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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 24

Docket No. USCBP-2020-0034; CBP Dec. No. 20-13

RIN 1515-AE46

Fees for Inbound Express Mail (EMS) Items

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

ACTION: Interim final rule.

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

DATES: *Effective date:* This interim final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], except for the amendment to § 24.23(c)(1)(v)

which is effective [INSERT 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comment date: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

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

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

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

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

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

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I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim final rule. U.S. Customs and Border Protection

(CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim final rule. Comments that will provide the most assistance to CBP will reference a specific portion of the interim final rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

II. Background and Purpose

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

Title VIII, Subtitle A of the SUPPORT for Patients and Communities Act is the Synthetics Trafficking and Overdose Prevention Act of 2018 (STOP Act). Among other things, the STOP Act amends subsection 13031(b)(9) of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c(b)(9)), to add a new paragraph (D) (hereafter referred to as “new subsection 13031(b)(9)(D)” or “new subsection 13031(b)(9)(D) of COBRA”), which requires certain fees for the processing of Inbound Express Mail Service (Inbound EMS) items at international mail facilities. Inbound Express Mail Service refers to the optional postal express service for sending postal items from other countries.¹ CBP is

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

responsible for screening inbound international mail and removing packages with illicit goods (including, but not limited to, opioids) from the mail stream before delivery to intended recipients in the United States.² New subsection 13031(b)(9)(D) of COBRA requires a payment of \$1 per Inbound EMS item, subject to annual adjustment, for services rendered in screening and processing of Inbound EMS items and, if an Inbound EMS item is formally entered, a payment of the fee provided for under subsection 13031(a)(9) of COBRA, if applicable. The fee provided for under subsection 13031(a)(9) is a merchandise processing fee.³ Under new subsection 13031(b)(9)(D), USPS must remit 50 percent of the \$1 fee per Inbound EMS item that it collects to CBP on a quarterly basis as reimbursement to CBP for processing of Inbound EMS items, and retain the other 50 percent to cover its processing of these items. The new subsection 13031(b)(9)(D) of COBRA requires the Secretary of the Treasury to issue regulations regarding the details of the quarterly remittances.⁴

CBP is amending its regulations to implement the provisions of new subsection 13031(b)(9)(D) pertaining to Inbound EMS items, including the applicable fees, adjustments to the fees, details about the remittances from USPS to CBP and the required supporting documentation. CBP is also amending its regulations to make certain conforming amendments to reflect the provisions of the new subsection 13031(b)(9)(D) of COBRA. First, CBP is amending its regulations to reflect the fact that the subsection 13031(a)(9) merchandise

² In addition to the amendments made to COBRA, section 8003 of the STOP Act amends section 343(a)(3)(K) of the Trade Act of 2002 (19 U.S.C. 1415), to require the Secretary of Homeland Security to issue regulations that require USPS to transmit certain advance electronic data on international mail shipments destined to the United States for risk assessment purposes. The Secretary of Homeland Security will be issuing a separate rule to implement these provisions.

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

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

processing fee will apply to Inbound EMS items as provided in the new subsection 13031(b)(9)(D). Second, CBP is amending its regulations to reflect that the dutiable mail fee previously authorized by subsection 13031(a)(6) will no longer apply to Inbound EMS items, based on the amendments made to subsection 13031(a)(6) of COBRA by section 8002(b) of the STOP Act that specifically exclude Inbound EMS items from the dutiable mail fee.

As provided in section 8002(c) of the STOP Act, the amendments made to COBRA by section 8002 of the STOP Act took effect on January 1, 2020. This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], except with respect to the amendments to §24.23(c)(1)(v) regarding the merchandise processing fee for formally entered Inbound EMS items, which take effect on [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

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

A. General Requirements

Section 8002 of the STOP Act amended subsection 13031(b)(9) of COBRA (19 U.S.C. 58c(b)(9)), by adding a new paragraph (D) (new subsection 13031(b)(9)(D)), which requires certain fees for the processing of items that are sent to the United States through the international postal network by “Inbound Express Mail service” or “Inbound EMS” (as that service is described in the mail classification schedule referred to in section 3631 of title 39, United States Code).⁵ The initial fee set by Congress is \$1 per Inbound EMS item (new subsection

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

13031(b)(9)(D)(i)(I)), plus an additional amount for Inbound EMS items that are formally entered (new subsection (b)(9)(D)(i)(II)). The Secretary of the Treasury, in consultation with the Postmaster General, may adjust the former amount annually by regulation. The latter amount is the merchandise processing fee provided for under subsection 13031(a)(9) of COBRA, which is subject to annual adjustment under subsection 13031(l) of COBRA. The new section 13031(b)(9)(D) provides that the above amounts shall be the only payments required for reimbursement of CBP for services provided in connection with the processing of an Inbound EMS item. The new subsection 13031(b)(9)(D) requires USPS to remit 50 percent of the \$1 fee it collects to CBP on a quarterly basis in accordance with regulations issued by the Secretary of the Treasury. Details about these remittances are provided in section III.B., below. Details about the method for adjusting the \$1 fee in new subsection 13031(b)(9)(D)(i)(I) are provided in section III.C., below.

