Issued in Washington, DC, on March 1, 2024.

Thomas J. Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * Effective Upon Publication

AIRAC date	State	City	Airport name	FDC No.	FDC date	Procedure name
4/18/24	MO	Cape Girardeau	Cape Girardeau Rgnl	4/0772	2/5/24	RNAV (GPS) RWY 20, Orig-B.
4/18/24	MO	Cape Girardeau	Cape Girardeau Rgnl	4/0785	2/5/24	RNAV (GPS) RWY 2, Orig-A.
4/18/24	MO	Cape Girardeau	Cape Girardeau Rgnl	4/0787	2/5/24	RNAV (GPS) RWY 28, Amdt 1A.
4/18/24	WI	Middleton	Middleton Muni/ Morey Fld.	4/2321	2/9/24	RNAV (GPS) RWY 28, Amdt 2B.
4/18/24	NC	Wallace	Henderson Fld	4/4384	2/13/24	RNAV (GPS) RWY 9, Orig-A.
4/18/24	NC	Wallace	Henderson Fld	4/4385	2/13/24	RNAV (GPS) RWY 27, Orig-B.
4/18/24	MT	Helena	Helena Rgnl	4/5889	1/24/24	RNAV (GPS) Y RWY 9, Amdt 2.

[FR Doc. 2024–05539 Filed 3–15–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 165

[USCBP–2016–0053; CBP Dec. 24–04]

RIN 1515–AE10

Investigation of Claims of Evasion of Antidumping and Countervailing Duties

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

ACTION: Final rule.

SUMMARY: This document adopts as final, with changes, interim amendments to the U.S. Customs and Border Protection (CBP) regulations that were published in the **Federal Register** on August 22, 2016, as CBP Dec. 16–11, which implemented procedures to investigate claims of evasion of antidumping and countervailing duty (AD/CVD) orders in accordance with section 421 of the Trade Facilitation and Trade Enforcement Act of 2015. This document also announces that CBP deployed a case management system in April 2021, which CBP and the public use for filing, tracking, and adjudicating allegations of evasion of AD/CVD orders.

DATES: Effective on April 17, 2024.

FOR FURTHER INFORMATION CONTACT: Victoria Cho, Chief, EAPA Investigations Branch, Office of Trade, U.S. Customs and Border Protection, (202) 945–7900, or *victoria.cho@cbp.dhs.gov,* or Kristina Horgan, Supervisory International Trade Analyst, EAPA Investigations Branch, Office of Trade, U.S. Customs and Border Protection, (202) 897–9399, or *kristina.horgan@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. Enforce and Protect Act of 2015

On February 24, 2016, President Obama signed into law the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), which contains Title IV—Prevention of Evasion of Antidumping and Countervailing Duty Orders (short title ''Enforce and Protect Act of 2015'' or ''EAPA'') (Pub. L. 114–125, 130 Stat. 122, 155 (Feb. 24, 2016) (19 U.S.C. 4301 note)). EAPA established a formal process for U.S. Customs and Border Protection (CBP) to investigate allegations of evasion of antidumping and countervailing duty (AD/CVD) orders. Section 421 of TFTEA amended the Tariff Act of 1930 by establishing a new framework for CBP to investigate allegations of evasion of AD/CVD orders, under newly created section 517 (''Procedures for Investigating Claims of Evasion of Antidumping and Countervailing Duty Orders''), and required that regulations be prescribed as necessary, and provisions be implemented within 180 days of TFTEA's enactment. *See* 19 U.S.C. 1517.

B. Interim Final Rule

On August 22, 2016, CBP published an interim final rule (the ''IFR'') (CBP Dec. 16–11) in the **Federal Register** (81 FR 56477), setting forth procedures for the investigation of claims of evasion of antidumping and countervailing duty orders in a new part 165 in title 19 of the Code of Federal Regulations (19 CFR part 165), with a 60-day public comment period. The IFR became effective on August 22, 2016. On September 8, 2016, CBP published a technical correction in the **Federal Register** (81 FR 62004) to correct language in the definition of ''evade or evasion'' in 19 CFR 165.1, by adding a comma that was inadvertently omitted. On October 21, 2016, CBP published an extension of the comment period in the

Federal Register (81 FR 72692), providing an additional 60 days for interested persons to submit comments in response to the IFR in order to have as much public participation as possible in the formulation of the final rule.

Operations

The first EAPA allegation was submitted to CBP in September 2016, approximately one month after the interim regulations became effective. Between September 2016 and the end of fiscal year 2021, CBP's Trade Remedy Law Enforcement Directorate (TRLED) has processed approximately 490 EAPA allegations and initiated 179 investigations; in addition, CBP has processed 39 requests for administrative review and issued 19 final administrative determinations.

In these past few years, CBP has gained considerable expertise processing EAPA allegations and has continued to ensure that EAPA proceedings are transparent and that all parties are afforded an opportunity for full participation and engagement during the investigation. To enhance convenience and provide further transparency, on April 1, 2021, CBP deployed the EAPA Portal, an electronic case management system for the filing, tracking, and adjudicating of EAPA allegations, and maintaining an administrative record, in one centralized location, which may be accessed on CBP's website at *https://www.cbp.gov/trade/trade-enforcement/tftea/eapa* when clicking on the field titled ''Filing an EAPA Allegation.'' [1]

In the EAPA Portal, parties to the investigation may view decisions and public administrative record documents (including public versions of documents associated with the investigation), check the status of the investigation, and submit factual information, written arguments, and documents relevant to the investigation. The EAPA Portal also sends notifications to the parties to the investigation with deadline reminders and actions to be taken. In addition, when this final rule is effective, an alleger will be able to withdraw an allegation and a Federal agency will be able to withdraw a request for an investigation (referral) in the EAPA Portal.[2] With a new case management system in place, and CBP's extensive experience with the current EAPA process, CBP is now ready to finalize the interim regulations, with several modifications as described below.

II. Discussion of Comments

Although the interim regulatory amendments were promulgated without prior public notice and comment procedures pursuant to the agency organization, procedure, and practice exemption in 5 U.S.C. 553(b)(A), the IFR provided for the submission of public comments that would be considered by CBP before adopting the interim amendments as final. The 60-day public comment period was set to end on October 21, 2016, but was extended that day for an additional 60 days. The extended comment period closed on December 20, 2016.

CBP received 17 submissions in response to the publication of the interim regulations, each of them including comments on multiple topics. The comments involved various aspects of the EAPA process, from the initiation of an investigation to the administrative review of a determination as to evasion. CBP reviewed all public comments received in response to the interim final rule and made some changes to the interim regulations based on those comments. In addition, CBP has included some clarifications where needed to ensure a transparent investigation process. A description of the public comments received, along with CBP's analysis, are set forth below. The comments and responses have been grouped together by subpart of the EAPA regulations, where appropriate.

General Provisions (Subpart A)

Subpart A (General Provisions) provides definitions of terms relevant to the EAPA process, specifies the entries that may be the subject of an allegation, identifies when a power of attorney is required, and addresses the submission of business confidential information. This subpart further sets forth the means by which CBP may obtain information for EAPA proceedings, addresses the circumstances when CBP may apply adverse inferences in an EAPA investigation and in an administrative review, and details the reporting responsibilities in case of public health and safety issues associated with an investigation. Multiple comments were received regarding subpart A, dealing with questions on the various definitions in § 165.1, and the submission requirements in §§ 165.3 and 165.5. Some commenters requested clarification on certain aspects of the application of adverse inferences in case of a party's failure to comply with CBP's request for information.

Comment: Multiple commenters stated that CBP should not require the identification of an importer as a condition for initiation of an investigation. The commenters noted that Congress did not require the identification of an importer of record and that by doing so, CBP could be encouraging the proliferation of shell or paper companies to act as importers. The commenters further stated that TFTEA instructed CBP to investigate any allegation that reasonably suggests that covered merchandise has been entered into the customs territory of the United States through evasion. Therefore, the commenters suggest that CBP should remove the phrase ''by an importer'' in § 165.1 in the ''allegation'' definition, and, for the same reason, remove references to the identification of an importer in various sections of part 165, such as §§ 165.4(c)(3), 165.11(b)(3) and 165.14(b)(1). One commenter referenced the Trade Secrets Act (18 U.S.C. 1905) and the statute's goal to bar against unauthorized disclosure by government officials of confidential information received in the course of their employment or official duties, which could include the identity of an importer. The commenter argued that CBP may protect the identity of an importer without having to narrow the scope of the investigation by simply not requiring the specific identification of an importer of record in an allegation.

Response: CBP disagrees with the commenters' suggestion to remove language in the regulations that requires that an alleger provide the identity of the importer against whom an allegation is filed. The text of 19 U.S.C. 1517(b)(2) refers to ''. . . an allegation that *a person* has entered covered merchandise . . .'' (emphasis added), which requires the specific identification of an importer. Removing the reference to ''a person,'' *i.e.,* an importer, in the regulations, would require a statutory change prior to making a change in the regulation.

[1] Trade users must submit an EAPA allegation through the EAPA Portal. The EAPA Portal can be reached in two ways. First, through the Trade Violation Reporting (TVR) system, also known as e-Allegations, used for reporting various trade violations. Trade users can access e-Allegations at *https://eallegations.cbp.gov/s* and submit an EAPA allegation by clicking on the field entitled ''Report Enforce and Protect Act Violations.'' Second, trade users may also access the EAPA Portal via the EAPA website at *https://cbp.gov/trade/trade-enforcement/tftea/eapa* by clicking the field titled ''Filing an EAPA Allegation.'' To submit an EAPA allegation in the EAPA Portal, trade users must create a CBP user account first, at *https://www.login.gov/create-an-account.* As new technology becomes available, CBP may replace the current process or utilize additional methods for accepting EAPA allegations or requests for investigations from Federal agencies.

[2] Guidance for trade users regarding the EAPA Portal, and additional resources, such as a quick reference guide and a recorded demonstration on how to access and navigate within the EAPA Portal, can be found on CBP's website at *https://www.cbp.gov/trade/trade-enforcement/tftea/eapa* when clicking on the field titled ''Filing an EAPA Allegation'' at the bottom of the page.

Furthermore, CBP considers the requirements in the regulations to be consistent with the Trade Secrets Act. While the Trade Secrets Act protects against the unauthorized disclosure of confidential information, CBP does not consider the identity of the importer to be confidential. In fact, § 165.4(c)(3) specifically states that the name and address of an importer against whom the allegation is brought is not protected as business confidential information.

Comment: One commenter requested that an illustrative list of examples of evasion schemes be included in the definition of ''evade or evasion'' in § 165.1.

Response: CBP agrees with the commenter that it would be helpful to add some examples of evasion to the definition, such as the transshipment, misclassification and/or undervaluation of covered merchandise. Accordingly, CBP has added such language at the end of the definition of ''evade or evasion'' in § 165.1.

Comment: One commenter expressed concern that the EAPA provisions would be misused by domestic interested parties or competitors in an effort to disrupt the supply chains of foreign producers and U.S. importers. Another commenter raised the concern that the EAPA provisions have the potential to brand innocent importers as evaders of the law, regardless of their good faith efforts to comply with AD/CVD orders.

Response: While CBP understands these concerns, CBP carefully investigates and reviews the evidence, in accordance with all applicable legal requirements, at each stage of the process before making a determination as to evasion.

Comment: Multiple commenters asked CBP to expand the list of interested parties who are allowed to participate in EAPA investigations. The commenters argued that the limitation in the interim regulations deprives CBP of the resources, experience, and insights from other domestic producers or importers, especially in cases when Federal agencies request an investigation, such that the domestic industry affected by the evasion would have no right to provide information or otherwise participate in the investigation. One of the commenters suggested to amend the regulation to include in an EAPA investigation, whether initiated pursuant to the filing of an allegation by an interested party or pursuant to a request by a Federal agency, ''any other party meeting the definition of ''interested party'' in § 165.1 that submits an entry of appearance to CBP in a timely fashion,'' in addition to the interested party who filed an allegation and the importer who allegedly engaged in evasion. Two other commenters stated that CBP should expand the regulatory definition of ''interested party'' to align with the broader statutory definition of the ''United States importer'' in section 517(a)(6)(A)(i) of the Tariff Act of 1930.

Response: CBP disagrees with the commenters' requests to expand the list of interested parties who are allowed to participate in EAPA investigations. The primary focus of CBP's determination in an EAPA investigation is narrow, *i.e.,* whether evasion, as defined by 19 U.S.C. 1517(a)(5), occurred or not. CBP's current EAPA process does not allow for interested parties other than the alleger to participate during the first 90 days of an investigation.

Moreover, the regulatory definition of the term ''interested party'' aligns with the statutory definition. *See* 19 U.S.C. 1517(a)(6)(A) and 19 CFR 165.1. Both provisions allow for interested parties to participate in an investigation by filing an allegation. The statutory definition for ''interested party'' includes, *inter alia,* the United States importer of covered merchandise. The regulatory definition of an ''interested party'' in § 165.1, which is not limited to importers of record, but includes any importer of covered merchandise, including the party against whom the allegation is brought, is consistent with the statutory definition.

Comment: One commenter suggested to limit the definition of the term ''importer'' to an importer of record of covered merchandise and amend the definition of ''interested party'' in § 165.1 accordingly. The commenter argued that CBP did not provide any reason for expanding the definition beyond the importer of record, and thus only the alleger and alleged evader should be included in the definition.

Response: CBP disagrees with the commenter's definition of ''importer.'' In current practice, allegations are usually made against importers of record of covered merchandise, in accordance with the statute. However, CBP has defined the term ''importer'' by regulation in 19 CFR 101.1 as the importer of record, the consignee, the actual owner of the merchandise, or the transferee of the merchandise, and CBP may initiate investigations against such parties if an allegation reasonably suggests that evasion is occurring.

Comment: Multiple commenters asked for clarification of the interaction of the evasion provisions with the penalties provision (section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592)), the impact of a prior disclosure pursuant to section 592(c)(4) on an EAPA investigation, and identification of appropriate cases involving AD/CVD orders where penalties would be contemplated and potentially assessed. One of the commenters opined that an EAPA investigation is not a section 592 investigation and cannot lead to a section 592 penalties matter; thus, the investigation definition in § 165.1 should be deleted. Another commenter suggested that CBP clarify in § 165.28(a) that CBP is not required to initiate any other actions, including a section 592 proceeding. Lastly, a commenter asked for the revision of § 165.11 to expressly provide that the filing of an evasion allegation operates as a ''formal investigation'' to preclude the acceptance of a prior disclosure, with regard to the same set of facts, importer(s), entries and AD/CVD orders, under 19 U.S.C. 1592.

Response: CBP welcomes the opportunity to provide some clarification in response to the comments received on the interaction between an EAPA investigation and section 592 actions, as well as the impact of a prior disclosure on an EAPA investigation. An importer may be precluded from filing a prior disclosure for violations discovered during the course of an EAPA investigation but may not be precluded from filing a prior disclosure for violations discovered outside of the course of the EAPA investigation. The determination of whether a prior disclosure is accepted requires a fact-specific assessment as to the importer(s), entries and AD/CVD order(s) involved. In addition, CBP disagrees with the commenter's request for a regulatory change to the ''investigation'' definition in § 165.1 as the definition is accurate and should not be removed. CBP retains the discretion to accept or reject a prior disclosure for any facts that were not discovered during the course of an EAPA investigation.

Further, CBP does not agree with the amendment of § 165.28(a), as one of the commenters suggested. CBP appreciates the opportunity to clarify that CBP is not required to initiate any other actions, including section 592 proceedings. If CBP finds that entries are already liquidated when an affirmative determination as to evasion is made, then CBP's recourse to recover the lost duties is to initiate a section 592 proceeding or any other appropriate action separate from the EAPA proceeding. If TRLED makes an affirmative determination of evasion, pursuant to § 165.27, a Center of Excellence and Expertise (Center) will

be directed to collect cash deposits and take other enforcement actions as necessary. TRLED may also refer the case to other components within CBP and partner government agencies (PGAs) to review the facts and perhaps assess a penalty, depending on the circumstances.

