



DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

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[USCBP–2016–0075; CBP Dec. 23–12]

RIN 1651–AB02

Regulatory Implementation of the Centers of Excellence and Expertise

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

ACTION: Final rule.

SUMMARY: This document adopts as final, without change, interim amendments made to the U.S. Customs and Border Protection (CBP) regulations by CBP Decision 16-26, as modified by a subsequent technical correction, CBP Decision 19-11. The interim amendments established the Centers of Excellence and Expertise (Centers) as a permanent organizational component of the agency. The interim amendments shifted certain trade functions to the Centers and identified other trade functions jointly carried out by port directors and Center directors. The interim amendments provided broad, centralized decision-making authority to the Centers to enable the Centers to facilitate trade, reduce transaction costs, increase compliance with applicable import laws, and achieve uniformity of treatment at ports of entry for identified industries.

DATES: This final rule is effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background and Summary
 - A. Purpose of the Centers of Excellence and Expertise (Centers)
 - B. Test Program Developing the Centers
 - C. Interim Final Rule
 - D. Technical Correction
- II. Discussion of Comments
 - A. Overview
 - B. Responses to Comments
- III. Conclusion
- IV. Statutory and Regulatory Requirements
 - A. Executive Orders 13563 and 12866
 - B. Regulatory Flexibility Act
 - C. Paperwork Reduction Act

Signing Authority

Amendments to CBP Regulations

- I. Background and Summary**
 - A. Purpose of the Centers of Excellence and Expertise (Centers)**

Prior to the implementation of the Centers of Excellence and Expertise (Centers), U.S. Customs and Border Protection (CBP) processed imports on a port-by-port basis. Due to CBP's port-by-port trade processing authority, importers claimed disparate processing treatment for similar goods entered at different ports of entry, causing trade disruptions, increased transaction costs, and information lapses. In response, CBP established 10 Centers with broad, centralized decision-making authority to facilitate trade, reduce transaction costs, increase compliance with applicable import laws, and achieve uniformity of treatment at the ports of entry for identified industry sectors. The Centers focus on nationwide entry summary processing and other trade

oversight on a per-importer account basis through a single assigned Center, replacing traditional post-summary processing for each entry at each port of entry. The port directors continue to retain sole authority over the control, movement, and release of cargo.

The Centers are managed from strategic locations around the country, permitting CBP to focus its trade expertise on industry-specific issues and provide tailored support for importers. The Centers and the cities wherein each management office is located are as follows: (1) Agriculture & Prepared Products, Miami, Florida; (2) Apparel, Footwear & Textiles, San Francisco, California; (3) Automotive & Aerospace, Detroit, Michigan; (4) Base Metals, Chicago, Illinois; (5) Consumer Products & Mass Merchandising, Atlanta, Georgia; (6) Electronics, Long Beach, California; (7) Industrial & Manufacturing Materials, Buffalo, New York; (8) Machinery, Laredo, Texas; (9) Petroleum, Natural Gas & Minerals, Houston, Texas; and (10) Pharmaceuticals, Health & Chemicals, New York, New York. For a more detailed discussion of the scope of industries covered by each Center, please refer to the Interim Final Rule discussed in further detail in Sec. I.C below.

B. Test Program Developing the Centers

The Centers concept developed as a result of discussions between CBP and the Commercial Customs Operations Advisory Committee (COAC), which advises the Commissioner of CBP, the Secretary of the Department of Homeland Security (DHS), and the Secretary of the Department of the Treasury (Treasury) on the commercial operations of CBP and related DHS and Treasury functions. *See* Section 109, Public Law 114-125, 130 Stat. 122 (Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA)).

In 2012, CBP developed a test to incrementally transition the operational trade functions that traditionally resided with port directors to the Centers. The purpose of the test was to broaden the ability of the Centers to make decisions by waiving certain identified regulations to the extent necessary to provide the Center directors, who manage the Centers, with the authority to make the decisions normally reserved for the port directors. On August 28, 2012, CBP

published the first of three General Notices in the *Federal Register* (Announcement of Test Providing Centralized Decision-Making Authority for Four CBP Centers of Excellence and Expertise, 77 FR 52048) announcing a general test (the Centers test) open to participants from industries covered by the Electronics Center, the Pharmaceuticals, Health & Chemicals Center, the Automotive & Aerospace Center, and the Petroleum, Natural Gas & Minerals Center. CBP modified the Centers test in two subsequent *Federal Register* notices published on April 4, 2013 (Modification and Expansion of CBP Centers of Excellence and Expertise Test to Include Six Additional Centers, 78 FR 20345) and March 10, 2014 (Centers of Excellence and Expertise Test; Modifications, 79 FR 13322).