B. USPS Remittances to CBP and Supporting Documentation

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

international mail facilities. It also provides that the payments retained by USPS with respect to the \$1 processing fee for Inbound EMS items are to be used for reimbursement purposes only.

USPS and CBP conferred about the methodology for how these quarterly remittances from USPS to CBP will occur. The agreed upon methodology takes into account the fact that USPS will collect the \$1 processing fee per Inbound EMS item from foreign postal operators and that USPS will reimburse CBP after settlement with foreign postal operators has occurred. The quarterly remittances from USPS to CBP will be made as follows: USPS will remit to CBP on a quarterly basis 50 percent of the amount required by new subsection 13031(b)(9)(D)(i)(I) of COBRA, for which settlement with foreign postal operators has occurred. Except for the first remittance, USPS must make such remittances to CBP every calendar quarter to cover preceding calendar quarters. As provided in section 8002(c) of the STOP Act, the amendments to COBRA took effect on January 1, 2020. Accordingly, the first remittance from USPS to CBP is due no later than July 31, 2020. It will cover, at a minimum, the first calendar quarter of 2020.⁶ This methodology permits USPS to remit the required amounts after payment is settled with foreign postal operators and allows for standard processing times associated with inter-agency funds transfers. Additionally, CBP is requiring USPS to maintain documentation necessary for CBP to verify the accuracy of the fee calculations and to provide certain supporting documentation with each quarterly remittance.

New subsection 13031(b)(9)(D) does not include any specific requirements pertaining to the payment of the applicable merchandise processing fee, pursuant to subsection 13031(a)(9) of

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

COBRA, for Inbound EMS items that are formally entered.⁷ Therefore, CBP will collect this fee in the manner that it ordinarily collects a merchandise processing fee, which is directly from the importer of record.⁸

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

New subsection 13031(b)(9)(D)(iv) provides that, beginning in fiscal year 2021, the Secretary of the Treasury, in consultation with the Postmaster General, may adjust the amount new subsection 13031(b)(9)(D)(i)(I), initially \$1 per Inbound EMS item, no more than once per fiscal year. The adjustment is not to exceed the costs of services provided in connection with the processing of inbound EMS items⁹ and must be consistent with the obligations of the United States under international agreements. CBP is incorporating this provision into its regulations. For the reasons noted below, the regulations will provide that this fee is not subject to the annual inflation adjustment requirement in subsection 13031(l) of COBRA.

Subsection 13031(l) of COBRA authorizes the Secretary of the Treasury to adjust the fees established under subsections 13031(a) and (b)(2), (b)(3), (b)(5), (b)(6), (b)(8), and (b)(9) of COBRA at the beginning of each fiscal year to reflect the percentage of the increase in the average of the Consumer Price Index for the preceding 12-month period. Although subsection 13031(l) references subsection 13031(b)(9), as noted above, the new subsection 13031(b)(9)(D) explicitly specifies an alternative procedure for adjustment of the \$1 Inbound EMS item fee. In addition, it does not specify that the \$1 per Inbound EMS item fee is “subject to adjustment under subsection (l).” This is in contrast to all the other provisions that are referenced in

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

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

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

subsection 13031(b), which explicitly provide that the respective fees imposed by those provisions are “subject to adjustment under subsection (l).” CBP is of the view that by providing a separate and distinct adjustment procedure for the \$1 Inbound EMS item fee, and by conspicuously omitting from new subsection 13031(b)(9)(D) any explicit reference to adjustment under subsection 13031(l), the new subsection 13031(b)(9)(D)(iv) is the sole applicable adjustment procedure - to the exclusion of the annual inflation adjustment procedures specified in subsection 13031(l) of COBRA. Any adjustment to the \$1 fee will be done by regulation. USPS, CBP, and Treasury will consult on such adjustments.