Finally, CBP disagrees with the last commenter, that an EAPA investigation operates as a formal investigation and precludes prior disclosure under 19 U.S.C. 1592. The importer who is alleged to have engaged in evasion will have the burden to show that it is not aware of an ongoing investigation. If the importer is able to do so, and meets all other relevant criteria, then the importer may have the opportunity to file a prior disclosure with CBP.

Comment: Multiple commenters stated that the one-year threshold for entries that may be the subject of an allegation is too narrow as it severely restricts the allegations that can be pursued, and thus should be eliminated. One of the commenters argued that there is no statutory support for this limitation. Another commenter suggested the application of a statute of limitations (SOL) that is consistent with the SOL for violations of section 592 of the Tariff Act of 1930, as amended, in order to provide interested parties with sufficient time to uncover evasion and prepare an allegation. *See* 19 U.S.C. 1621. Finally, one commenter expressed support for the regulation and claimed that only entries made within one year before receipt of an allegation may be the subject of an allegation.

Response: CBP appreciates the comments but disagrees that CBP is limited to investigating entries of merchandise made within one year before the receipt of an allegation. As stated in the preamble of the IFR, CBP deemed a one-year period for an EAPA investigation appropriate as it would allow for a timely determination using current and readily available information, and prevent situations where CBP would encounter entries that were already liquidated, or importers that are no longer active. *See* 81 FR 56477, at 56479. Notwithstanding the above, the regulations provide CBP with the discretion to investigate other entries of such covered merchandise, and CBP will exercise such authority on a case-by-case basis. *See* 19 CFR 165.2.

Comment: One commenter stated that § 165.3 does not specify what action CBP will take if the required proof of execution of a power of attorney is missing.

Response: CBP agrees with the commenter's statement and, accordingly, has added a new paragraph (f) in § 165.3, clarifying that CBP will reject any submission, and not consider or place such submission on the administrative record, if a party has not provided proof of execution of a power of attorney to CBP, as required pursuant to the first sentence of paragraph (e) of § 165.3, within five business days of an interested party's first submission during an investigation or administrative review. CBP further added language in the new paragraph (f), that CBP will reject any submission, and not consider or place such submission on the administrative record, if a party has not provided proof of authority to execute a power of attorney pursuant to paragraph (c) of § 165.3 upon CBP's request.

Comment: One commenter stated that CBP did not specify what action it may take if a submission fails to meet the form requirements of § 165.5(b)(1), and thus proposed to add a paragraph (b)(4) to include the rejection of a submission as a consequence for failure to meet those requirements.

Response: CBP welcomes the opportunity to clarify that CBP will reject a submission that does not fulfill the form requirements of § 165.5(b)(1), and will not consider or place it on the administrative record. Accordingly, CBP added a new paragraph (b)(4) in § 165.5 to reflect this clarification. For the same reasons, CBP amended § 165.41(f) to clarify that CBP will reject a request for administrative review if the content requirements in paragraph (f) are not met.

Comment: One commenter stated that it is unclear whether the person making a submission pursuant to § 165.5(b)(2) can be the authorized representative of the party, the party itself, or both. The commenter stated that the final regulation should clarify who needs to sign each type of certification.

Response: CBP disagrees with the commenter's statement. The interim regulation is clear as it reads ''on behalf of,'' allowing for an authorized representative, such as an attorney, in addition to the party itself to make the certification. Moreover, this has not been an issue in practice.

Comment: One commenter expressed concern that adverse inferences may be imposed on a party if an importer complies with CBP's request, but the foreign supplier does not. The commenter requested clarification as to whether evasion could be found in the described scenario with regard to the foreign supplier, but not the importer, and what such a finding would mean in terms of the application of duties or other measures. Another commenter expressed a similar concern and asked for § 165.5 to be amended to include a requirement that CBP notify the importer whenever CBP issues a questionnaire to a foreign supplier to give the importer the opportunity to leverage its relationship with the supplier to obtain the supplier's full cooperation and avoid adverse inferences.

Response: A determination of evasion is based on an analysis of the record, including responses to requests for information by both the U.S. importer and foreign manufacturer. The scenario where one party cooperates to the best of its ability, and another does not, creates a difficult situation for CBP to conduct its analysis, and thus evasion could still be found, depending on the available information. CBP evaluates carefully on a case-by-case basis and may apply adverse inferences as to the party not acting to the best of its ability to cooperate with the investigation, in accordance with 19 U.S.C. 1517(c)(3)(B). The consequences, if any, that flow from such a finding will vary on a case-by-case basis. With regard to the suggestion to include a notification requirement in § 165.5, CBP provides the public versions of all documents, including questionnaires, to all parties to the investigation and does not believe that any additional notifications are necessary.

Comment: Two commenters noted that the use of a party's behavior in a prior proceeding should not be an indicator for whether to apply adverse inferences in the current proceeding, as stated in § 165.6(b), arguing that only the party's behavior in the current proceeding should be relevant for adverse inferences. Another commenter asked CBP to amend paragraph (b) to clarify the distinction between the intent of paragraph (a) and paragraph (b) by stating that CBP may select from facts otherwise available, including information from a prior determination in another CBP investigation, when applying adverse inferences under paragraph (a).

One of the commenters also stated that the way paragraph (c) of § 165.6 is written, it unfairly applies adverse inferences even if the information sought is already on the record. According to the commenter, it should be irrelevant which party provided the information as long as the information was provided to CBP.

Response: CBP disagrees; section 165.6, as written, accurately reflects the statutory language. Both the statute and the regulation distinguish between adverse inferences to be applied when a party fails to cooperate and comply with CBP's request for more information

in the current proceeding (§ 165.6(a) and section 412(b)(1)(A) of TFTEA), and adverse inferences to be applied based on a prior determination in another CBP proceeding, or any other available information (§ 165.6(b) and section 412(b)(2)(B) and (C) of TFTEA). However, to be clearer and avoid any confusion, CBP has revised § 165.6(b) so the regulatory language more closely resembles the statutory language in section 412(b)(2) of TFTEA, without making any changes to the substance of the language. In addition, CBP further amended § 165.6(b) to clarify that CBP may only consider ''any other available information'' that has been placed on the administrative record for purposes of applying adverse inferences.

CBP believes that when it comes to adverse inferences, the determination to be made is whether the party from whom CBP requested information provided the information. The fact that another party had already provided information to CBP does not relieve the party of its obligation to provide the requested information, as the other party's submission may have been incorrect or incomplete. Lastly, as to the commenter's unfairness argument, the regulations allow for due process via administrative review by CBP and judicial review by the U.S. Court of International Trade (CIT) in case an interested party believes that adverse inferences were inappropriately applied.

Comment: One commenter talked about instances where CBP requests information from a foreign government and receives no response, and stated that, in such situations, CBP would need to examine the facts available on the record to determine how to address the failure to respond, and reach a determination based on those facts available.

Response: CBP agrees as 19 U.S.C. 1517(c)(2)(a)(iv) and (c)(3) clearly state that CBP cannot apply adverse inferences as a result of failure of a foreign government to respond to a CBP information request. CBP will make a determination based on the facts available on the administrative record, which may include, among other things, adverse inferences made against other interested parties.

Comment: One commenter stated that the ''to the best of its ability'' standard in § 165.6(a) is vague and lacks a definition. The commenter argued that it is unclear as to what level of cooperation with CBP's information request is acceptable and what level is insufficient, making the regulatory language unfair.

Response: CBP disagrees with the commenter's statement. CBP ensures that the request procedure is transparent to those parties involved in an EAPA investigation by providing all documents on the administrative record. Further, the parties to the investigation, which include the party filing the allegation and the importer, and the foreign producer or exporter of the covered merchandise, are given sufficient time during an EAPA investigation to gather and provide the requested information to CBP. CBP then carefully evaluates the information on a case-by-case basis to determine whether the party cooperated and complied with CBP's request to the best of its ability and takes into account the specific circumstances surrounding each request before deciding whether adverse inferences are appropriate. The regulations also provide for due process in the form of administrative review and judicial review in cases where the importer is of the opinion that the ''to the best of its ability'' standard was met, but CBP nonetheless applied adverse inferences.

B. Initiation of Investigations (Subpart B)

Subpart B (Initiation of Investigations) deals with the initiation of an investigation, such as the filing of an allegation by an interested party or a request for investigation (referral) by another Federal agency, specifies the date of receipt of an allegation, and discusses the consolidation of allegations, as well as referrals to the Department of Commerce (Commerce) to determine whether merchandise described in the allegation is properly within the scope of an AD/CVD order. Commenters submitted questions on the availability of technical assistance and guidance for small businesses and requested additional methods for withdrawal of allegations and requests from Federal agencies. CBP also received several comments surrounding the process of the consolidation of allegations, and CBP's notification procedures. Lastly, commenters asked for additional information about the timing of CBP's scope referral and Commerce's scope proceeding.

Comment: While one commenter supported the requirement in § 165.11(e) for CBP to provide technical assistance and guidance to small businesses, another commenter was concerned with the provision and stated that CBP should not assist small businesses with the preparation and filing of an allegation. The commenter argued that it should be the filing party's responsibility to meet the filing requirements in order to maintain a fair and transparent investigation.

Response: CBP appreciates the comments. Small businesses are entitled to technical assistance, upon request, from CBP if they satisfy the applicable standards set forth in 15 U.S.C. 632 and 13 CFR part 121. CBP notes that section 411(b)(4)(E) of TFTEA requires the provision of technical assistance and advice to eligible small businesses to prepare and submit an allegation. Furthermore, CBP encourages filings by small and medium businesses and continues to provide technical assistance to those businesses upon request.

Comment: One commenter suggested that CBP include a paragraph (f) in § 165.11, limiting communications with CBP to the parties to the investigation. The commenter asked CBP not to publicize the filing of an allegation or accept or respond to any unsolicited oral communication concerning the allegation or investigation from any person other than from a party to the investigation prior to a determination to not initiate an investigation under § 165.15, or a determination as to evasion under § 165.27(a).

Response: CBP disagrees with the commenter's request to include a paragraph (f) in § 165.11 that would limit communications to the parties to the investigation. CBP believes that the notice of initiation of an investigation, which includes facts and evidence from the submitted allegation, is the best time at which to notify all parties to the investigation, as well as the public, in an effort to make the EAPA proceedings as transparent as possible. If, and when, unsolicited information is submitted to CBP regarding an allegation or investigation, CBP has the discretion to decide, throughout the investigation, if it will place this information on the administrative record or not (including prior to the notice of initiation of an investigation).

Comment: Multiple commenters disagreed with the term ''date of receipt'' in § 165.12(a). The commenters argued that the overall intent of TFTEA is for CBP to proceed swiftly and adhere to strict deadlines, but claimed that the way the interim regulation is written, the date of receipt is entirely within CBP's control, and thus the regulatory language runs counter to the statutory language that states unambiguously that not later than 15 business days after receiving an allegation, CBP shall initiate an investigation. *See* 19 U.S.C. 1517(b)(1). For the same reasons, additional commenters requested that CBP specify the exact number of days within which CBP is required to issue

an acknowledgment of receipt, one of the suggestions being that the deadline is no later than two days after receipt of the allegation.

Response: CBP disagrees with the commenters' request to redefine the term ''date of receipt'' and specify an exact number of days within which CBP issues an acknowledgment of receipt of an allegation. It is clearly stated in the regulation that an allegation is received when CBP acknowledges a properly filed allegation. An allegation cannot be considered to be received until it is properly filed, *i.e.,* the allegation contains all the information and certifications required pursuant to § 165.11. The statute and interim regulations provide CBP the flexibility to properly examine the allegations as resources allow. Initiating an investigation within 15 business days of an allegation being in CBP's possession could lead to an inefficient use of CBP's resources, as poorly filed allegations or incomplete allegations would cause CBP to perform work that should have been done by the alleger.

Comment: One commenter called attention to a scenario that could arise in the context of an interaction between § 165.12 (date of receipt of an allegation) and § 165.2 (entries dating back to one year before receipt of an allegation). The commenter stated that, depending on the time of receipt of the allegation by CBP pursuant to § 165.12, the time period for investigating entries made within one year prior to CBP's receipt of the allegation could become shorter unintentionally if CBP takes time to acknowledge the receipt of the allegation, and thus entries of allegedly covered merchandise could potentially end up outside of the one-year period from the date of receipt, as specified in § 165.2.

Response: CBP disagrees that the regulation should be changed to cover entries made within one year before the original date of submission of the allegation, instead of the date of receipt of the allegation. CBP acknowledges that the scenario described above could make it difficult in certain instances to cover the alleged actions in the time frame set forth in § 165.2. However, as mentioned above in response to another comment, it is in CBP's discretion to investigate other entries of covered merchandise, *i.e.,* entries outside of the one-year time frame, if the circumstances warrant.

Comment: One commenter stated that CBP should amend § 165.12(b) to provide for consequences for withdrawing an allegation, such as prohibiting re-submission of a new allegation for a specified time period after withdrawal. In addition, the commenter stated that there should be consequences for providing false allegations.

Response: CBP disagrees with the commenter that consequences should be tied to a withdrawal of an allegation. CBP further notes that consequences for making false statements in EAPA investigations are provided for in § 165.5(b)(3).

Comment: One commenter asked CBP to amend § 165.12(b) and § 165.14(a) to allow for the withdrawal of a submission through any other method approved or designated by CBP, in addition to email, to make these provisions consistent with other provisions, such as § 165.5(b)(1) and § 165.11(a).

Response: CBP agrees with the commenter. One of the new functionalities of the EAPA Portal is the ability for parties to submit withdrawal requests through this system as a method approved or designated by CBP. Accordingly, CBP has amended the language in §§ 165.12(b) and 165.14(a) to allow for additional methods for the submission of withdrawal requests. As mentioned above, this functionality will be available in the EAPA Portal upon effectiveness of this final rule.

Comment: One commenter asked CBP to consolidate allegations prior to the initiation of an investigation, noting that the ''reasonably suggests'' standard in § 165.15(b)(2) is met in a case where multiple importers are contributing to an evasion scheme, but each importer-specific allegation may present, on its own, insufficient information to satisfy the initiation standard. The commenter stated that it would be imperative under those circumstances for CBP to consider and consolidate the multiple allegations to meet the ''reasonably suggests'' standard.

Response: Under § 165.13(a), CBP has the authority to consolidate allegations at any point prior to the issuance of a determination (even prior to the initiation of an investigation) and may do so if certain criteria set forth in § 165.13(b) are met.

Comment: One commenter suggested that CBP modify its regulations to grant the parties to the investigation an opportunity to comment on (or object to) consolidation prior to any decision to consolidate. The commenter argued that such a regulatory change would promote engagement with the parties as to why or why not consolidation would be beneficial or burdensome.

Response: CBP disagrees with the commenter's suggestion to modify the regulatory language. The interim regulations already include the ability for comments to be placed on the administrative record regarding consolidation of allegations once interim measures are announced. Pursuant to § 165.23(c), the parties to the investigation have the opportunity to submit factual information up to day 200 of the investigation. Relatedly, CBP has revised the regulatory language in § 165.23(c)(2) providing CBP with the discretion to officially extend the 200-day deadline for providing factual information, as discussed in more detail in section III below.

Comment: One commenter wrote that a consolidation of allegations does not seem appropriate in evasion investigations because only the importer is submitting the import declaration as to whether merchandise is covered by an AD/CVD order, and only the importer may evade an AD/CVD order. The commenter opined that a mere similarity of covered merchandise should not be the basis for a claim of evasion and, thus, not a basis for consolidation.

