnaire Resp. at Ex. 7 ("ITC Report"), PR 51. The Court observes that the ITC Report does not describe the production process as clearly as the Petition, nor does the ITC Report state that only after completing production stages one and two does a product become an unfinished pipe fitting. The ITC Report merely recognizes that "[m]ost of the domestic industry uses pipe as the starting material to produce reducers, tees, and elbows." ITC Report at I-7. The ITC Report states that "[t]he domestic industry includes integrated producers and combination producers. Integrated producers generally begin with seamless pipe as their raw material and perform both forming and machining operations. Combination producers produce some fittings in an integrated process and other fittings in a conversion process." *Id.* at I-10.

The term "rough" appears only once in the ITC Report when referencing "rough-formed unfinished fittings." The exact sentence reads: "The combination producers Hackney, Tube Forgings, Tube-Line, and Weldbend purchase and/or import rough-formed unfinished fittings which they bevel, bore, taper, grind, shot blast, die stamp, inspect, and paint." *Id.*

The Court observes that this language in the ITC Report does not directly support Commerce's determination because it indicates that rough-formed carbon steel pipes are unfinished fittings that are later processed. The ITC Report does not confirm Commerce's determination that only after carbon steel pipes are cut, then heat-treated and sized/formed, are they then considered to be unfinished butt-weld pipe fittings. The Court concludes that the ITC Report does not support Commerce's determination that only after the second production stage, or the sizing and reforming operations, is a carbon steel product identifiable as a butt-weld pipe fitting that is within the scope of the *Order*. *See* Final IDM at 26–27 (citing ITC Report at I-10).

Exhibit 6 of the Petitioner's CMI Questionnaire Response

Commerce may look at previous or concurrent determinations of the Secretary, including prior scope rulings, memoranda, or clarifications pertaining to both the order at issue, as well as other orders with same or similar language as that of the order at issue. 19 C.F.R. § 351.225(k)(1)(i)(C).

Plaintiffs argue that Commerce misconstrued contrary record evidence that detracted from its determination. Pls.' Br. at 30–31; Pls.' Reply at 12–15. For example, Plaintiffs assert that Exhibit 6 of the Petitioner's CMI Questionnaire Response provides contrary evidence to Commerce's determination that "rough fittings" are not unfinished

fittings. *See id.*

Attached to Exhibit 6 is a memorandum from Commerce, titled "Request for Clarification of Scope: Federal Registrar Notices of Initiation of Certain Carbon Steel Butt-Weld Fittings from China and Thailand," responding to the original petitioners' request to clarify the scope language in the Notice of Initiation. *See* Petitioner's CMI Questionnaire Resp. at Ex. 6; *Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China*, 56 Fed. Reg. 27,730 (Dep't of Commerce June 17, 1991) (initiation of antidumping duty investigation) ("Notice of Initiation").[5]

The preliminary Notice of Initiation had language excluding unfinished fittings that were not processed, with the sentence having read, "unfinished butt-weld pipe fittings that are not machined, not tooled and not otherwise processed after forging are not included in the scope of this investigation." The final version of the Notice of Initiation deleted that sentence excluding unprocessed fittings. *See* Notice of Initiation.

> The products covered by this investigation are carbon steel butt-weld pipe fittings, having an inside diameter of less than 360 millimeters (14 inches) imported in either finished or unfinished form. *Unfinished butt-weld pipe fittings that are not machined, not tooled and not otherwise processed after forging are not included in the scope of this investigation.* These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (e.g., threaded, grooved, or bolted fittings).

Notice of Initiation, 56 Fed. Reg. at 27,730 (emphasis added).

When Commerce included the language in the preliminary Notice of Initiation, the original petitioners objected, arguing that their "intent is to include imports of all butt-weld fittings of the kind described, whether finished or unfinished." PDM at 11.

The Parties dispute the significance of the exclusion language regarding unfinished, unprocessed products that was removed from the investigation. Plaintiffs argue that Commerce's deletion demonstrates that the *Order* was intended to cover all carbon steel butt-weld pipe fittings, and the *Order* was intended to cover rough fittings

[5] Commerce did not issue an amended Notice of Initiation. *See* Petitioner's CMI Questionnaire Resp. at Ex. 6.

that were not processed.[6] *See* Pls.' Br. at 30–31; Pls.' Reply at 12–15. Defendant counters that the meaning of removing the deleted language is ambiguous and does not demonstrate Commerce's and the original petitioners' clear intent to include "rough fittings" in the scope of the *Order*.

Defendant argues that: (1) Commerce disagreed that its removal of certain language from the Notice of Initiation scope was intended to cover rough fittings in the Preliminary Determination, and one could reasonably infer that the deletion of the language was "unnecessary to the proper administration of the scope and may have merely added confusion to it"; and (2) the petitioners to the original Notice of Initiation would not have approved of the scope language if they had such clear intent to cover "rough fittings." Def.'s Resp. at 25–26.