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

IV. Explanation of Amendments to CBP Regulations

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

Part 24 of Title 19 of the Code of Federal Regulations (CFR) sets forth the CBP regulations regarding customs financial and accounting procedures (19 CFR part 24). Section 24.22 (19 CFR 24.22) describes the customs COBRA user fees for certain services, and when such fees are required and subject to limitations and/or adjustments. Section 24.23 (19 CFR 24.23) sets forth the terms and conditions for when the fees for processing merchandise are

required. These two sections will incorporate the fees associated with processing of Inbound EMS items that are subject to the new subsection 13031(b)(9)(D) of COBRA.

A. Definitions

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

B. Inbound EMS Item Processing Fees

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

Paragraph (l)(2) specifies how the remittance of payments required by subsection 13031(b)(9)(D)(i)(I) of COBRA will occur between USPS and CBP. As required by new

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

subsection 13031(b)(9)(D)(iii)(I)(aa) of COBRA, paragraph (1)(2) states that USPS will remit to CBP on a quarterly basis 50 percent of the payments required by paragraph (1)(1) to reimburse CBP for services provided in connection with the processing of Inbound EMS items.¹¹

Paragraph (1)(2)(i) describes the method of remittance, in which USPS must remit 50 percent of payments required in paragraph (1)(1)(i) for which settlement with foreign postal operators has occurred.

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

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

CBP has the supporting documentation necessary to track USPS's remittances to CBP to ensure that the statutory requirements are met.

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

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

C. Exclusions

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

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

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

V. Statutory and Regulatory Requirements

A. Administrative Procedure Act

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

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

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

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

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

¹⁴ The nondiscretionary conforming amendments refer to amending CBP regulations to subject Inbound EMS items that are formally entered to the merchandise processing fee under subsection 13031(a)(9) of COBRA, and the amendments made to subsection 13031(a)(6) of COBRA by section 8002(b) of the STOP Act that exclude Inbound EMS items from the dutiable mail fee provided for in that subsection.

was given very little discretion regarding the implementation of new subsection 13031(b)(9)(D), CBP believes that prior notice and public comment procedure would be impracticable, unnecessary, and contrary to the public interest. Accordingly, CBP finds that there is good cause to issue this rule without prior notice and comment.

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

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

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

B. Executive Orders 12866, 13563, and 13771

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

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

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

USPS data. As such, CBP has included the following summary of the analysis to help inform stakeholders of this rule's impacts.

1. Background and Purpose of Rule

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

New subsection 13031(b)(9)(D) of COBRA requires a payment of \$1 per Inbound EMS item ("Inbound EMS item fee"), subject to annual adjustment, for services rendered in the screening and processing of Inbound EMS items. Under this new subsection, USPS must pay 50 percent of the designated \$1 fee per Inbound EMS item that it collects to CBP on a quarterly basis as reimbursement to CBP for processing of Inbound EMS items and retain the other 50 percent to cover its processing of these items. Depending on postal procedures, the \$1 Inbound EMS item fee may ultimately be paid by foreign postal operators, shippers, or other entities. New subsection 13031(b)(9)(D) of COBRA also specifies that the *ad valorem* merchandise processing fee (MPF) currently under subsection 13031(a)(9) of COBRA shall be required if applicable to Inbound EMS items that are formally entered; these new implementing regulations will make the MPF applicable to formally entered Inbound EMS items prospectively by

removing the current regulatory exemption.¹⁶ With this change, importers of record, who are addressees or addressees' brokers in the inbound mail environment, will be required to now pay an *ad valorem* MPF on any formally entered Inbound EMS items directly to CBP, consistent with current entry and entry summary procedures for other mail fees. For fiscal year (FY) 2020, this *ad valorem* MPF is 0.3464 percent, though it cannot exceed \$519.76 and cannot be less than \$26.79.¹⁷ These maximum and minimum fee values are determined each fiscal year and published via *Federal Register* notice.

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

As provided in the STOP Act, the aforementioned amendments to the COBRA fees took effect on January 1, 2020, though not all changes have been implemented. Through this rule,

¹⁶ Formally entered items generally include those valued at over \$2,500, but they may also include other items with a value less than \$2,500, such as commercial shipments containing textiles and apparel and products regulated by other government agencies. MPFs are paid by the importer of record, who are addressees or addressees' brokers in the inbound mail environment. *See* 19 CFR 145.12 and https://help.cbp.gov/app/answers/detail/a_id/121/kw/formal%20entry%20filing/related/1/session/L2F2LzEvdGltZS8xNTY3MTczOTg0L3NpZC81WjVwS0Jubw%3D%3D. Accessed August 30, 2019.

¹⁷ *See* CBP Dec. 19-08 (84 FR 37902).