Response: CBP disagrees with the commenter. Each EAPA allegation regarding an importer stands on its own merit. CBP judiciously uses the consolidation ability and bases consolidation on various criteria, such as those listed in § 165.13(b)(1)–(4). When allegations against importers are consolidated at the interim measures point, it is because there is reasonable suspicion that all the importers are engaged in evasion.

Comment: Two commenters stated that CBP should allow for the filing of one allegation against multiple importers if they are involved together in a duty evasion scheme. Given that the entities involved in an evasion may use a host of different importers of record as alter egos by which to improperly enter goods, limiting an allegation to a single importer would decrease efficiency for filers of allegations and CBP, and increase the burden to determine which importer was involved in an evasion. One of the commenters added that if confidentiality is a concern, CBP should implement an administrative protective order (APO) process in such cases.

Response: CBP disagrees with both commenters. Every EAPA allegation stands on its own. Allowing one allegation against multiple importers would be problematic if the alleger did not correctly name one of the importers or provided insufficient facts against one of the importers. In that instance, the alleger would have to withdraw the allegation against all the importers in order to re-submit an allegation against only one or more importers. In addition, since the statutory language in 19 U.S.C.

1517(b)(2) (''. . . allegation that *a person* has entered covered merchandise . . .'') (emphasis added) is written in singular form, allowing allegations against more than one importer would be inconsistent with the current statutory language and would require a statutory change. Nonetheless, CBP may consolidate allegations under certain circumstances. However, as explained in more detail below, CBP will provide for the use of APOs as part of the EAPA process going forward.

Comment: Multiple commenters voiced a concern regarding the 95-day period for notification of CBP's decision to initiate an investigation pursuant to § 165.15(d)(1). The commenters argued that such a lengthy delay in notifying the alleged evader about the initiation of an investigation could impede an importer's due process rights by significantly limiting the time to prepare a defense. It could deprive the alleged evader of an opportunity to provide information or arguments until after the interim measures are in effect. For similar reasons, another commenter asked for immediate publication of notice of the initiation of an investigation to enhance transparency.

Response: CBP disagrees with the commenters' suggestion that CBP issue a notice of initiation of an investigation earlier than 95 calendar days after a decision to initiate has been made. CBP needs adequate time to investigate the alleged evader's actions, before notifying the parties to the investigation about the initiation of an investigation. Issuing a notice of initiation early would allow the alleged evader to change its tactics in order to disrupt CBP's investigatory efforts. Pursuant to 19 U.S.C. 1517(b)(1), CBP must make a decision as to whether the allegation reasonably suggests evasion within 15 business days of receiving a properly filed allegation in order to initiate an investigation. No later than 90 calendar days after commencing an investigation, CBP must make a decision as to whether there is reasonable suspicion that covered merchandise has been entered into the U.S. customs territory through evasion. If CBP finds reasonable suspicion, CBP issues a combined notice of initiation of investigation and interim measures within five business days of that decision. Alternatively, if no interim measures are taken, CBP may issue a notice of initiation of investigation only, by day 95 of the case. Thus, for ease of administrability of this regulation and others in part 165 that provide for the notification of decisions five business days after a decision has been made, CBP has revised § 165.15(d)(1). The revised regulation states in the first sentence that CBP will issue a notice of its decision to initiate an investigation to all parties to the investigation no later than five business days after day 90 of the investigation, removing the current reference to the 95-calendar-day period. For consistency purposes, CBP also has changed the second sentence in paragraph (d)(1) to state that in case of interim measures, a notice to all parties to the investigation will occur no later than five business days after day 90 of the investigation.

Furthermore, this change will make the regulatory language consistent with the statutory language, which only mentions a 90-day timeline, and will also create uniformity for the processes for initiating and notifying of an investigation, and for taking and notifying of interim measures. Notwithstanding those time frames, CBP may make a decision earlier than 90 days if it is ready to do so after a thorough investigation and notify the parties to the investigation within five business days of that decision. Additionally, when revising § 165.15(d)(1), CBP has replaced the word ''notification'' in the existing regulation with ''notice'' since CBP serves an actual notice of initiation of an investigation on the parties to the investigation, as opposed to notification of the parties in some other fashion.

Comment: One commenter asked CBP to amend § 165.15(d) to provide that CBP notify not only the interested party who filed the allegation, but also the importer alleged to have engaged in evasion in a case where CBP determines to not initiate an investigation.

Response: CBP does not agree with the commenter to amend the regulation. In order to discourage any potential retaliatory actions by the alleged evader against the alleging party, CBP will not notify the alleged evader in case of a decision to not initiate an investigation. If CBP determines to not initiate an investigation due to insufficient evidence that there is a likelihood of evasion, CBP does not see a need to make the alleged evader's name public in a notice to not initiate an investigation.

Comment: One commenter asked that CBP provide for the opportunity to request an administrative review of a decision to not initiate an investigation so that the Commissioner of CBP may assess whether the decision was rendered in accordance with the legislative intent of a functioning mechanism for potential duty evasion and the plain language of the EAPA.

Response: Under the plain language of paragraph (f) of 19 U.S.C. 1517, administrative review may be requested for determinations made under 19 U.S.C. 1517(c). No provision in the statute authorizes CBP to conduct an administrative review of a decision to not initiate an investigation, which is not a determination under 19 U.S.C. 1517(c). Furthermore, CBP provides technical assistance to allegers on strengthening their allegations as a matter of practice and allegers have the opportunity to refile insufficient allegations as more information becomes available which would show that potential evasion is occurring.

Comment: One commenter recommended that the regulations be revised to create a single time frame for the notification of decisions to initiate and to not initiate an investigation and suggested both time frames be within 30 days of receipt of an allegation.

Response: CBP disagrees with the commenter's recommendation for the creation of a single time frame for the notification of CBP's decisions to initiate and to not initiate. Due to the different nature of these decisions, it is not practical to have one single timeframe for CBP to follow. There are different evidentiary standards and different timing requirements attached to the two types of decisions. As mentioned above, CBP has 15 business days to determine whether to initiate or to not initiate an investigation under the ''reasonably suggests'' standard. If CBP determines that it will not initiate an investigation, it will notify the alleger within five business days of that decision pursuant to § 165.15(d). If CBP determines within 15 business days of a properly filed allegation that it will initiate an investigation, CBP usually takes 90 calendar days to determine whether ''reasonable suspicion'' exists before making a decision to implement interim measures (or not) and informing the alleger and importer in case of a decision to implement interim measures. Thus, a notification 30 days after receipt of an allegation, as suggested by the commenter, is generally too short a time frame for CBP to examine all the facts and both determine whether to initiate an investigation and whether there is reasonable suspicion that evasion is occurring.

Comment: One commenter asked CBP to specify how CBP will notify of its decision to initiate, and asked CBP to require parties making allegations to provide certain information, such as the name of a contact person, mailing and email address of the importer alleged to have evaded, the foreign producer or exporter of covered merchandise, and the government of the country from

which the covered merchandise was exported.

Response: CBP has been providing notices of initiation of an investigation to the parties to the investigation pursuant to § 165.15(d)(1) via email. With the implementation of the EAPA Portal, CBP notifies the parties to the investigation through the system via an email to the alleging party and the alleged evader. In addition, CBP publishes public versions of the notices of initiation of an investigation on its website. Further, to respond to the second part of the comment, CBP already requires name and address for importers; any additional specific contact information would be too burdensome for allegers to include in an allegation, as not all the contact information the commenter listed above is relevant, and, in some instances, it is already publicly available. CBP believes that requiring this additional information would hinder the submission of allegations, without benefit to the EAPA investigation process.

Comment: One commenter stated that CBP should add language that would authorize CBP to self-initiate cases where the criteria in § 165.15(b) are met.

Response: CBP disagrees with the commenter. An amendment of § 165.15(b) would require a statutory change, as 19 U.S.C. 1517(b)(1) and (b)(3) allow for the initiation of an investigation pursuant to the submission of an allegation by an interested party or a request by another Federal agency, but not self-initiation by CBP.

Comment: One commenter stated that the ''reasonably suggests'' standard in § 165.15(b)(2) burdens domestic producers having to prove evasion at the outset in order to have an investigation initiated, whereas the statute only asks for information reasonably available to the party who filed the allegation. *See* 19 U.S.C. 1517(b)(2)(B).

Response: CBP disagrees with the commenter. Pursuant to 19 U.S.C. 1517(b)(2)(B), the allegation must be accompanied by information reasonably available to the party who filed the allegation. However, the threshold for initiating an investigation is that the information provided by the alleger reasonably suggests that evasion occurred, pursuant to 19 U.S.C. 1517(b)(1), which is the same standard as in § 165.15(b)(2). The regulatory language does not unduly burden the alleger by imposing a stricter standard. Moreover, CBP evaluates on a case-by-case basis the merits of each allegation and decides if the ''reasonably suggests'' standard for initiation of an investigation is met.

Comment: One commenter suggested that CBP periodically publish examples of information that was deemed reasonably available to the interested party and sufficient to support an allegation in prior investigations, as well as examples of information sufficient to meet the initiation standard.

Response: CBP currently informs the public through outreach to the industry in the form of presentations on EAPA and provides technical assistance and guidance when allegations are filed. In addition, as mentioned above, CBP publishes public versions of notices of initiation of an investigation on *CBP.gov,* providing examples of information that meets the initiation standard.

Comment: One commenter stated that CBP should urge Commerce to make public the procedures it intends to use in case of a covered merchandise referral and include provisions to allow interested parties to file comments.

Response: CBP disagrees with the commenter. Commerce decides how to best respond to covered merchandise referrals in EAPA investigations, according to its authority and current practices. Moreover, the referral process has been working well between the two agencies and CBP does not see a need for a change.

Comment: One commenter supported the requirement in § 165.16 that CBP refer a scope issue to Commerce at any point after receipt of the allegation, whereas a second commenter stated that CBP should, where possible, wait until after the issuance of interim measures to request a covered merchandise determination from Commerce. The second commenter argued that if CBP requested a covered merchandise determination prior to interim measures, then the covered merchandise referral might be the first time that an importer or other party learned about the evasion proceedings, which could undermine CBP's law enforcement interest to quickly investigate the allegations and gather information prior to issuing interim measures. In addition, the second commenter asked CBP to encourage Commerce to act expeditiously when processing a covered merchandise referral.

Response: CBP appreciates the comments. CBP decides on a case-by-case basis whether there is a need to refer scope issues to Commerce. According to § 165.16(a), CBP may refer the issue to Commerce for Commerce to determine whether imported merchandise constitutes covered merchandise, at any point after receiving the allegation. The statute (19 U.S.C. 1517(b)(4)) does not limit CBP's ability to refer a scope matter to Commerce within a certain time frame but allows CBP to make this decision depending on the circumstances of the specific investigation. With regard to the second part of the last comment, CBP has no jurisdiction over Commerce's authority to set timelines, and no influence over another agency's internal processes.

Comment: One commenter asked that CBP modify the interim regulations to further explain Commerce's covered merchandise proceeding, clarify whether or not interested parties would be able to participate in that proceeding, and whether Commerce's scope determination is appealable.

Response: Commerce processes covered merchandise referrals and determinations according to its own statutory and regulatory authority and CBP cannot amend CBP's regulations to discuss or clarify Commerce's authority and procedures. Nor is CBP in a position to opine on judicial review related to Commerce proceedings. We note, however, that Commerce has promulgated regulations to address covered merchandise referrals from CBP, at 19 CFR 351.227.

Comment: One commenter asked that CBP add a definition in § 165.16(c) for the word ''promptly.'' The commenter also suggested that CBP make a referral to Commerce within 30 days of initiation of the investigation, and CBP provide notice of the referral within five days of the referral.

Response: CBP disagrees with the commenter's request to add a definition for the word ''promptly.'' CBP makes determinations regarding covered merchandise referrals on a case-by-case basis and refers scope issues to Commerce as appropriate. As stated above, CBP may refer to Commerce at any point after receipt of an allegation. Further, CBP notifies the parties to the investigation as to when CBP sends the covered merchandise referral to Commerce.

Comment: One commenter argued that CBP should provide for a mechanism for an interested party to seek relief when CBP improperly refuses to refer a scope issue to Commerce and for situations where CBP improperly suspends liquidation of entries when the scope issue is being disputed.

Response: CBP disagrees with the commenter's argument. CBP works with the appropriate internal subject matter experts during an EAPA investigation and, in addition, works with the Customs Liaison Unit at Commerce, and

refers cases to Commerce regarding the scope of an AD/CVD order when appropriate. The covered merchandise referral to Commerce pursuant to 19 U.S.C. 1517(b)(4) is a specific authority for CBP to use in EAPA investigations, as needed, and should remain within CBP's discretion. Apart from CBP's authority to refer issues to Commerce for a covered merchandise determination, an interested party also has the ability to seek resolution of a scope issue before Commerce pursuant to Commerce's regulations found at 19 CFR 351.225 and 19 CFR 351.227. CBP does not believe that an additional mechanism is needed in this rulemaking. With regard to the second part of the comment, CBP does not believe that a process is needed for a situation where the importer alleges that CBP improperly suspended liquidation of entries when the scope was being disputed. If CBP determines that there is reasonable suspicion that the importer entered covered merchandise into the customs territory of the United States, TRLED will instruct the Center to suspend liquidation of entries of such covered merchandise that entered on or after the date of initiation of the investigation or extend the period for liquidating each unliquidated entry of such covered merchandise that entered before the date of the initiation of the investigation, and take other measures necessary to protect the revenue. CBP needs to conclude its investigation to issue a determination as to evasion, and does not overturn interim measures, such as the suspension of liquidation or the extension of the liquidation period, until a determination has been made.

Investigation Procedures (Subpart C)

Subpart C (Investigation Procedures) includes provisions setting forth the EAPA investigation procedures, such as the maintenance of an administrative record, the time period provided for an investigation and the deadline for making a determination, the types and requirements for the submission of factual information, and the issuance of interim measures. This subpart also describes CBP's authority to conduct verifications of information, deals with the submission of written arguments to CBP and responses to written arguments, and finally sets forth the process for the issuance of a determination as to evasion and the assessment of duties and other actions in case of an affirmative determination. Commenters submitted questions regarding public access to the administrative record, questions surrounding the submission of factual information, and the interim measures process, as well as the verification process.

Comment: One commenter stated that it is unclear from the regulations how and to what extent parties to the investigation would be able to access public information during the course of the investigation or administrative review. The commenter asked that CBP amend the regulations to include a provision that sets forth where CBP would maintain an up-to-date public administrative record, how CBP would guarantee access, and when and how CBP would share public information.

Response: The EAPA Portal provides the parties to the investigation with access to the public documents and public versions of documents relating to the EAPA proceeding and allows the parties to the investigation to view the public administrative record. In addition, CBP publishes public versions of notices of initiation of an investigation, notices of initiation of an investigation and interim measures, covered merchandise referrals, and determinations as to evasion on its website, in a timely manner. Finally, CBP appreciates the opportunity to announce that CBP has started publishing public versions of final administrative review determinations.[3] CBP has uploaded earlier public versions of final administrative review determinations to its website.

Comment: While one commenter supported the opportunity for parties to the investigation to submit factual information pursuant to § 165.23(b), another commenter asked CBP to clarify in § 165.23(a) that CBP may request information from any party who has relevant information.

Response: CBP appreciates the comments. However, CBP disagrees with the second commenter that a regulatory change is needed to clarify that CBP may request information from any party who has relevant information. The universe of persons from whom CBP may request information pursuant to § 165.23(a) is broad, and CBP does not believe that it needs to be specifically defined.

Comment: One commenter stated that it would be useful for the purpose of identifying an importer, especially in situations where importers are incorporated under multiple different names, or when several related companies act as importers of record through an agent, that CBP include in the scope of an EAPA investigation activities engaged in by companies related to an identified importer, which support the allegation.