The Court concludes that the (k)(1) source of the deleted language in the *Order* does not weigh in favor of either Commerce's or Plaintiffs' interpretations. Commerce did not provide an explanation at the time it deleted the reference to unprocessed products from the *Order*, so it is unclear what significance the Court can read into the deleted language at this point. The deleted language in the (k)(1) source of Exhibit 6 neither supports nor undermines Commerce's determination.

Declarations from Domestic Industry Executives

Commerce may consider secondary interpretative sources such as "industry usage" or "any other relevant record evidence." 19 C.F.R. § 351.255(k)(1)(ii).

Plaintiffs contend that "it bears observing that the [*Order*] has been in effect for more than 30 years without any confusion about whether "rough" butt-weld fittings were covered by the *Order*. . . . As the sworn declarations of members of the industry demonstrate, . . . no one in the [carbon steel butt-weld pipe fittings] industry has ever been confused about whether rough fittings are butt-weld pipe fittings in unfinished form." Pls.' Br. at 23.

Plaintiffs argue that Commerce did not properly consider contrary evidence on the record of declarations from domestic industry executives stating that "rough," "as formed," and "unfinished" fittings are, or have been, used interchangeably in the butt-pipe weld pipe fittings

[6] Contrary to Defendant's assertion, this argument is not waived because Plaintiffs had argued that Commerce's revision of the investigation's scope was evidence that "rough fittings" were subject to the *Order* during the administrative proceedings, and Commerce responded to their argument in the Preliminary Determination. *See* PDM at 11.

industry.[7] Pls.' Br. at 29; Petitioners' CMI Questionnaire Resp. at Ex. 1 ("Declaration of Patrick R. Benavides"), Ex. 2 ("Declaration of Jeffrey Griffith"), Ex. 3 ("Declaration of Bruce Rust"). Commerce determined that the industry declarations and the Petition were conflicting (k)(1) sources regarding the interchangeability of the terms "rough," "as formed," and "unfinished" fittings. Final IDM at 26 ("Even if the industry currently may use these terms interchangeably (per the petitioners' claim), the language of the Petition itself describes what constitutes an 'unfinished' and 'finished' fitting and the *Order* is clearly intended to only cover finished and unfinished fittings as described in the Petition."). While Commerce acknowledged that the terms "rough" fittings, "as formed" fittings, and unfinished fittings have been "used interchangeably at times in other segments of the proceeding," it dismissed the industry's "claim that there is no difference between a rough fitting and unfinished fitting" as simple confusion over these terms. *See id.* at 26–27.

These industry declarations detract from Commerce's determination because the industry declarations show that the terms "rough," "as formed," and "unfinished" fittings are, or have been, used interchangeably in the butt-pipe weld pipe fittings industry. *See* Decl. Patrick R. Benavides at 2 ("Historically and currently, the terms 'rough,' 'as formed,' or 'unfinished' fittings have been and still are used interchangeably in the butt-weld pipe fittings industry. They are universally understood to refer to the roughly shaped result of subjecting a cut length of pipe to the forming process."); Decl. Jeffrey Griffith at 3 ("The terms 'rough,' 'as formed,' and 'unfinished' fittings are used interchangeably in the butt-weld pipe fittings industry. In my 48[-]year experience, this has always been true. These terms are universally understood to refer to the roughly shaped result of subjecting a cut length of pipe to the forming process."); Decl. Bruce Rust at 3 ("The terms 'rough,' 'as formed,' or 'unfinished' fittings are and, to my knowledge, always have been used interchangeably in the butt-weld pipe fittings industry. These terms are universally understood to refer to the roughly shaped result of subjecting a cut length of pipe to the forming process.").

The Court observes that the declarations from industry executives establish a recognized practice and understanding in the industry for over 30 years that rough fittings are considered butt-weld pipe fittings in unfinished form subject to the *Order*.

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[7] These declarations are from Patrick R. Benavides, the Vice President and Chief Operating Officer of Tube Forgings; Jeffrey Griffith, the President of Mills Iron Works; and Bruce Rust, the General Manager of Hackney-Ladish.

If there is a conflict between secondary and primary interpretive (k)(1) sources, the primary interpretive sources will normally govern in determining whether a product is covered by the scope of the order at issue. 19 C.F.R. § 351.255(k)(1)(ii).

However, the Court is troubled here because the evidence on the record demonstrates that the industry has long understood that "rough fittings," also known as carbon steel in the rough shape of elbows, tees, or reducers, are butt-weld pipe fittings in unfinished form within the scope of the *Order*.