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

CBP is amending its regulations to implement all of the STOP Act’s COBRA amendments that pertain to Inbound EMS items, including statutorily-prescribed fees, adjustments to fees, fee revenue remittances from USPS to CBP, and the elimination of the dutiable mail fee for Inbound EMS items. CBP is also requiring USPS to maintain and provide supporting documentation to the agency to ensure the accuracy of the fee remittances with this rule. Table 1 summarizes the COBRA user fees applicable to Inbound EMS items with and without the COBRA amendments and this rule.

Table 1. Inbound EMS Item User Fees with and without the COBRA Amendments and Rule

| Inbound EMS Item Entry Type | Without COBRA Amendments and Rule | With COBRA Amendments and Rule |
|--|--|--|
| Formal Entry (Generally >\$2,500 in value) | Dutiable mail fee for dutiable items (FY 2020 fee is \$5.89) ¹⁹ | \$1.00 Inbound EMS item fee and <i>Ad valorem</i> MPF of 0.3464 percent (In FY 2020 the maximum amount of the fee cannot exceed \$519.76 and cannot be less than \$26.79) |
| Informal Entry²⁰ (Generally < or = \$2,500) | Dutiable mail fee for dutiable items (FY 2020 fee is \$5.89) | \$1.00 Inbound EMS item fee |

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

2. Historical and Projected Inbound Mail Volumes and Fees

Between FY 2017 and FY 2019, Inbound EMS items slightly declined, while total inbound mail items decreased at a higher rate. During this period, Inbound EMS items

¹⁹ See CBP Dec. 19-08 (84 FR 37902).

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

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

Based on input from USPS subject matter experts, CBP predicts that the rule's \$1 Inbound EMS item fee and the *ad valorem* MPF for Inbound EMS items are likely to lead to

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

decreases in Inbound EMS item volumes; however, the exact amounts of the decreases are unknown.²² As such, CBP analyzes the impacts of this rule under three Inbound EMS item changes compared to the baseline. Under the first projection method, CBP predicts that the rule will have no impact on future Inbound EMS item volumes relative to the baseline. Thus, CBP projects that the changes in Inbound EMS item volumes with this rule will be the same as those predicted under the baseline, decreasing by a small percentage each year starting from their FY 2019 value. Under the second projection method, CBP projects that Inbound EMS item volumes will decline by a slightly greater percentage point relative to the baseline each year starting from the FY 2019 total volume of Inbound EMS items. Under the third projection method, CBP projects that Inbound EMS item volumes will decline by an even greater additional percentage relative to the baseline each year starting from the FY 2019 total volume of Inbound EMS items. CBP will also no longer assess or collect dutiable mail fees for dutiable Inbound EMS items with this rule, meaning that there will be no corresponding fee collections during the period of analysis with this rule.

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

²² Source: Email communication with USPS on May 7, 2020.

3. Transfer Payments from Rule

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

To calculate this rule's monetary transfers, CBP considered the new or eliminated fee amounts and the projected number of Inbound EMS items respectively subject to these fee changes. In particular, to calculate the total Inbound EMS item fee payments resulting from this rule, CBP multiplied the \$1 Inbound EMS item fee by the projected number of Inbound EMS items delivered by USPS from FY 2020 to FY 2024. To determine the *ad valorem* MPF payments from importers of record, who are addressees or addressees' brokers in the inbound mail environment, to the U.S. Government under this rule, CBP used an estimate of the average *ad valorem* MPF assessed for each formally entered Inbound EMS item multiplied by the projected number of formally entered Inbound EMS items over the period of analysis. In the absence of robust data on the value of formally entered Inbound EMS items, CBP estimated that the average MPF assessed for each formally entered Inbound EMS item will be equal to the

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

minimum MPF for FY 2020 of \$26.79 between FY 2020 and FY 2024.²⁴ To measure the total amount of forgone dutiable mail fee transfer payments from addressees of dutiable Inbound EMS items to the U.S. Government, CBP multiplied the FY 2020 dutiable mail fee of \$5.89 by the projected number of Inbound EMS items that will be subject to the dutiable mail fee under the baseline from FY 2020 to FY 2024. According to these calculations, the U.S. Government will enjoy an undiscounted net transfer payment from fee payers of at least \$54.3 million from this rule between FY 2020 and FY 2024 according to the projection method used (see Table 2). When discounted, this net transfer payment equals at least \$47.9 million in present value and at least \$10.9 million on an annualized basis (using a 7 percent discount rate; see Table 2). To the extent that fee payers make more (fewer) transfer payments to the U.S. Government with this rule than estimated, the actual net transfers to the U.S. Government will be higher (lower).