Response: CBP disagrees with the commenter's suggestion. Although an alleger is free to include information about the activities of a company related to an identified importer in its allegation, the statutory language does not require the inclusion of such information. Furthermore, such a requirement would create an additional barrier that may inhibit the submission of some legitimate allegations.

Comment: One commenter supported the establishment of a service list for purposes of serving other parties with public versions of documents, and asked CBP to amend the regulations to set forth the requirements for the maintenance of such a list.

Response: CBP does not agree with the commenter's request to add a requirement for maintenance of a service list in the regulations. CBP currently releases public versions of documents to the parties to the investigation, which CBP believes is sufficient. Public documents and public versions of documents are also available to the parties to the investigation in the EAPA Portal.

Comment: Multiple commenters asked CBP to modify its regulations so that parties can submit confidential documents via a secure electronic filing system, as opposed to email, and allow attorneys and other interested parties to easily monitor the ongoing investigation. One commenter also asked CBP to provide for the hand delivery of documents if documents contain confidential information, or delivery by mail if the document to be submitted exceeds a certain size limit.

Response: The EAPA Portal allows parties to submit confidential documents, and the parties to the investigation, as well as their attorneys, are able to monitor the status of an EAPA proceeding. Further, CBP already allows for hand delivery on a case-by-case basis, in instances of voluminous submissions or the submission of confidential documents. A party who wishes to hand-deliver documents must file a request with TRLED and provide a reason why the documents cannot be filed electronically. The regulation does not need to be amended as the option of hand delivery is already included in § 165.5(b)(1) as a method approved or designated by CBP. Regarding the last

[3] The final administrative review determinations may be found online at *https://www.cbp.gov/trade/trade-enforcement/tftea/eapa* by clicking on the field titled ''Request for Administrative Review,'' and then on the blue ''Final Administrative Determinations'' button. The published determinations may also be found online at *https://www.cbp.gov/trade/trade-enforcement/tftea/eapa/requests-administrative-review* by clicking on the field titled ''Final Administrative Determination,'' or on the blue ''Final Administrative Determinations'' button.

comment, delivery by mail is not allowed, but if there are size limitation issues with the EAPA Portal, parties may contact the EAPA Investigations Branch at *eapallegations@cbp.dhs.gov.*

Comment: One commenter requested that CBP add a provision in the regulations to allow for the filing of a ''Bracketing Not Final'' version of a submission first, followed by the final, public version the next business day. The commenter believes that this additional time is necessary to review any business confidential information to make sure that the public version is correct. The commenter argued that this change would make CBP's regulations consistent with those of Commerce, the U.S. International Trade Commission (ITC), and the CIT.

Response: CBP disagrees with the commenter's request to allow for the filing of a ''Bracketing Not Final'' version first, followed by a final, public version the next business day. Section 165.4(a)(2) states that the public version should be filed on the same date as the business confidential version and gives CBP the opportunity to reject a public version, if needed. Simultaneous filing ensures that the other parties to the investigation timely receive documents, since only public versions are provided to other parties in an EAPA investigation. Commerce, ITC, and CIT procedures differ in this regard, in that confidential versions are provided to other parties under protective orders.

Comment: One commenter asked CBP to modify § 165.23(c)(1) to set a deadline for service of the public version of a submission of factual information, which currently is missing in the regulations.

Response: CBP disagrees with the commenter. Section 165.23, first sentence, refers to §§ 165.4 and 165.5 with regard to the submission requirements. Specifically, § 165.4(a)(2) addresses the requirement to submit a public version on the same date as the business confidential version.

Comment: One commenter asked CBP to clarify in § 165.23(c)(2) whether the service requirement applies to the submission of all factual information, or only to factual information submitted after a certain point in the investigation. The commenter stated that pursuant to § 165.23(c)(2), parties submitting factual information are required to serve on parties to the investigation a public version of the submission. The commenter went on to say that if an alleging party submitted factual information after the initial allegation, but prior to the issuance of interim measures, it would be unclear whether service of that information on other parties would interfere with CBP's enforcement efforts in case CBP had not yet notified certain parties of the investigation.

Response: CBP disagrees with the commenter's request to modify § 165.23(c)(2). The service requirements in § 165.4 apply throughout the investigation; there is no distinction in the regulation, or in practice, regarding the timing of the submission of factual information. However, CBP wishes to clarify that any documents submitted prior to the notice of initiation of an investigation will be served by TRLED on the parties to the investigation soon after the issuance of the notice, regardless of who submitted those documents. For additional clarity, CBP added a sentence to that effect at the end of § 165.15(e).

Comment: One commenter stated that CBP should adopt a regulation that imposes interim measures if Commerce finds that imported merchandise is covered by an AD/CVD order and that tolls the CBP deadlines for the completion of the investigation. Otherwise, the commenter noted, if Commerce issues a scope determination which is subject to judicial review and CBP's regulations do not toll CBP's administrative deadlines during the pendency of judicial review, it may be the case that an importer is labeled an ''evader'' even though the underlying facts for the scope determination are subject to dispute. The commenter opined that adding a regulation as described above would ensure that importers will not be labeled as duty evaders unless and until all their due process rights have been exhausted.

Response: CBP disagrees with the commenter. CBP considers decisions by various internal stakeholders as well as other government agencies when reaching the decision to take interim measures, but CBP has independent authority to determine if or when to impose interim measures. CBP takes interim measures after careful examination of the facts and information provided, concluding that there is reasonable suspicion that evasion has taken place. Judicial review of a scope determination should not put the EAPA investigation on hold because CBP needs to timely continue its process, as provided in the regulations, to fully investigate the facts relating to the allegation and make a determination as to evasion. CBP notes that Congress, through the statutory timelines set forth in EAPA, made clear that it intended prompt action on the part of CBP.

Comment: One commenter requested that CBP amend § 165.24(c) to state that CBP will share the public administrative record with Commerce upon issuing interim measures. The commenter argued that the connection between Commerce's administration and enforcement of AD/CVD orders and CBP's efforts to combat evasion under EAPA necessitates that the agencies share information and work together to maximize enforcement.

Response: CBP does not see a need to amend the regulations so CBP may share the administrative record with Commerce after the issuance of interim measures. CBP regularly shares information with Commerce, based on the circumstances of the case and in accordance with law.

Comment: One commenter asked CBP to clarify in § 165.25 that the verification process takes place sometime between initiation of the investigation and the 200th calendar day after the initiation, that a verification agenda is included, and modify the regulations to provide for a verification report that CBP will place on the administrative record.

Response: CBP does not agree with the commenter that the verification process must be completed by the 200th calendar day after initiation of an investigation. Rather, verification generally occurs after all new factual information has been submitted to the administrative record. The deadline for voluntary submission of new factual information is established in § 165.23. To clarify that CBP may conduct verifications before and after the deadline for voluntary submission of factual information, CBP has revised the language in § 165.25(b). In addition, CBP added a sentence in paragraph (b) to confirm that the purpose of the verification is to verify the accuracy of the information already placed on the administrative record. Regarding the commenter's second request, CBP already provides a verification agenda to the parties to the investigation and does not believe that it needs to be specifically stated in the regulation.

To respond to the commenter's request regarding the verification report, CBP added a new paragraph (c) stating that CBP will place a report about the verification, *i.e.,* the verification report, on the administrative record. CBP will also require the party that underwent the verification to place verification exhibits, which will generally contain information compiled and verified by CBP at CBP's discretion during the verification, on the administrative record. In accordance with § 165.4, CBP and the party that underwent the verification will provide public versions of their verification documents, which will be served on all parties to the

investigation. CBP will not accept voluntary submissions of new factual information at the verification after the deadline for such submissions, as referenced in § 165.23. Further, parties to the investigation cannot submit rebuttal information to either CBP's verification report or the verification exhibits. Parties to the investigation, however, may submit to CBP written arguments in relation to the verification report and/or its exhibits in accordance with § 165.26.

CBP also added a new paragraph (d) stating that if CBP determines that information discovered during a verification is relevant to the investigation and constitutes new factual information, CBP will place it on the administrative record separately, in accordance with § 165.23, and allow the parties to the investigation to submit rebuttal information.

Comment: One commenter expressed support of § 165.26 but was concerned that the 50-page limit in paragraph (d) may be too short in some cases. The commenter suggested that CBP explicitly state in the regulation that it would increase the page limitation upon request when good cause is shown.

Response: CBP disagrees with the commenter's suggestion and supports the regulation as currently written. Written arguments are a summary of record evidence and new information is not permitted. CBP believes that 50 pages is a reasonable limit and does not see a need to provide for exceptions in the regulation.

Comment: One commenter stated that CBP should clarify in § 165.26(c) that CBP may request written arguments on any issue from any interested party.

Response: CBP believes that § 165.26(c) as currently written is properly limited to the parties to the investigation. However, to make the terminology in § 165.26(c) clearer, CBP changed the regulatory language from ''any party'' to the investigation to ''the parties'' to the investigation.

Comment: One commenter argued that CBP should make it clear in § 165.27(a) that a determination must be based on substantial evidence on the record, and add a reference to the administrative record, as defined in § 165.21.

Response: CBP does not see a need to add a clarification in the regulation. Section 165.27(a) already contains language that a determination is based on substantial evidence as to whether covered merchandise was entered into the U.S. customs territory through evasion. In addition, § 165.21(a) states that CBP maintains an administrative record for purposes of making a determination as to evasion under § 165.27. When both regulations are read together, it is clearly stated that CBP's determination as to evasion is based on substantial evidence on the administrative record. In current practice, CBP states in its affirmative determinations that CBP reviewed the administrative record and found that it contained substantial evidence of evasion.

Comment: One commenter suggested that CBP add a sentence to § 165.27(b) to state that CBP will provide parties to the investigation with a public version of the administrative record no later than five business days after making a determination as to evasion, the same date that CBP sends the parties to the investigation a summary of the determination limited to publicly available information. This suggested language would mirror the language in § 165.24(c) for interim measures, which includes a notification of the decision to the parties of the investigation, along with a public version of the administrative record on the same date.

Another commenter suggested that § 165.27(b) be amended to provide a detailed and meaningful public explanation as to what should be covered by the summary of CBP's determination as to evasion since that summary would serve as the primary basis for a party's decision whether to request an administrative review and subsequent judicial review.

Response: With regard to the first comment, once parties to the investigation are notified of an investigation, and then throughout the remainder of the investigation, the administrative record is made available in the EAPA Portal. CBP does not agree that the regulation needs to be amended to that effect. Pursuant to § 165.27(b), CBP will provide a summary of the determination as to evasion, limited to publicly available information, to the parties to the investigation. As part of the public version of the determination as to evasion, CBP includes a short summary of the redacted information in brackets that was deemed business confidential information. Additionally, as discussed in more detail below, CBP will provide for an APO process so parties to the investigation may access business confidential information. Thus, an amendment to § 165.27(b) as suggested by the second commenter is not necessary.

Comment: One commenter stated that § 165.27 does not appear to contemplate the publication of a determination as to evasion, and a summary is available only to the parties to the investigation. The commenter suggested that CBP add a new paragraph (c) to § 165.27 stating that no later than 90 days after making a determination as to evasion, CBP would publish a summary of the determination limited to publicly available information in the *Customs Bulletin* or make the determination otherwise available for public inspection.

Response: CBP disagrees with the commenter's suggestion to amend § 165.27. In addition to informing the parties to the investigation about the determination electronically, CBP has been publishing a public version of the determination on its website. The public version of a determination is also available to the parties to the investigation in the EAPA Portal.

Comment: One commenter stated that a party's right to judicial review, as granted in 19 U.S.C. 1517(g), is restricted by the regulations as the regulations limit a party's right to public information only, and thereby deprive the party of full knowledge of the basis for CBP's determination. It is the commenter's opinion that CBP must provide the parties to the investigation with some level of access to proprietary information in order for CBP to give full effect to the statute.

Response: CBP agrees with the commenter's request to provide access to another party's proprietary information. As discussed in more detail below, CBP will establish an APO process to allow for the release of business confidential information to parties to the investigation.

Administrative Review of Determinations (Subpart D)

Subpart D (Administrative Review of Determinations) specifies the requirements for requesting an administrative review of a determination as to evasion, discusses the submission of responses to the request for administrative review, and describes CBP's authority to request additional information from the parties to the investigation. This subpart also deals with the administrative review standard, the ability to file for judicial review of the final administrative determination, and, finally, potential penalties and other actions that CBP may undertake pursuant to any other relevant laws. CBP received comments regarding the publication of final administrative determinations, the availability of rebuttal information during an administrative review, and questions on the *de novo* review process for administrative reviews.

Comment: One commenter expressed concern with regard to the 30-business-day deadline (§ 165.41(d)) for requesting

an administrative review of a determination as to evasion and asked for clarification in the regulations. The commenter stated that it is unclear whether ''issuance'' in the regulation refers to the date CBP signs the initial determination, the date it is sent to the parties, the date it is received by the parties, or some other date.

Response: CBP appreciates the opportunity to clarify that the date of issuance is the date that the determination is signed by CBP and also electronically transmitted to the parties to the investigation. In a rare case where the determination as to evasion is signed on one day and electronically transmitted the next business day, the date of electronic transmittal is considered the date of issuance.

Comment: One commenter asked for the regulations to be amended to expressly allow for rebuttal information in administrative reviews.

Response: CBP disagrees with the commenter. Under § 165.44, CBP may request additional written information from the parties to the investigation at any time during the administrative review process; however, these requests are narrowly tailored for specific information related to a record that has already been created during the course of the investigation. CBP has a strict 60-business-day review period to issue a determination on the request for administrative review. *See* 19 U.S.C. 1517(f) and 19 CFR 165.41(i). Any rebuttal information from the parties on additional information requested by CBP would reduce the number of days that Regulations and Rulings (RR) has available to conduct a *de novo* review of the record information and issue a final administrative determination. However, should CBP determine that rebuttal information is useful, then § 165.44 permits CBP to request such information.

Comment: One commenter stated that the language in § 165.45 is contradictory because the administrative review process is described to be *de novo* and, at the same time, based on specific facts and circumstances already on the administrative record. It is the commenter's opinion that parties should be able to provide any information they deem appropriate in the administrative review process since it is a *de novo* review.

Response: CBP disagrees with the commenter's request. EAPA requires that an administrative review be rendered within 60 business days (19 U.S.C. 1517(f)), which is in contrast to a much longer time frame (up to 360 calendar days) that CBP has available to render a determination as to evasion. The short deadline for the administrative review makes it impracticable for CBP to accept additional information that parties wish to submit. Rather, the administrative review must be based solely on the facts already on the record, with the exception being if CBP believes that it needs additional information in accordance with § 165.44 to be able to render its decision, as mentioned above. To clarify even further, CBP added the phrase ''in response to a request by CBP'' before ''pursuant to § 165.44'' to emphasize that CBP will only consider additional information if CBP specifically requested that information.

Comment: One commenter asked CBP to add a paragraph in § 165.46 that sets forth that final administrative determinations are published in the *Customs Bulletin* or are otherwise made available for public inspection no later than 90 days after the issuance of the final administrative determination.

Response: CBP disagrees with the commenter's suggestion to amend the regulation as there is no need to include in the regulatory text a requirement for the publication of the final administrative determination. As mentioned in more detail above, CBP has started publishing final administrative determinations, limited to public information, on its website.

Comment: One commenter stated that CBP should clarify that any actions taken apart from the EAPA investigation will not disadvantage False Claims Act (FCA) relators. The commenter stated that § 165.47 expressly states that no action taken under EAPA prevents CBP from assessing penalties of any sort related to such cases or taking action under any other relevant laws and that CBP should extend this recognition to claims brought under the FCA in the final regulations.