The Court does not agree with Commerce that the contrary evidence of the declarations of domestic industry executives should be ignored or minimized, particularly when weighing over 30 years of understanding and industry practice against a new policy that Commerce only developed in this covered merchandise referral request for the first time in 2023.

The Court remands for Commerce to reconsider or provide further explanation for disregarding the evidence of the industry declarations, particularly in light of Commerce's reconsideration on remand whether "rough fittings," or carbon steel pipe in the rough shape of an elbow, tee, or reducer, are butt-weld pipe fittings within the scope of the *Order*. Commerce may not lightly ignore decades of practice and understanding without providing more explanation for its determination. The Court remands this case for Commerce to answer these questions.

Prior Thailand Circumvention Determination

Commerce may look at previous or concurrent determinations, including prior scope rulings, memoranda, or clarifications pertaining to the order at issue. 19 C.F.R. § 351.225(k)(1)(i)(C). Commerce considered a prior circumvention determination[8] in its scope analysis, which concluded that fittings finished in the Kingdom of Thailand ("Thailand") from Chinese carbon steel cut to length pipe were circumventing the *Order*. *See* Final IDM at 25–26; *Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China* ("Thailand Circumvention Determination"), 59 Fed. Reg. 15,155 (Dep't of Commerce Mar. 31, 1994) (affirmative final determination of circumvention of antidumping duty order); *see also Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China* ("Thailand Preliminary Circumvention Determination"), 59 Fed. Reg. 62

[8] An anticircumvention inquiry is similar to a scope inquiry because they are both subsets of a scope ruling but differ because anticircumvention inquiries are recognized by 19 C.F.R. § 351.225(g)–(j), and they are the only types of scope rulings governed by a specific statutory scheme, 19 U.S.C. § 1677(j), and subsection (k) factors do not apply to circumvention scope inquiries. *U.K. Carbon & Graphite Co. v. United States*, 37 CIT 1295, 1300 (2013).

(Dep't of Commerce Jan. 3, 1994) (affirmative preliminary determination of circumvention of antidumping duty order).

Commerce relied on the Thailand circumvention inquiry to support its determination that "rough fittings" were excluded from the *Order*. Commerce determined that the subject merchandise in the Thailand circumvention inquiry, "unfinished pipe fittings produced in [China]," were equivalent to the "rough fittings" in the covered merchandise scope referral. Final IDM at 25. The subject merchandise in the circumvention inquiry were described as "imports into the United States of pipe fittings that were finished in Thailand from unfinished pipe fittings produced in [China]" and these "unfinished 'as-formed' pipe fittings" from China, *see* Thailand Preliminary Circumvention Determination; Thailand Circumvention Determination, "[underwent] heat treatment and finishing processes in Thailand." Final IDM at 25.

Notably, the Thailand circumvention inquiry highlights an inconsistency in Commerce's practices between 1994 and 2023. The Thailand circumvention inquiry in 1994 described the carbon steel pipe products that were cut to length, but not heat-treated or formed, as "unfinished butt-weld pipe fittings." *Id.* This is consistent with the understanding of the U.S. domestic industry, according to the (k)(1) secondary evidence of the industry declarations. Commerce then attempted to explain in the Final IDM that, for purposes of the covered merchandise referral request in 2023, those same products in the Thailand circumvention inquiry should no longer to be considered "unfinished butt-weld pipe fittings," but instead should be labeled "rough fittings." *Id.* This shows Commerce's contradictory practices and magnifies the fact that Commerce treated the same situation differently, without sufficient explanation.

Commerce determined that the **"** unfinished butt-weld pipe fittings" in the Thailand circumvention inquiry were actually equivalent to "rough fittings" because: (1) even though the circumvention inquiry used the term "unfinished" to describe the subject merchandise, "the record indicates that the products were instead rough fittings"; and (2) there is a distinction between a "pipe fitting in unfinished form as a subject fitting" and the "inquiry merchandise in the Thailand Circumvention Inquiry" as a material input used to produce subject unfinished and finished fittings that had yet to undergo stage two processing. *Id.* at 25, 26 n.143.

The Court finds problematic Commerce's reliance on the Thailand circumvention inquiry in the final covered merchandise determination, which confusingly stated that a product that Commerce previously called an "unfinished butt-weld pipe fitting" in the 1994 Thai-

land circumvention inquiry was no longer considered an "unfinished butt-weld pipe fitting" here, but instead was considered to be a "rough fitting." *Id.* at 25. It is contradictory for Commerce to have previously referred to a carbon steel product in the rough shape of an elbow, tee, or reducer, which was not heated or formed, as an "unfinished butt-weld pipe fitting" 30 years ago in 1994 (and apparently for the ensuing 30 years), and then claim that such product is no longer considered an "unfinished butt-weld pipe fitting," but should be considered a "rough fitting" in the 2023 Final IDM. This contradiction without justification is puzzling and disingenuous.