Table 2. Total Potential Monetized Present Value and Annualized Net Transfer Payments of Rule, FY 2020 – FY 2024 (2020 U.S. Dollars)

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

*These estimates were excluded from the table for commercial sensitivity reasons.

Note: The estimates in this table are contingent upon CBP's projections as well as the discount rates applied.

4. Costs and Benefits of Rule

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

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

CBP's Office of Finance will experience some time burdens associated with the review of USPS's \$1 Inbound EMS item fee documentation. CBP staff will have to match supporting documentation provided by USPS with funds remitted to CBP. There will also be periodic audits by CBP's Regulatory Audit and Agency Advisory Services Directorate to ensure Inbound EMS item volumes reported by USPS and the funds remitted to CBP match the volumes indicated in CBP's system. CBP will conduct these reviews and audits in conjunction with other remittance reviews and audits. CBP estimates that the monetized time burden of these reviews and audits will be very small each year.²⁶ As such, this Inbound EMS item user fee documentation review and auditing will not meaningfully affect CBP operations.

²⁵ Source: Communication with USPS on September 20, 2019.

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

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

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

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

5. Summary

In summary, this rule will mostly result in transfer payments between fee payers and the U.S. Government (specifically, USPS and CBP). On net, payers will transfer at least an estimated \$10.9 million in annualized fee payments to the U.S. Government from FY 2020 to FY 2024 (using a 7 percent discount rate). These estimates are based on historical growth rates and shares. The transfer payments resulting from this rule could be understated if future inbound mail volumes increase more than estimated, or they could be overstated if future inbound mail

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

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

volumes decrease more than estimated, like during the COVID-19 pandemic. To the extent that fee payers make more (fewer) transfer payments to the U.S. Government with this rule than estimated, the actual net transfers to the U.S. Government from this rule will be higher (lower). USPS, CBP, and fee payers will likely incur minimal costs from this rule.

C. Regulatory Flexibility Act

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

D. Unfunded Mandates Reform Act of 1995

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

E. Paperwork Reduction Act

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

F. Signing Authority

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

List of Subjects in 19 CFR Part 24

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

Amendments to the Regulations

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

PART 24 – CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

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

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

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

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

2. Amend § 24.22 by:

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

b. Adding paragraph (a)(5);

c. Revising paragraph (f);

d. Adding paragraph (l).

The additions and revision read as follows:

§ 24.22 Fees for certain services.

(a) * * *

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

* * * * *

(f) *Fee for dutiable mail*—(1) *Dutiable mail other than Inbound EMS items*. Except as provided in paragraph (f)(2) of this section, the addressee of each item of dutiable mail for which a CBP officer prepares documentation will be assessed a processing fee in the amount of \$5.50, as adjusted in accordance with the terms of paragraph (k) of this section. When the merchandise is delivered by the Postal Service, the fee will be shown as a separate item on the entry and collected at the time of delivery of the merchandise along with any duty and taxes due. When CBP collects the fee directly from the importer or his agent, the fee will be included as a separate item on the informal entry or entry summary document.

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

* * * * *

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

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

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

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

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

(ii) *Supporting Documentation.* United States Postal Service must maintain documentation necessary for CBP to verify the accuracy of the fee calculations. With each quarterly remittance to CBP, United States Postal Service must provide a supporting document that shows:

- (A) The total quantity of Inbound EMS items for which 50 percent of the payments required by paragraph (l)(1)(i) of this section are being remitted;
- (B) The receiving international mail facility location of each Inbound EMS item for which 50 percent of the payments required by paragraph (l)(1)(i) of this section are being remitted;
- (C) The total amount of payments required by paragraph (l)(1)(i) of this section for which settlement with foreign postal operators has occurred; and
- (D) For any Inbound EMS items sent to the United States through the international postal network in preceding calendar quarters for which settlement with foreign postal operators concerning the payments required by paragraph (l)(1)(i) of this section has not occurred, the receiving international mail facility

location of each such Inbound EMS item and the total quantity of any such Inbound EMS items received at each affected international mail facility location.

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

3. Amend § 24.23 by:

a. Adding paragraph (a)(6); and

b. Revising paragraph (c)(1)(v)..

The addition and revision read as follows:

§ 24.23 Fees for processing merchandise.

(a) * * *

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

* * * * *

(c) ***

(1) ***

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

entered on or after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE
FEDERAL REGISTER]

Appendix A to Part 24 [Amended]

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

DATED: July 15, 2020

Mark A. Morgan
Chief Operating Officer and
Senior Official Performing the Duties
of Commissioner
U.S. Customs and Border Protection

Approved:

Timothy E. Skud,
Deputy Assistant Secretary of the Treasury
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