Response: CBP disagrees with the commenter's request for clarification of § 165.47. EAPA investigations do not prevent actions by CBP or other government agencies under other authorities, including FCA, and CBP's and other governmental agencies' rights to undertake additional investigations or enforcement actions in cases covered by the EAPA provisions are already established in § 165.47. *See also* 19 U.S.C. 1517(h).

Comment: Multiple commenters stated that a determination as to evasion should not be a protestable decision and asked that CBP clarify in the regulations that the administrative process and judicial review under 19 U.S.C. 1517(f)–(g) are the only avenues by which a party may challenge a determination.

Response: CBP agrees with the commenters that a determination as to evasion in an EAPA investigation is not a protestable decision. Sections 1517(f)–(g) of 19 U.S.C. establish both an administrative and judicial review process for EAPA determinations made by CBP. The administrative and judicial review processes are the exclusive means by which EAPA determinations can be reviewed. However, CBP does not see a need to clarify this in the final regulations at this time.

Other Comments

Comment: Multiple commenters asked that CBP publicly disclose key events, such as the initiation of an investigation, or determination as to evasion, to a wider trade community, either in form of a searchable docket or some other type of publication process for the key documents. The commenters argued that such disclosure would deter future evasion attempts and promote increased compliance by all parties.

Response: CBP already publishes public versions of notices of initiation of an investigation, notices of initiation of an investigation along with interim measures (if CBP takes interim measures after initiating an investigation), covered merchandise referrals, determinations as to evasion, and now final administrative determinations as well, on its website. To further promote transparency of the EAPA process, those decisions are viewable in the EAPA Portal by the parties to the investigation.

Comment: Multiple commenters have urged CBP to create an APO process or similar process in the final regulations, which would allow authorized representatives of interested parties to obtain and review confidential information submitted by other interested parties. While the commenters acknowledge that the statute did not explicitly authorize CBP to create an APO, these commenters note that such specific statutory authorization is not necessary given that Congress has broadly authorized CBP to promulgate regulations necessary to implement the provisions of TFTEA. The commenters claim that the lack of an APO hinders the parties' ability to meaningfully participate in EAPA proceedings in multiple ways. The commenters argue that the parties affected by CBP's decision-making will not have full access to information contained on the administrative record unless and until judicial review is requested. Further, the inability to have access to other parties' business confidential information prevents other parties to the investigation from providing rebuttal information and from

submitting arguments at the administrative level based on a review of the complete information. Finally, the commenters argue that the lack of an APO makes the administrative process more burdensome for CBP, because CBP must respond to irrelevant arguments and evidence submitted by parties, who, without full access to the record, are unable to assess the nature of that record and other parties' claims.

Response: CBP agrees with the commenters that Congress provided CBP with authority to ''prescribe such regulations as may be necessary'' to implement the requirements under the statute. CBP, by regulation, has created an investigation procedure that allows participation by the parties to the investigation. Under § 165.4, any party submitting information to CBP may request confidential treatment for information protectable under 5 U.S.C. 552(b)(4). The party must identify such confidential information by placing it in brackets, marking the first page as confidential, and providing an explanation for requesting confidential treatment. The interested party must also file a public version of the confidential document. Under § 165.4(a)(2), the public version must contain a summary of the confidential information with sufficient detail to permit a reasonable understanding of the substance of the information. If the submitting interested party claims that summarization is not possible, the claim must be accompanied by a full explanation of the reasons supporting that claim. Public summaries that do not meet this requirement will be rejected.

Moreover, in order to allow meaningful participation in the proceedings, and for purposes of transparency, CBP will not accept claims of confidential treatment for the following information: (1) name of the party to the investigation providing the information, its agent filing on its behalf, if any, and email address for communication and service purposes; (2) basis upon which the party making the allegation qualifies as an interested party as defined in § 165.1; (3) name and address of importer against whom the allegation is brought; (4) description of covered merchandise; and (5) applicable AD/CVD orders.

While CBP believes that the above process provides parties to the investigation with a meaningful opportunity to participate in the EAPA investigation, CBP acknowledges that, on July 27, 2023, the U.S. Court of Appeals issued a decision in *Royal Brush Mfg.* v. *United States,* 75 F.4th 1250 (Fed. Cir. 2023), with respect to the issue of a need for an administrative protective order in that case. In light of that precedential decision, CBP is reviewing its procedures with respect to the disclosure of business confidential information during EAPA investigations. As such, CBP has amended § 165.4 and added language in the introductory text of paragraph (a) to state that if the requirements of § 165.4 are satisfied and the information is privileged or confidential in accordance 5 U.S.C. 552(b)(4), CBP will grant business confidential treatment and issue an APO, in compliance with the mandate in *Royal Brush.* Further, CBP added a new paragraph (f), stating that in each investigation where CBP grants a request for business confidential treatment, CBP will issue an APO which will contain terms that allow the representatives of the parties to the investigation to access the business confidential information. CBP will publish guidance to provide additional information on this new APO process, and CBP is also considering whether to initiate a separate rulemaking for purposes of further codifying an APO process. Finally, CBP made several additional changes to § 165.4, unrelated to an APO process, which may be found in section III below.

Comment: Multiple commenters stated that CBP must follow the statutorily mandated deadlines and should clarify in the final regulations that they are mandatory.

Response: CBP abides by all statutory deadlines such as CBP's decision to take interim measures no later than 90 days after initiating an investigation under 19 U.S.C. 1517(e), CBP's determination as to evasion no later than 300 days after initiating an investigation pursuant to section 1517 (c)(1)(A), and the 60-business-day timeline for making a final administrative determination pursuant to section 1517(f)(2). CBP does not believe that a clarification in the final regulations is necessary.

Comment: One commenter stated that CBP should clarify in the final regulations that all *ex parte* communications of substance will be memorialized in the administrative record and public versions of such written memorialization should be promptly disclosed to the other parties to the proceeding.

Response: CBP disagrees with the commenter that the memorialization of *ex parte* communications needs to be specifically outlined in the regulations. Substantive *ex parte* communications are memorialized, and public versions are disclosed to the parties to the investigation as a matter of practice.

Comment: One commenter voiced concerns with regard to section 411(b)(4)(B) of TFTEA, specifically the provision of information on the status of CBP's consideration of an evasion allegation and related decision whether or not to pursue any administrative inquiries or other actions as a result of an allegation to a party or parties who submitted an allegation as to evasion. The commenter stated that this provision appears to authorize CBP to allow the alleging party to request Federal documents, which will likely include business confidential information of the importer. The commenter further argued that this provision disadvantages the importer by giving the alleging party information that the importer cannot review and of which the importer is not aware, making this provision fundamentally unfair.

Response: CBP disagrees with the commenter, who is not interpreting the statute in the way that CBP is administering EAPA. While the alleging party may be aware that CBP is processing an allegation before the alleged evader is, CBP does not share business confidential information of other entities with the alleging party at any stage of the investigation. All parties to the investigation are notified whether or not interim measures are taken once an investigation is ongoing and are allowed to participate in the investigation from that point forward.

Comment: One commenter stated that CBP should prescribe regulations that obligate customs brokers to collect and verify meaningful information regarding companies that approach the broker seeking to act as an importer of record.

Response: CBP thanks the commenter for its contribution; however, this comment is beyond the scope of this EAPA rulemaking.

III. Technical Changes and Clarifications to the Interim Regulations

In addition to carefully considering and responding to the public comments, CBP has reviewed the interim regulations in their totality to assess the effectiveness of the established EAPA process and determine whether any regulations, other than the ones addressed above in response to public comments, should be amended. Pursuant to this review, CBP has made some changes to clarify and update the interim regulations, emphasizing CBP's goal for a clear and transparent process and aligning CBP's current practice with the regulations.

CBP made some changes to § 165.1 by clarifying and updating some of the existing definitions and adding a definition. First, CBP slightly rearranged the sentence of the definition of

''allegation'' in § 165.1 for clarity. Next, in the definition of ''TRLED'' in § 165.1, CBP removed the reference to EAPA and replaced it with a reference to the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) as it is a more accurate reference. CBP also added a definition for ''Business day'' in § 165.1, which mirrors the language in 19 CFR 101.1. CBP had received a general comment regarding the treatment of Inauguration Day (January 20 or January 21 if January 20 falls on a Sunday) in the context of calculating deadlines, and CBP wants to take the opportunity to clarify its position on this subject since this legal holiday in the Washington, DC, area occurs every four years. Thus, pursuant to the new definition, and in accordance with 5 U.S.C. 6103(c), Inauguration Day is not considered a business day for purposes of an EAPA investigation.

CBP made several changes to § 165.4, in addition to the changes mentioned above. In paragraph (a), CBP added a sentence at the end of the paragraph to state that all documents and communications that are submitted to CBP after notice of initiation must be served on all parties to the investigation by the submitting entity. For business confidential documents, a public version must be served as well, in accordance with § 165.4(a)(2). This addition is not a change but merely a confirmation of CBP's practice. Further, CBP included language in the introductory sentence in paragraph (b) clarifying that rejected submissions due to failure to meet the requirements of § 165.4(a) will not be placed on the administrative record. The same language regarding the placement on the administrative record was added in § 165.4(b)(3), setting forth the effects of a rejected submission. Finally, CBP added the phrase ''unless the submitting interested party takes any of the actions in paragraph (b)(2) of this section within the timeframe specified in that paragraph'' at the end of the introductory sentence in paragraph (b), referring to the possibility of corrective action pursuant to § 165.4(b)(2) in case of a nonconforming submission.

In addition, CBP added two sentences at the end of paragraph (e), stating that parties who are not already subject to the requirements of § 165.4, such as suppliers or customers, must adhere to the requirements set forth in § 165.4 and § 165.5 when filing submissions. With this change, CBP is clarifying its current expectation that interested parties and other parties who submit information to CBP must follow the same submission requirements. Additionally, § 165.5(b) states that all submissions to CBP must adhere to the requirements in part 165. Thus, the addition of the two sentences in paragraph (e) simply clarifies the requirements set forth in § 165.4 and § 165.5 and the effect of a nonconforming submission.[4]

In § 165.5(b)(2), CBP added language to clarify that the certification requirement, along with other submission requirements in sections 165.4 and 165.5, applies not only to submissions by interested parties, but also to submissions requested by CBP from any other party. Lastly, CBP replaced the reference to ''19 CFR'' with a section symbol in two places in § 165.5(b)(2)(ii) and (iii) to make those references consistent with other references in the regulations.

In addition, CBP added a new paragraph § 165.5(b)(4), titled ''Nonconforming submissions,'' clarifying that CBP will reject submissions that do not meet the requirements of paragraph (b) of this section, and will not consider or place them on the administrative record. In § 165.5(c)(1), CBP added language in the first sentence to clarify that the request for extensions applies not only to regulatory time limits, but also to any deadlines for the submission of information requested by CBP. CBP has allowed for requests for extension of non-regulatory deadlines in prior investigations and takes the opportunity to confirm in the regulation that a party may request an extension of a deadline set by CBP. In addition, CBP added the words ''by the requester'' at the end of the third sentence of paragraph (c)(1) in the definition of an extraordinary circumstance, which is an unexpected event that could not have been prevented even if the requester had taken reasonable measures. In paragraph (c)(2), CBP replaced ''retain it in'' the administrative record with ''place it on'' the administrative record to make the language consistent with other sections that have similar language.

CBP revised the language in the second sentence of § 165.13(c) by replacing the 95-calendar-day reference with regulatory language that reflects CBP's practice of notifying the parties to the investigation within five business days of making formal a decision to initiate an investigation and a decision to consolidate after day 90 of the investigation. This change is similar to the change in § 165.15(d)(1), as explained above. The changes to both § 165.13(c) and § 165.15(d)(1) will create uniformity among the regulations dealing with the timing of notification of decisions that CBP makes throughout the EAPA investigation process. CBP further reorganized the first sentence in § 165.13(d) to read more easily and added a reference to public documents that need to be served on parties to the previously unconsolidated investigation once the parties subject to the consolidation are notified. Both public versions of documents and public documents are placed on the administrative record as part of the EAPA investigation. Lastly, CBP replaced the second and third mentions of the word ''upon'' in the first sentence of § 165.13(d) with ''on'' for clarity.

CBP amended the first sentence of § 165.14(a) to include the words ''but not limited to'' after ''including'' to emphasize that any Federal agency, in addition to Commerce and the ITC, may request an investigation under part 165.

CBP added a phrase to § 165.16(d) to include interim measures under § 165.24, along with the deadline to decide whether to initiate an investigation and the deadline to issue a determination as to evasion under § 165.27, setting forth that the time period for any referral to and determination by Commerce will not be counted toward the deadlines mentioned in this paragraph. The regulation is based on language in 19 U.S.C. 1517(b)(4)(C), which states that the period required for the referral to Commerce and the determination shall not be counted in calculating any deadline under this section, and interim measures are mentioned in paragraph (e) of section 1517 as well.

In §§ 165.22(a) and (d), CBP replaced the phrase ''not later'' with ''no later'' to be consistent with the use of the phrase in other regulations. This technical change does not change the deadlines associated with a determination as to evasion in this section. In paragraph (d), CBP changed the word ''notification'' to ''notice'' in the paragraph heading to better reflect CBP's practice of serving the parties to the investigation with a notice, instead of simply notifying them of an extension of time to make a determination as to evasion. Further, CBP rephrased some of the language in § 165.22(b) to mirror the language in § 165.13(a), and with this final rule, both sections will include the ''date of receipt of the first properly filed allegation'' instead of the ''date on which CBP receives the first of such allegations.''

In § 165.23(b), CBP changed the words ''Any party'' to the investigation at the beginning of the sentence to ''The parties'' to the investigation. This change clarifies CBP's intent as to who may submit additional information and makes the language consistent with the

[4] CBP added § 165.5(b)(4) in this final rule and the addition is explained in further detail below.

term ''parties to the investigation,'' as defined in § 165.1. For ease of reading, CBP reorganized 165.23(c)(2), breaking it out into subparagraph (i) dealing with the requirements associated with the voluntary submission of factual information and subparagraph (ii) detailing the requirements for the submission of rebuttal information to the submitted factual information.

In the newly created paragraph (c)(2)(i), CBP added language to provide CBP with the discretion to extend the deadline for voluntary submission of factual information if CBP determines that circumstances warrant an extension. In many past investigations, CBP was under considerable time constraints to timely review and assess the information gathered during the investigation before making a determination as to evasion. In exceptional cases, CBP had already extended the deadline in § 165.23(c)(2). When the interim regulations were drafted, the timelines stated therein seemed feasible; however, CBP's experience over the past seven years has shown that there are situations where CBP needs additional time to investigate and, therefore, needs to have the discretion to extend the deadline for the voluntary submission of factual information when the circumstances warrant. There may be situations where verifications are difficult to conduct due to travel restrictions or other obstacles, and CBP needs the flexibility to extend the deadline for the voluntary submission of factual information in order to conduct a fulsome investigation. If CBP extends the deadline in § 165.23(c)(2)(i), the parties to the investigation will be notified of the extension and will be given the opportunity to make submissions up to the end of the extended deadline. To make the remaining language in § 165.23 consistent with this change, CBP revised the last sentence of (c)(1) by removing the reference to the 200-day deadline and replacing it with a reference to (c)(2), which sets forth the deadline, including the possibility for CBP to extend the deadline at its discretion. It is important to note that this discretionary extension of the deadline in § 165.23(c)(2)(i) does not go beyond the statutory limit of 360 days (19 U.S.C. 1517(c)(1)) by which CBP is required to make a determination as to evasion.