The Court concludes that the Thailand Circumvention Determination is a (k)(1) source that detracts from Commerce's determination that carbon steel products in the rough shape of an elbow, tee, or reducer, which were not heated or formed, are "rough fittings" rather than "unfinished butt-weld pipe fittings."

It is clear that after more than 30 years, Commerce suddenly and surprisingly changed its decades-long past practice without recognizing a switch in this case, and without providing a sufficient explanation to depart from its past practice. Even though Commerce does not specifically admit that it is departing from past practice and taking a new position in this case, that is clearly the situation here, with Commerce reversing its stance on "unfinished butt-weld pipe fittings." Both the Thailand circumvention inquiry and the declarations of the industry executives support Plaintiffs' contention that the carbon steel products in the rough shape of an elbow, tee, or reducer, not heated or formed, were considered to be "unfinished butt-weld pipe fittings" for over 30 years since the *Order* went into effect in 1992.

Commerce is entitled to change its views, but the Court concludes that Commerce acted arbitrarily by deviating from its decades-long interpretation and practice of considering products in the rough shape of an elbow, tee, or reducer, which were not heated or formed, to be butt-weld pipe fittings, without offering sufficient reasons. *SKF USA Inc. v. United States*, 263 F.3d 1369, 1382 (Fed. Cir. 2001) ("[A]gency action is arbitrary when the agency offer[s] insufficient reasons for treating similar situations differently." (quoting *Transactive Corp. v. United States*, 91 F.3d 232, 237 (D.C. Cir. 1996))).

The Court remands this case for Commerce to address the Court's concerns about contradictory evidence on the record and the failure to provide sufficient reasons for treating similar situations differently.

Administrative Exhaustion of the Costs and Value Added Issue

Plaintiffs contend that the costs and value added at various phases of the production process of butt-weld pipe fittings, which demon-

strate that the investment in equipment for sizing is not economical, supports their argument that Commerce's determination that the essential characteristics are imparted after stage two of the production process is not supported by substantial evidence. Pls.' Br. at 35–37. Defendant asserts that Plaintiffs waived their argument because Plaintiffs failed to raise this issue in their administrative briefs. Def.'s Resp. at 31.

Before commencing suit in the CIT, an aggrieved party must exhaust all administrative remedies available to it. "In any civil action . . . the Court of International Trade shall, where appropriate, require the exhaustion of administrative remedies." 28 U.S.C. § 2637(d). The Court "generally takes a 'strict view' of the requirement that parties exhaust their administrative remedies[.]" *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1381 (Fed. Cir. 2013). There are limited exceptions to the exhaustion requirement. *See Pakfood Pub. Co. v. United States*, 34 CIT 1122, 1145–47, 724 F. Supp. 2d 1327, 1351–52 (2010) ("[T]he court has waived the exhaustion requirement where it would have been futile for the party to raise its argument at the administrative level, as well as where the record indicates that . . . the agency in fact thoroughly considered the issue in question."); *see also Holmes Prod. Corp. v. United States*, 16 CIT 1101, 1104 (1992) ("[E]xhaustion may be excused if the issue was raised by another party, or if it is clear that the agency had an opportunity to consider it.").

Plaintiffs apparently did not raise the issue of cost of production/value added in their administrative case briefs, and also failed to address the waiver issue in their reply briefs before this Court. *See* Pls.' Reply. Therefore, the issue regarding costs and value added is waived.

CONCLUSION

The Court concludes that Commerce's reliance on (k)(1) interpretive sources is in accordance with law because of the ambiguous scope language. The Court concludes that Commerce's determination that "rough fittings" further processed in Vietnam were excluded from the scope of the *Order* is not supported by substantial evidence. The Court also concludes that Commerce's determination is not in accordance with law because Commerce acted arbitrarily by deviating from its decades-long interpretation and practice of considering products in the rough shape of an elbow, tee, or reducer, which were not heated or formed, to be in-scope butt-weld pipe fittings.

Accordingly, it is hereby

ORDERED that that this case shall proceed according to the following schedule:

(1) Commerce shall file its remand determination on or before April 2, 2025;

(2) Commerce shall file the administrative record on or before April 16, 2025;

(3) Comments in opposition to the remand determination shall be filed on or before May 16, 2025;

(4) Comments in support of the remand determination shall be filed on or before June 16, 2025; and

(5) The joint appendix shall be filed on or before June 23, 2025.

Dated: January 2, 2025
New York, New York

/s/ *Jennifer Choe-Groves*
JENNIFER CHOE-GROVES, JUDGE

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