In addition, in newly created § 165.23(c)(2)(i), CBP replaced the clause ''except rebuttal information as permitted pursuant to the next sentence herein'' with a reference to (c)(2)(ii), pointing to the time frame and requirements for the submission of rebuttal information. Lastly, in the newly created paragraph (c)(2)(ii), CBP removed the phrase ''from the date of service of any factual information,'' keeping only the phrase ''from the date of placement of any new factual information'' because CBP's practice has been to use the date of placement of new factual information on the administrative record as the trigger for the 10-calendar-day period for providing rebuttal information. Removing this phrase does not change the parties' rights to provide rebuttal information and the time frame for submitting rebuttal information.

In § 165.23(d), CBP included language in the second sentence to clarify that CBP intends to place a written summary of an oral discussion between CBP and any party from whom CBP requests factual information on the administrative record once an investigation has been initiated, consistent with CBP's practice. It is important to note that oral discussions between the alleger and CBP regarding flaws in an allegation will not be placed on the administrative record. In addition, CBP switched the order of the words ''confidential'' and ''business'' in the third sentence of paragraph (d) as the proper term is ''business confidential information'' and it was erroneously written in the interim regulations as ''confidential business information.''

In § 165.24, CBP replaced the word ''notification'' in the first sentence of paragraph (c) with ''notice'' as CBP serves an actual notice of the decision to take interim measures. In addition, CBP amended the last sentence of paragraph (c) stating that CBP will provide the public version of the administrative record within 10 business days of issuing a notice of initiation of an investigation. When the interim regulations were drafted, it seemed operationally feasible to provide the public version of the administrative record and the notice of initiation of investigation and interim measures on the same date. However, due to TRLED's heavy workload, it has proven difficult in many cases to provide the entire administrative record, limited to public information, after day 90 of the investigation, on the same day as the notice of initiation of investigation and interim measures, as CBP needs time to prepare the public versions of documents on the administrative record before providing them to the parties to the investigation.

CBP made changes to § 165.26(a)(1) and (b)(1) that are similar to the changes discussed above for § 165.23(c), providing CBP the discretion to extend the deadlines for submitting written arguments and responses to written arguments if the circumstances warrant. The need to extend a deadline under § 165.26(a) has frequently become apparent, usually due to the verification process not being completed in time. The purpose of such an extension is to grant an additional 60 days in those instances to complete the verification, give parties adequate time to present written arguments, and for CBP to make a determination as to evasion. In addition, CBP reorganized paragraph (a)(1) and included language stating that an extension of the 230-calendar-day deadline cannot exceed 300 calendar days after the investigation was initiated, or 360 calendar days after the investigation was initiated (in case of an extension of the deadline for a determination as to evasion pursuant to § 165.22(c)). This change will provide CBP the additional time needed to make a sound decision if circumstances warrant an extension. CBP also reorganized paragraph (b)(1) to include language regarding CBP's discretion to extend the 15-calendar-day deadline if CBP deems it necessary. Further, CBP slightly revised § 165.26(d)(2) to make the language read more easily without changing the substance or meaning of the language.

In § 165.28(c), CBP added the phrase ''in accordance with the instructions received from the Department of Commerce'' at the end of the sentence in order to align the regulatory language with the statutory language in 19 U.S.C. 1517(d)(1)(D) and provide further clarity.

In order to bring the EAPA regulations in line with the statutory language in 19 U.S.C. 1517(c), CBP removed the word ''initial'' before the word ''determination'' throughout §§ 165.41, 165.45 and 165.46. CBP added ''as to evasion'' after ''determination'' in the heading of subpart D, as well as in the section heading for § 165.41 to distinguish a determination as to evasion from a determination that is made during the administrative review. In addition, CBP has removed the last sentence of § 165.41(i) as it is redundant and potentially confusing. The 30-business-day deadline for filing a request for an administrative review is set forth in § 165.41(d).

CBP made three changes in the introductory paragraph of § 165.41(f). First, at the end of the first sentence, CBP added the phrase ''in total (including exhibits but not table of contents or table of authorities),'' which can also be found in § 165.42, in order to make the page limit requirements for a request for administrative review

consistent with the requirements for a response to a request for administrative review. Second, CBP replaced the word ''upon'' with ''on for clarity. And third, CBP added a sentence to clarify that CBP will reject a request for administrative review that does not meet the requirements of paragraph (f) and will not consider it or place it on the administrative record. Further, in § 165.41(h), CBP removed the language ''involving the same importer and merchandise'' as this is not a correct statement as to the consolidation of requests for administrative review. There is no limitation in practice as to the possibility of consolidating separate requests for administrative review that relate to one consolidated investigation, which may include different importers and merchandise.

In addition, CBP added a sentence in § 165.42 to clarify that the original submitter of a request for administrative review is not included as one of the parties who may submit a written response to the filed request for review. It has never been CBP's intent that a party who submitted a request for administrative review be able to respond to its own submission, and CBP wants to confirm this intent in the final regulation. CBP also replaced the word ''upon'' with ''on'' in § 165.42 for clarity.

CBP amended § 165.44 by adding two sentences at the end of the section to clarify that CBP will only accept written submissions of additional information in response to a request by CBP, and that meetings or any other methods of unsolicited submission of additional information during the administrative review are not permitted. Throughout subpart D, only written submissions and additional written information, and no other methods, such as oral discussions as allowed in subpart C, will be accepted. *See* §§ 165.41(f), 165.42, and 165.44.

Lastly, CBP made two minor changes in § 165.46. In paragraph (a), CBP replaced the reference to ''EAPA'' with a reference to ''TFTEA'' as it is more accurate. In addition, CBP replaced the term ''final administrative determination'' in § 165.46(b) with ''administrative review'' to mirror the statutory language used in 19 U.S.C. 1517(f).

IV. Conclusion

Based on the analysis of the comments and further consideration, CBP has decided to adopt as final the interim regulations published in the **Federal Register** on August 22, 2016, as modified by the changes based on public comments, and the technical changes and clarifications discussed above.

V. Statutory and Regulatory Requirements

A. Executive Orders 13563 and 12866

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

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, OMB has not reviewed it.

This rule has resulted in undiscounted costs to the public of $20,008,985 to file allegations and communicate to CBP during the EAPA investigation process and to file administrative review requests since the IFR was published in 2016. The rule has resulted in $20,542,915 in costs to CBP. Qualitative benefits of this rule include improved enforcement of AD/CVD orders, increased transparency and predictability in the processing of AD/CVD evasion allegations, and increased communication with the public.

1. Purpose of the Rule

As mentioned above, on February 24, 2016, President Obama signed into law the Trade Facilitation and Trade Enforcement Act of 2015, which contains Title IV-Prevention of Evasion of Antidumping and Countervailing Duty Orders (short title ''Enforce and Protect Act of 2015'' or ''EAPA'') (Pub. L. 114–125, 130 Stat. 122, 155, (Feb. 24, 2016) (19 U.S.C. 4301 note)). Section 421 of TFTEA requires that regulations be promulgated where necessary to implement the provisions of EAPA. Previous customs laws did not establish a set of specific formal procedures for parties to submit allegations of antidumping or countervailing duty (AD/CVD) evasion to CBP. EAPA provides CBP with new and additional tools with which to combat the problem of AD/CVD evasion with the establishment of a formal process for investigating allegations of the evasion of AD/CVD orders. On August 22, 2016, CBP published an interim final rule (IFR) in the **Federal Register** (81 FR 56477), which established a transparent process for making allegations, investigating such allegations, and reporting the results of investigations. This process provides access to information for the parties to the investigation, giving CBP the opportunity to conduct improved and more thorough investigations of each allegation and to make informed AD/CVD evasion decisions. This final rule makes permanent the interim regulations, including a change based on the previously published technical correction, changes in light of the public comments received in the comment period, as well as changes based on CBP's own review of the interim regulations and the established investigation process.

AD/CVD duties are an important trade measure that shields domestic companies from unfair trade practices by overseas competitors. In fiscal years 2020 and 2021, CBP assessed approximately $1.8 billion [5] and $2.4 billion [6] in antidumping and countervailing duties, respectively. With so much money at stake, the incentives to circumvent AD/CVD orders imposing these duties are high. The public benefits from having a more formalized and clear AD/CVD evasion allegation process, and such a process gives CBP the information it needs to be more effective with AD/CVD enforcement. Furthermore, this rule fulfills the legal mandate set forth in EAPA to establish a formal AD/CVD evasion allegations process and an investigation program.

Background

The antidumping (AD) law provides relief to domestic industries that have been materially injured or are threatened with material injury by imported merchandise sold in the U.S. market at prices below fair market value. The countervailing duty (CVD) law provides relief to domestic industries that have been materially injured or are threatened with material injury by imported merchandise sold in the U.S. market that has been unfairly subsidized by a foreign government or

[5] Source: CBP. *CBP Trade and Travel Report.* Available at *https://www.cbp.gov/sites/default/files/assets/documents/2021-Feb/CBP-FY2020-Trade-and-Travel-Report.pdf.* Accessed June 15, 2022.

[6] Source: CBP. *CBP Trade and Travel Report.* Available at *https://www.cbp.gov/sites/default/files/assets/documents/2022-Apr/FINAL%20FY2021_%20Trade%20and%20Travel%20Report%20%28508%20Compliant%29%20%28April%202022%29_0.pdf.* Accessed June 15, 2022.

public entity. AD/CVD laws provide for additional import duties to be placed on the dumped or subsidized imports to offset the unfair dumping or subsidization of those imports.

Before the promulgation of interim final regulations, there was not a formal procedure for interested parties and other Federal agencies to submit allegations and evidence of AD/CVD evasion to CBP or a requirement for CBP to undertake a formal investigation in response to allegations of evasion. If an entity wanted to file an AD/CVD grievance against another business it would have had to submit a grievance via CBP's Trade Violation Reporting (TVR) system for general e-Allegations or contact CBP by other means, and a CBP employee would assist it in submitting its allegation. After the alleger provided all the required information, CBP would examine the information and determine whether to initiate an informal inquiry. There was not a formal process in place for CBP to reach out to the entity initiating the allegation to inform it of the results of its grievance and in many cases the alleger never heard back from CBP after the allegation was made. There was also no mechanism for the accused entity to know that it was under an e-Allegation investigation nor opportunity for it to provide information in its defense unless CBP decided to open a formal investigation. AD/CVD grievances submitted via the ''Report Trade Violation'' option on the TVR website are commonly referred to as ''e-Allegations.''

Costs

EAPA provides CBP with a formal process for conducting administrative investigations involving possible evasion of AD/CVD orders. CBP has established a new process under EAPA whereby CBP can formally reach out to the alleger, the alleged evader, and other interested parties with separate and distinct questionnaires in order to acquire information that will be used to determine whether an investigation is warranted and whether evasion is occurring or has occurred.

Parties submitting EAPA allegations do so through the EAPA Portal, which was launched in April 2021. New users are prompted to create an account and provide their name and email address in the account creation process. The creation of an account and submission of an allegation via the EAPA Portal are estimated to take three minutes (0.05 hours) and 12 minutes (0.20 hours) respectively, for a total time burden of 15 minutes (0.25 hours) for a first EAPA allegation by a user. Information provided during account creation is automatically inserted into documents submitted to CBP through the EAPA Portal and reduces the time burden to submit an EAPA allegation by three minutes when compared to the time burden prior to the introduction of the EAPA Portal. Users would also save the three minutes related to account creation for each allegation submitted after the first when compared to the previous method of having to submit the information again directly into the EAPA Portal. Prior to the launching of the EAPA Portal (and its EAPA-dedicated predecessor), EAPA allegations were submitted via a dedicated link on CBP's TVR system to a document for the alleger to complete and documents submitted as part of the investigation were sent via email. The time it takes to enroll in the EAPA Portal is equal to the time saved the first time the EAPA Portal is used. For repeat users, there will be a three-minute time savings, but CBP lacks data to estimate how often this takes place. To the extent the EAPA Portal is used more than once by individual users, there will be a three-minute savings per use. For the purpose of this analysis, CBP assumes the EAPA Portal has no impact on time burdens.

CBP estimates that the submission of an EAPA allegation takes approximately 15 minutes (0.25 hours).[7] The statute requires a CBP employee to advise and provide technical assistance to the alleger in the filing of the EAPA allegation. In practice, this has eliminated the necessity of a follow-up questionnaire to be filled out by the alleger.

The alleged evader may receive a CBP Form 28 (CF–28) (Request for Information) or an Initial Request for Information questionnaire and other interested parties may receive an Initial Request for Information questionnaire. Responding to CBP's request for information via these instruments is optional; however, any party, except, *e.g.,* a foreign government, customer, or supplier, that chooses not to respond could be subject to adverse inferences and the investigation may lead to an unfavorable outcome for that party. The expected time burdens to complete and submit a response to the CF–28 and Initial Request for Information are approximately 60 and 90 hours, respectively.[8] If CBP determines that more information is required to bring an EAPA case to a close, relevant parties will receive a Supplemental Request for Information questionnaire. A Supplemental Request for Information questionnaire is typically issued because a party did not fully answer questions in the CF–28 or Initial Request for Information questionnaire. The Supplemental Request for Information questionnaire is estimated to have a time burden of 60 hours to complete and submit.[9]

To estimate the cost to the industry from filing an EAPA allegation and responding to the subsequent forms, CBP must first determine a value of time for entities who would complete and file the forms. CBP expects that, in most cases, these documents will be completed and filed by an outside attorney due to the complex and specialized nature of international trade law. CBP estimated the cost to companies to hire an outside attorney to be $400 per hour in 2016 [10] and adjusted the wage to $466.38 in 2022 dollars.[11] Each document's time burden is then multiplied by the hourly cost to hire an outside attorney to determine a total cost for each form. As shown in Table 1, the cost to file a single EAPA allegation is monetized by multiplying the time burden (.25 hours) and the hourly attorney costs ($466.38 in 2022 dollars) which results in a cost of $116.60 per filing. The estimated cost to the industry for filing each document is shown in Table 1 along with their corresponding time burdens.

This rule formalized the written argument process with the implementation of timelines for submittal. There is no additional cost to the public as a result of the new formal written argument process as the public already had the ability to submit written

[7] Source: U.S. Customs and Border Protection. Supporting Statement for Paperwork Reduction Act Submission: 1651–0131, e-Allegations Submission. September 24, 2020. Available at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202009-1651-006.* Accessed November 24, 2020.

[8] Source: Email correspondence with CBP's Enforcement Operations Division on May 20, 2021.

[9] Source: Email correspondence with CBP's Enforcement Operations Division on May 20, 2021.

[10] Source: American Intellectual Property Law Association. *2017 Report of the Economic Survey.* ''Billable Hours, Billing Rate, Dollars Billed (Q29, Q30, Q27).'' June 2017.

[11] CBP calculated the 2021 adjusted dollar amount using the percent increase in the Annual Average GDP Price Deflator (2012=100) between 2016 and 2021. The annual average GDP Price Deflator value in 2016 = 105.74, the annual average GDP Price Deflator value in 2021 = 118.37, the percent increase was estimated to be around 11.19444% (118.37/105.74 = 1.119444 or 11.19444%). This percent increase was applied to the 2016 estimated hourly billing rate of $400 for external attorneys to estimate the 2021 hourly billing rate of $447.78 for external attorneys. CBP assumes an annual growth rate of 4.15% based on the prior year's change in the implicit price deflator, published by the Bureau of Economic Analysis, to arrive at the 2022 figure.

arguments to CBP, though not as part of a formal process.

This rule also established a process by which either the alleger or the alleged evader may request an administrative review of a determination as to evasion. The interested party has 30 business days after the determination to request an administrative review. CBP estimates an administrative review request takes 50 hours to complete and submit.

TABLE 1—TIME BURDENS FOR DOCUMENTS SUBMITTED TO CBP

Document submitted	Time burden (in hours)	Cost per submission (in 2022 dollars)
e-Allegations	0.25	$116.60
EAPA allegation	0.25	116.60
CF–28 Response	60	27,982.80
Initial Request for Information Response	90	41,974.20
Supplemental Request for Information Response	60	27,982.80
Administrative Review Request	50	23,319.00

The total cost of this rule to the industry is fully monetized by multiplying the cost per submission from Table 1 and the number of submissions in Table 2 and then summing the results for each year. The product of the cost per submission and the submissions by fiscal year are shown in Table 3, as well as the summing of each year's undiscounted costs.

TABLE 2—SUBMISSIONS BY FISCAL YEAR

Document submitted	2016	2017	2018	2019	2020	2021
e-Allegations (AD/CVD) *	115	76	106	91	106	147
EAPA allegations	2	29	57	127	149	127
CF–28 Response	1	17	19	54	46	47
Initial Request for Information Response	2	27	18	66	42	98
Supplemental Request for Information Response	0	13	18	26	13	47
Administrative Review Requests	0	0	2	2	14	21
Total Filings Caused by Rule	5	86	114	275	264	340

Note: Submissions are sorted by the fiscal year the case was initiated, not by the year the individual document was received.
* *Note:* e-Allegation (AD/CVD) submissions are not included in Total Filings Caused by Rule.

TABLE 3—INDUSTRY COSTS CAUSED BY RULE BY FISCAL YEAR

[In undiscounted 2022 dollars]

Document submitted	2016	2017	2018	2019	2020	2021	6 Year Total
e-Allegations (AD/CVD) *	$13,408	$8,861	$12,359	$10,610	$12,359	$17,139	$74,737
EAPA allegations	233	3,381	6,646	14,808	17,373	14,808	57,248
CF–28 Response	27,983	475,708	531,673	1,511,071	1,287,209	1,315,192	5,148,835
Initial Request for Information Response	83,948	1,133,303	755,536	2,770,297	1,762,916	4,113,472	10,619,473
Supplemental Request for Information Response	0	363,776	503,690	727,553	363,776	1,315,192	3,273,988
Administrative Review Requests	0	0	46,638	46,638	326,466	489,699	909,441
Total Industry Costs Caused by Rule	112,164	1,976,169	1,844,183	5,070,367	3,757,740	7,248,361	20,008,985

Note: Submissions are sorted by the fiscal year the case was initiated, not by the year the individual document was received.
* *Note:* e-Allegation (AD/CVD) submissions are not included in Total Industry Costs Caused by Rule.

CBP incurs costs throughout the EAPA investigative process and created two new branches to handle the new filings and resulting investigations. These two new branches are staffed with a total of 15 full-time equivalent (FTE) employees. The average CBP Trade and Revenue fully-loaded salary in fiscal year 2022 was $228,254.61.[12] This rule created 15 full-time equivalent positions and multiplying this by the FY 2022 wage rate results in $3,423,819 in undiscounted costs annually since 2016. As shown in Table 5, the total costs to CBP for the fiscal years 2016–2021 were $22,811,066 and $26,205,984 discounted at three and seven percent, respectively.

In summary, this rule resulted in a cost to the public of $18,337,822 to file EAPA allegations and respond to the questionnaires, under the EAPA investigation process since the EAPA IFR was published in 2016. In addition, CBP estimates that it cost the public $873,171 to file administrative review requests. In total, this rule has resulted in an undiscounted cost to the public of $19,210,993 and $20,542,915 to CBP.

[12] CBP bases this wage on the FY 2022 salary, benefits, premium pay, non-salary costs, and awards of the national average of CBP Trade and Revenue positions, which is equal to a GS–12, Step 10. Source: Email correspondence with CBP's Office of Finance on June 27, 2022.

TABLE 4—TOTAL COST

[In undiscounted 2022 U.S. dollars]

Fiscal year	Industry	CBP	Total
2016	$112,164	$3,423,819	$3,535,984
2017	1,976,169	3,423,819	5,399,988
2018	1,844,183	3,423,819	5,268,002
2019	5,070,367	3,423,819	8,494,186
2020	3,757,740	3,423,819	7,181,559
2021	7,248,361	3,423,819	10,672,181
Total	20,008,985	20,542,915	40,551,900

TABLE 5—MONETIZED PRESENT VALUE AND ANNUALIZED COSTS BY FISCAL YEAR

Fiscal year	Industry		CBP		Total	
	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate
2016	$133,930	$168,329	$4,088,219	$5,138,229	$4,222,149	$5,306,558
2017	2,290,921	2,771,679	3,969,145	4,802,084	6,260,066	7,573,762
2018	2,075,644	2,417,348	3,853,539	4,487,929	5,929,183	6,905,276
2019	5,540,527	6,211,417	3,741,300	4,194,326	9,281,826	10,405,743
2020	3,986,587	4,302,237	3,632,330	3,919,931	7,618,916	8,222,167
2021	7,465,812	7,755,747	3,526,534	3,663,487	10,992,346	11,419,233
Total	21,493,421	23,626,756	22,811,066	26,205,984	44,304,487	49,832,740
Annualized Cost	3,226,048	3,086,842	3,423,819	3,423,819	6,649,867	6,510,661

4. Benefits

Domestic producers and legitimate importers benefit from better enforcement as a result of this rule. In fiscal year 2021, the EAPA process prevented the evasion of over $375 million in AD/CVD duties.[13] As domestic producers and legitimate importers grow more accustomed to the EAPA process, it is likely that this number will increase but CBP is unable to quantify this growth at this time.

Importers and domestic producers also benefit from increased transparency and predictability in the processing of AD/CVD evasion allegations because of this rule. Previously, an alleger submitted an e-Allegation to CBP and CBP was not able to provide any subsequent follow up to that alleger. This rule increased the transparency of the allegation process and set clear time frames for all parties involved. Furthermore, CBP increased communication with the public as a result of this rule, specifically regarding technical assistance and advice on how to properly file AD/CVD evasion allegations. This outreach could result in faster processing and response times for grievances; however, CBP is unable to quantify these benefits.

Additionally, this rule established a stronger working relationship among CBP, the trade community, and foreign governments in the effort to prevent evasion of AD/CVD duties. This rule gave CBP access to more information from all affected parties, which helps CBP improve AD/CVD enforcement. This rule helps prevent the circumvention of the AD/CVD laws, which benefits domestic producers by shielding them from unfair trade practices. Furthermore, to the extent that this rule reduces the evasion of AD/CVD payments, the government will benefit through higher AD/CVD revenue.

B. Regulatory Flexibility Act

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

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)) requires that CBP consider the impact of paperwork and other information collection burdens imposed on the public. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget (OMB).

The e-Allegations submission information collection, which is assigned OMB control number: 1651–0131,[14] is being amended to reflect the change in burden hours caused by the EAPA requirements, and to include the EAPA Portal as described above, and to reflect the provisions of §§ 165.5(a) and 165.23(a). To create an account to access the EAPA Portal and submit an EAPA allegation, users provide their first name, last name, and email address and the process of account creation is estimated to take three minutes (0.05 hours). CBP estimates that the creation of 250 EAPA Portal accounts annually will add a total time burden of approximately 13 hours to the public.

[13] Source: CBP. *CBP Trade and Travel Report.* Available at *https://www.cbp.gov/sites/default/files/assets/documents/2022-Apr/FINAL%20FY2021_%20Trade%20and%20Travel%20Report%20%28508%20Compliant%29%20%28April%202022%29_0.pdf.* Accessed on June 16, 2022. Although data is available for some years prior to fiscal year 2021, in light of the newness of the EAPA program, CBP does not believe the data can be used to extrapolate a trend.

[14] CBP notes that the TVR system continues to be used for purposes other than EAPA.

CBP estimates that 149 EAPA allegations will be filed annually which is an increase of 82 from what was previously approved by OMB. These additional 82 EAPA allegations will result in an additional time burden of approximately 13 hours to the public, resulting in a total time burden of 30 hours to the public. In total, this rule resulted in an overall increase of 26 burden hours from what is currently approved by OMB. This increases the total burden hours for this collection from 289 to 315. The e-Allegations submission revisions described in this rule have been submitted to OMB for review and approval in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507). OMB control number 1651–0131 is being revised to reflect the change in burden hours for EAPA respondents (*i.e.,* those responding to the EAPA submission requirements) and to confirm the burden hours for e-Allegations as follows:

E-Allegations

Estimated number of annual respondents: 1,088.
Estimated number of annual responses: 1,088.
Estimated time burden per response: 15 minutes (.25 hours).
Estimated total annual time burden: 272 hours.

EAPA Allegations

Estimated number of annual respondents: 149.
Estimated number of annual responses: 149.
Estimated time burden per response: 12 minutes (0.20 hours).
Estimated total annual time burden: 30 hours.

EAPA Portal Account Creation

Estimated number of annual respondents: 250.
Estimated number of annual responses: 250.
Estimated time burden per response: 3 minutes (0.05 hours).
Estimated total annual time burden: 13 hours.

Comments concerning the collections of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be submitted to OMB via *https://www.reginfo.gov.*

Signing Authority

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

Troy A. Miller, Senior Official Performing the Duties of the Commissioner, having reviewed and approved this document, has delegated the authority to electronically sign this document to the Director (or Acting Director, if applicable) of the Regulations and Disclosure Law Division of CBP, for purposes of publication in the **Federal Register**.

List of Subjects in 19 CFR Part 165

Administrative practice and procedure, Business and industry, Imports.

Amendments to the Regulations

For the reasons given above, the IFR, which was published at 81 FR 56477 on August 22, 2016, adding part 165 to Chapter I of the CBP regulations (19 CFR part 165), is adopted as final with the following changes:

PART 165—INVESTIGATION OF CLAIMS OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTIES

■ 1. The general authority citation for part 165 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1508, 1517 (as added by Pub. L. 114–125, 130 Stat. 122, 155 (19 U.S.C. 4301 note)), 1623, 1624, 1671, 1673.

■ 2. Section 165.1 is amended by:
■ a. Revising the definition of ''*Allegation*'';
■ b. Adding the definition ''*Business day*'' in alphabetical order;
■ c. Revising the definition of ''*Evade* or *evasion*''; and
■ d. Revising the definition of ''*TRLED*''.

The addition and revisions read as follows:

§ 165.1 Definitions.

* * * * *

Allegation. The term ''allegation'' refers to a filing with CBP under § 165.11 by an interested party that alleges an act of evasion of AD/CVD orders by an importer.

* * * * *

Business day. The term ''business day'' means a weekday (Monday through Friday), excluding national holidays as specified in § 101.6(a) of this chapter.

* * * * *

Evade or *Evasion.* The terms ''evade'' and ''evasion'' refer to the entry of covered merchandise into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the covered merchandise. Examples of evasion include, but are not limited to, the transshipment, misclassification, and/or undervaluation of covered merchandise.

* * * * *

TRLED. The term ''TRLED'' refers to the Trade Remedy Law Enforcement Directorate, Office of Trade, that conducts the investigation of alleged evasion under this part, and that was established as required by section 411 of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA).

■ f. Section 165.3 is amended by adding a new paragraph (f) to read as follows:

§ 165.3 Power of attorney.

* * * * *

(f) *Return of submission.* If a party has not provided proof of execution of a power of attorney to CBP within five business days of an agent's first submission on behalf of an interested party pursuant to paragraph (e) of this section, or proof of authority to execute a power of attorney, if requested by CBP, pursuant to paragraph (c) of this section, CBP will reject the submission and will not consider or place such submission on the administrative record.

■ 4. Section 165.4 is amended by:
■ a. Revising the introductory text of paragraphs (a) and (b);
■ b. Revising paragraph (b)(3) and (e);
■ c. Adding a new paragraph (f).

The revisions and addition read as follows:

§ 165.4 Release of information provided by interested parties.

(a) *Claim for business confidential treatment.* Any interested party that makes a submission to CBP in connection with an investigation under this part, including for its initiation and administrative review, may request that CBP treat any part of the submission as business confidential information except for the information specified in paragraph (c) of this section. If the requirements of this section are satisfied and the information for which protection is sought consists of trade secrets and/or commercial or financial information obtained from any person, which is privileged or confidential in accordance with 5 U.S.C. 552(b)(4), CBP will grant business confidential treatment and issue an administrative protective order pursuant to paragraph (f) of this section. All documents and

communications that are submitted to CBP after notice of initiation of an investigation must be served on all parties to the investigation by the submitting entity (for business confidential documents, a public version must be served as well, in accordance with paragraph (a)(2) of this section).

* * * * *

(b) *Nonconforming submissions.* CBP will reject a submission that includes a request for business confidential treatment but does not meet the requirements of paragraph (a) of this section and will not consider or place such submission on the administrative record unless the submitting interested party takes any of the actions in paragraph (b)(2) of this section within the timeframe specified in paragraph (b)(2) of this section.

* * * * *

(3) *Effects of rejection.* If the submitting interested party does not take any of the actions in accordance with paragraph (b)(2) of this section, CBP will not consider the rejected submission, not place such submission on the administrative record, and, if applicable, adverse inferences may be drawn pursuant to § 165.6.

* * * * *

(e) *Information placed on the record by CBP.* Any information that CBP places on the administrative record, when obtained other than from an interested party subject to the requirements of this section, will include a public summary of the business confidential information as described in paragraph (a)(2) of this section, when applicable. If CBP places information on the record from parties who are not already subject to the requirements of this section, CBP will require these parties to conform to the requirements of this section and § 165.5 when filing submissions. Otherwise, such submissions may be treated as nonconforming submissions pursuant to paragraph (b) of this section and/or § 165.5(b)(4).

(f) *Administrative protective order.* In each investigation where CBP has granted a request by an interested party to treat any part of its submission as business confidential information, CBP will issue an administrative protective order which will contain terms to allow the representatives of parties to the investigation to access the business confidential information.

■ 5. Section 165.5 is amended by:

■ a. Revising paragraph (b)(2) introductory text;

■ b. Removing in paragraphs (b)(2)(ii) and (iii) the reference ''19 CFR'' and adding in its place ''§'';

■ c. Adding a new paragraph (b)(4); and

■ d. Revising paragraphs (c)(1) and (2).

The revisions and addition read as follows:

§ 165.5 Obtaining and submitting information.

* * * * *

(b) * * *

(2) *Certifications.* Every written submission made to CBP by an interested party or requested by CBP from any other party pursuant to §§ 165.4 and 165.5 must be accompanied by the following certifications from the person making the submission:

* * * * *

(4) *Nonconforming submissions.* CBP will reject a submission that does not meet the requirements of paragraph (b) of this section and will not consider it or place it on the administrative record.

(c) * * *

(1) *Requests for extensions.* CBP may, for good cause, extend any regulatory time limit, or any deadline for the submission of information requested by CBP, if a party requests an extension in a separate, stand-alone submission and states the reasons for the request. Such requests must be submitted no less than three business days before the time limit expires unless there are extraordinary circumstances. An extraordinary circumstance is an unexpected event that could not have been prevented even if reasonable measures had been taken by the requester. It is within CBP's reasonable discretion to determine what constitutes extraordinary circumstances, what constitutes good cause, and to grant or deny a request for an extension.

(2) *Rejection of untimely submissions.* If a submission is untimely filed, CBP will not consider it or place it on the administrative record and adverse inferences may be applied, if applicable.

■ 6. Section 165.6 is amended by revising paragraph (b) to read as follows:

§ 165.6 Adverse inferences.

* * * * *

(b) *Adverse inferences described.* An adverse inference used under paragraph (a) may include reliance on information derived from an allegation, a prior determination in another CBP investigation, proceeding, or action that involves evasion of AD/CVD orders, or any other available information on the administrative record.

* * * * *

■ 7. Section 165.12 is amended by revising paragraph (b) to read as follows:

§ 165.12 Receipt of allegations.

* * * * *

(b) *Withdrawal.* An allegation may be withdrawn by the party that filed it if that party submits a request to withdraw the allegation to the designated email address specified by CBP or through any other method approved or designated by CBP.

■ 8. Section 165.13 is amended by revising paragraphs (c) and (d) to read as follows:

§ 165.13 Consolidation of allegations.

* * * * *

(c) *Notice.* Notice of consolidation will be promptly transmitted to all parties to the investigation if consolidation occurs at a point in the investigation after which they have already been notified of the ongoing investigation. Otherwise, parties will be notified no later than five business days after day 90 of the investigation.

(d) *Service requirements for other parties to the investigation.* Upon notification of consolidation, parties to the consolidated investigation must serve on the newly added parties to the investigation, via an email message or through any other method approved or designated by CBP, public documents and the public versions of any documents that were previously served on parties to the unconsolidated investigation. Service must take place within five business days of the notice of consolidation.

■ 9. Section 165.14 is amended by revising paragraph (a) to read as follows:

§ 165.14 Other Federal agency requests for investigation.

(a) *Requests for investigations.* Any other Federal agency, including but not limited to the Department of Commerce or the United States International Trade Commission, may request an investigation under this part. CBP will initiate an investigation if the Federal agency has provided information that reasonably suggests that an importer has entered covered merchandise into the customs territory of the United States through evasion, unless the agency submits a request to withdraw to the designated email address specified by CBP or through any other method approved or designated by CBP.

* * * * *

■ 10. Section 165.15 is amended by revising paragraphs (d)(1) and (e) to read as follows:

§ 165.15 Initiation of investigations.

* * * * *

(d) * * *

(1) *In general.* CBP will issue a notice of its decision to initiate an

investigation to all parties to the investigation no later than five business days after day 90 of the investigation, and the actual date of initiation of the investigation will be specified therein. In cases where interim measures are taken pursuant to § 165.24, notice to all parties to the investigation will occur no later than five business days after day 90 of the investigation.

* * * * *

(e) *Record of the investigation.* If an investigation is initiated pursuant to subpart B of this part, then the information considered by CBP prior to initiation will be part of the administrative record pursuant to § 165.21. Any documents submitted prior to the issuance of a notice of CBP's decision to initiate an investigation will be served by CBP on the parties to the investigation, regardless of who submitted those documents.

■ 11. Section 165.16 is amended by revising paragraph (d).

§ 165.16 Referrals to Department of Commerce.

* * * * *

(d) *Effect on investigation.* The time period required for any referral and determination by the Department of Commerce will not be counted toward the deadlines for CBP to decide on whether to initiate an investigation under § 165.15, whether to take interim measures under § 165.24, or the deadline to issue a determination as to evasion under § 165.27.

* * * * *

■ 12. Section 165.22 is amended by:
■ a. In paragraph (a) removing the words ''not later'' and adding in their place the words ''no later'';
■ b. Revising paragraph (b);
■ c. In paragraph (d), removing the words ''not later'' and adding in their place the words ''no later''; and
■ c. In paragraph (d), removing the word ''*Notification*'' and adding in its place the word ''*Notice*''.

The revision reads as follows:

§ 165.22 Time for investigations.

* * * * *

(b) *Time for determination with consolidated allegations.* If CBP consolidates multiple allegations under § 165.13 into a single investigation under § 165.15, the date of receipt of the first properly filed allegation will be used for the purposes of the requirement under paragraph (a) of this section with respect to the timing of the initiation of the investigation.

* * * * *

■ 13. Section 165.23 is amended by:
■ a. Revising paragraph (b);
■ b. Revising the last sentence of paragraph (c)(1);
■ c. Revising paragraph (c)(2); and
■ d. Revising paragraph (d).

The revisions read as follows:

§ 165.23 Submission of factual information.

* * * * *

(b) *Voluntary submission of factual information.* The parties to the investigation may submit additional information in order to support the allegation of evasion or to negate or clarify the allegation of evasion.

(c) * * *

(1) * * * If CBP places new factual information on the administrative record on or after the deadline for submissions of new factual information pursuant to paragraph (c)(2) of this section (or if such information is placed on the record at CBP's request), the parties to the investigation will have 10 calendar days to provide rebuttal information to the new factual information.

(2) *Voluntary submission of factual information.* (i) Factual information voluntarily submitted to CBP pursuant to paragraph (b) of this section must be submitted no later than 200 calendar days after CBP initiated the investigation under § 165.15, unless this deadline is officially extended by CBP solely at CBP's discretion. If CBP extends this deadline, parties to the investigation will be notified and may make submissions up through the end of the extended deadline. Voluntary submissions made after the 200th calendar day after initiation of the investigation, or after the extended deadline, will not be considered or placed on the administrative record, except rebuttal information as provided in paragraph (c)(2)(ii) of this section. The public version must also be served via an email message or through any other method approved or designated by CBP on the parties to the investigation.

(ii) Parties to the investigation will have 10 calendar days from the date of placement of any new factual information on the record to provide rebuttal information to that new factual information, if the information being rebutted was placed on the administrative record no later than 200 calendar days after CBP initiated the investigation under § 165.15, or no later than the extended deadline.

(d) *Oral discussions.* Notwithstanding the time limits in paragraph (c) of this section, CBP may request oral discussion either in-person or by teleconference. CBP will memorialize such discussions with a written summary that identifies who participated and the topic of discussion, and place the written summary on the administrative record. In the event that business confidential information is included in the written summary, CBP will also place a public version on the administrative record.

■ 14. Section § 165.24 is amended by revising paragraph (c) to read as follows:

§ 165.24 Interim measures.

* * * * *

(c) *Notice.* If CBP decides that there is reasonable suspicion under paragraph (a) of this section, CBP will issue a notice of this decision to the parties to the investigation within five business days after taking interim measures. CBP will also provide parties to the investigation with a public version of the administrative record within 10 business days of the issuance of a notice of initiation of an investigation.

■ 15. Section 165.25 is amended by:
■ a. Revising paragraph (b); and
■ b. Adding new paragraphs (c) and (d).

The revision and additions read as follows:

§ 165.25 Verifications of information.

* * * * *

(b) CBP may conduct verifications before and after the deadline for the voluntary submission of new factual information as referenced in § 165.23. The general purpose of the verification is to verify the accuracy of the information already placed on the administrative record.

(c) CBP will place a report about the verification, *i.e.,* the verification report, on the administrative record. CBP will require the party that underwent the verification to place verification exhibits on the administrative record. Verification exhibits will generally contain information compiled and verified by CBP at CBP's discretion during the verification. In accordance with § 165.4, both CBP and the party that underwent the verification will provide public versions of their verification documents, which will be served on all parties to the investigation. CBP will not accept voluntary submissions of new factual information at the verification after the deadline for voluntary submission of new factual information, as referenced in § 165.23. Parties to the investigation cannot submit rebuttal information to either CBP's verification report or the verification exhibits. Parties to the investigation may submit to CBP written arguments in relation to the verification report and/or its exhibits in accordance with § 165.26.

(d) If CBP determines that information discovered during a verification is

relevant to the investigation and constitutes new factual information, CBP will place it on the administrative record separately, in accordance with § 165.23, and allow parties to the investigation to submit rebuttal information.

■ 16. Section 165.26 is amended by revising paragraphs (a), (b), (c), and (d)(2) to read as follows:

§ 165.26 Written arguments.

* * * * *

(a) *Written arguments.* Parties to the investigation:

(1) May submit to CBP written arguments that contain all arguments that are relevant to the determination as to evasion and based solely upon facts already on the administrative record in that proceeding. All written arguments must be:

(i) Submitted to the designated email address specified by CBP or through any other method approved or designated by CBP;

(ii) Submitted no later than 230 calendar days after the investigation was initiated pursuant to § 165.15, unless extended by CBP solely at CBP's discretion but no later than 300 calendar days after the investigation was initiated, or 360 calendar days after the investigation was initiated if the deadline for a determination as to evasion has been extended by CBP pursuant to § 165.22(c); and

(2) Must serve a public version of the written arguments prepared in accordance with § 165.4 on the other parties to the investigation by an email message or through any other method approved or designated by CBP the same day it is filed with CBP.

(b) *Responses to the written arguments.* Parties to the investigation:

(1) May submit to CBP a response to a written argument filed by another party to the investigation, fulfilling the following requirements:

(i) The response must be in writing and submitted to the designated email address specified by CBP, or through any other method approved or designated by CBP, no later than 15 calendar days after the written argument was filed with CBP, unless extended by CBP solely at CBP's discretion; and

(ii) The response must be limited to the issues raised in the written argument; any portion of a response that is outside the scope of the issues raised in the written argument will not be considered; and

(2) Must serve a public version of the response prepared in accordance with § 165.4 on the other parties to the investigation by an email message or through any other method approved or designated by CBP the same day it is filed with CBP.

(c) *Written arguments submitted upon request.* Notwithstanding paragraphs (a) and (b) of this section, CBP may request written arguments on any issue from the parties to the investigation at any time during an investigation.

(d) * * *

(2) A concise summary of the argument or response to the argument;

* * * * *

■ 17. Section 165.28 is amended by revising paragraph (c) to read as follows:

§ 165.28 Assessments of duties owed; other actions.

* * * * *

(c) *Cash deposits and duty assessment.* CBP will require the posting of cash deposits and assess duties on entries of covered merchandise subject to its affirmative determination of evasion in accordance with the instructions received from the Department of Commerce.

■ 18. Revise the heading to subpart D to read as follows:

Subpart D—Administrative Review of Determinations as to Evasion

■ 19. Section 165.41 is amended by:

■ a. Removing the word ''initial'' in the section heading and each time it appears in the section;

■ b. Revising the introductory text of paragraph (f);

■ c. Revising paragraph (h); and

■ d. Removing the last sentence of paragraph (i).

The revisions read as follows:

§ 165.41 Filing a request for review of the determination as to evasion.

* * * * *

(f) *Content.* Each request for review must be based solely on the facts on the administrative record in the proceeding, in writing, and may not exceed 30 pages in total (including exhibits but not table of contents or table of authorities). It must be double-spaced with headings and footnotes single spaced, margins one inch on all four sides, and 12-point font Times New Roman. If it exceeds 10 pages, it must include a table of contents and a table of cited authorities. CBP will reject a request for review that does not meet the requirements of this paragraph, and will not consider it or place it on the administrative record. Each request for review must set forth the following:

* * * * *

(h) *Consolidation of requests for administrative review.* Multiple requests under the same allegation control number assigned by CBP may be consolidated into a single administrative review matter.

* * * * *

■ 20. Revise § 165.42 to read as follows:

§ 165.42 Responses to requests for administrative review.

Any party to the investigation, regardless of whether it submitted a request for administrative review, may submit a written response to the filed request(s) for review. A party who submitted a request for administrative review may not respond to its own submission. Each written response may not exceed 30 pages in total (including exhibits but not table of contents or table of authorities) and must follow the requirements in § 165.41(f). The written responses to the request(s) for review must be limited to the issues raised in the request(s) for review and must be based solely on the facts already on the administrative record in that proceeding. The responses must be filed in a manner prescribed by CBP no later than 10 business days from the commencement of the administrative review. All responses must be accompanied by the certifications provided for in § 165.5. Each party seeking business confidential treatment must comply with the requirements in § 165.4. The public version of the response(s) to the request(s) for review must be provided to the other parties to the investigation via an email message or through any other method approved or designated by CBP.

■ 21. Revise § 165.44 to read as follows:

§ 165.44 Additional information.

CBP may request additional written information from the parties to the investigation at any time during the review process. The parties who provide the requested additional information must provide a public version to the other parties to the investigation via an email message or through any other method approved or designated by CBP. The submission of additional information requested by CBP must comply with requirements for release of information in § 165.4. CBP may apply an adverse inference as stated in § 165.6 if the additional information requested under this section is not provided. CBP will only accept written submissions of additional information in response to a request by CBP. No meetings or any other methods of unsolicited submission of additional information are permitted during the administrative review.

■ 22. Revise § 165.45 to read as follows:

§ 165.45 Standard for administrative review.

CBP will apply a de novo standard of review and will render a determination appropriate under law according to the specific facts and circumstances on the record. For that purpose, CBP will review the entire administrative record upon which the determination as to evasion was made, the timely and properly filed request(s) for review and responses, and any additional information that was received in response to a request by CBP pursuant to § 165.44. The administrative review will be completed within 60 business days of the commencement of the review.

■ 23. Section § 165.46 is amended by:
■ a. Removing in paragraph (a) the acronym ''EAPA'' and adding in its place the acronym ''TFTEA''; and
■ b. Revising paragraph (b).

The revision reads as follows:

§ 165.46 Final administrative determination.

* * * * *

(b) *Effect of the administrative review.* If the administrative review affirms the determination as to evasion, then no further CBP action is needed. If the administrative review reverses the determination as to evasion, then CBP will take appropriate actions consistent with the administrative review.

Robert F. Altneu,

Director, Regulations & Disclosure Law Division, Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.

Aviva R. Aron-Dine,

Acting Assistant Secretary of the Treasury for Tax Policy.

[FR Doc. 2024–04713 Filed 3–15–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[SATS No. WV–118–FOR (partial); Docket ID: OSM–2011–0009; SATS No. WV–126–FOR; Docket ID: OSM–2019–0012; S1D1S SS08011000 SX064A000 220S180110;S2D2S SS08011000 SX064A000 220XS501520]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment in part, disapproval of amendment in part.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving amendments to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). These amendments make changes to the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA), the Code of West Virginia (W.Va. Code), and the West Virginia Code of State Rules (CSR).

DATES: This rule is effective April 17, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Castle, Acting Director, Charleston Field Office, Telephone: (859) 260–3900. Email: *osm-chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

Subject to OSMRE's oversight, section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). Based on these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's finding, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendment

WV–118–FOR

By letter dated April 25, 2011, received by us on May 2, 2011 (Administrative Record Number WV–1561), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its program under SMCRA, docketed as WV–118–FOR. The proposed amendment consists of regulatory revisions to the West Virginia Surface Mining Reclamation Regulations at CSR Title 38, Series 2, as contained in Committee Substitute for Senate Bill 121 of 2011. *See* 2011 W.Va. Acts ch. 109. As is discussed more fully below, because West Virginia has made multiple submissions with respect to the same or similar provisions of statue and regulations, only a portion of the original submission from West Virginia will be addressed in this final rule. The remaining portion of WV–118 will be addressed in a subsequent final rule.

Relevant to this Notice, Senate Bill 121 authorizes regulatory revisions codifying an emergency rule issued on December 16, 2009, which amend the existing West Virginia coal mining regulations by adding trust funds and annuities as approved forms of financial assurance instruments.

We announced receipt of the proposed amendment in the November 2, 2011, **Federal Register** (76 FR 67637). In the same notice, we opened a public comment period and provided an opportunity for a public hearing on these provisions (Administrative Record Number WV–1573). The public comment period closed on December 2, 2011. We received responses from three Federal agencies stating that they had no comments.

WV–126–FOR

By letters dated May 2, 2018 (Administrative Record Nos. WV–1613A, in part, and WV–1613B), WVDEP submitted an amendment to its program under SMCRA, docketed as WV–126–FOR. The amendment contains revisions to the WVSCMRA and the West Virginia Surface Mining Reclamation Regulations at CSR 38–2–1 *et seq.,* as contained in Committee Substitutes for Senate Bills 163 and 626 of 2018. *See* 2018 W.Va. Acts chs. 141, 152.

Senate Bill 163 seeks to revise regulatory provisions involving definitions, reclamation, the environmental security account for water quality, water quality enhancement and modifying sections on incremental bonding, release of bonds, forfeiture of bonds, effluent limitations, and blasting.

Senate Bill 626 seeks to revise statutory provisions about the method in which permit applications, permit revisions, and informal conferences are advertised under WVSCMRA and make several editorial corrections about items such as position titles and agency names.

We announced the receipt of the proposed amendment in the February 14, 2020, **Federal Register** (85 FR 8497). In the same document, we opened the public comment period and provided an