Over the course of the Centers test, the decision-making authority of the Center directors was incrementally broadened. On September 11, 2014, the then-serving Commissioner of CBP, R. Gil Kerlikowske, signed Delegation Order 14-004, which expanded the Center directors' decision-making authority by delegating to the Center directors all functions, authorities, rights, privileges, powers, and duties vested in port directors by law, regulation, or otherwise. The delegation enabled these functions, authorities, rights, privileges, powers, and duties to be exercised concurrently by port directors and Center directors.

C. Interim Final Rule (IFR)

Section 110 of TFTEA required the development and implementation of the Centers. Accordingly, on December 20, 2016, CBP published an interim final rule, CBP Decision (CBP Dec.) 16-26 (Centers IFR), in the *Federal Register* (Regulatory Implementation of the Centers of Excellence and Expertise, 81 FR 92978), amending title 19 of the Code of Federal Regulations (19 CFR) and establishing the Centers as a permanent organizational component of the agency. Furthering the Centers' trade enhancement goals, the Centers IFR implemented the Centers' broad decision-making authority by amending parts of title 19 of the CFR to: (1) define the Centers and the Center directors; (2) modify the definition of the term "port director" in order to distinguish the port directors' functions from the Center directors' functions; (3) identify the

Center management offices; (4) explain the process by which importers are assigned to the Centers based on the predominant Harmonized Tariff Schedule of the United States (HTSUS) tariff classification of the importer's goods; (5) establish an appeals process that allows an importer to contest its assignment to a specific Center; (6) identify the regulatory functions that have been transitioned from the port directors to the Center directors and those functions that the port directors and the Center directors carry out jointly; (7) clarify that certain payments and documents may continue to be submitted at the ports of entry and electronically; and (8) provide a list of industries covered by each of the Centers. A limited number of responsibilities and authorities that had been provided to the Center directors under the Centers test were not transitioned to the Centers as part of the interim amendments.¹

D. Technical Correction

On September 5, 2019, CBP published a technical correction, CBP Dec. 19-11, (Technical Correction), in the *Federal Register* (84 FR 46676) to correct discrepancies in 19 CFR 12.73(j) and 141.113(b) to properly reflect the authority of the Center directors. Following the publication of an unrelated final rule in the *Federal Register* on December 27, 2016 (81 FR 94974), § 12.73(j) contained an inconsistency that was corrected to reflect that both the Center directors and port directors have the authority to collect certain U.S. Environmental Protection Agency (EPA) declarations, and the Center directors, rather than the port directors, have the authority to extend the submission deadline for such EPA declarations. Additionally, an inadvertent omission in the amendatory instructions to § 141.113(b) was corrected to replace the word "port director" with the word "Center director."

II. Discussion of Comments

A. Overview

¹ See 81 FR 92978 (December 20, 2016) for a detailed list of responsibilities and authorities that had been previously provided to the Center directors as part of the Centers test but were not transitioned to the Centers as part of the interim amendments.

Pursuant to the agency management or personnel exemption in 5 U.S.C. 553(a)(2), the agency organization, procedure, and practice exemption in 5 U.S.C. 553(b)(A), and the good cause exemption in 5 U.S.C. 553(b)(B), the interim regulatory amendments were promulgated without prior public notice and comment procedures. However, the Centers IFR provided for the submission of public comments that would be considered before adopting the interim amendments as a final rule. The prescribed 30-day public comment period closed on January 19, 2017.

One of the comments that CBP received during the initial 30-day public comment period requested a 60-day extension of the 30-day public comment period. In response to the comment and to allow for as much public participation as possible in the formulation of the final rule, on January 27, 2017, CBP extended the initial 30-day public comment period for another 60 days until March 20, 2017 (82 FR 8588). During the public comment period, CBP received eight comments, six of which were within the scope of the Centers IFR.² CBP has carefully considered all comments submitted in response to the Centers IFR.

All comments were supportive of the implementation of the Centers as a permanent organizational component of the agency. Nonetheless, several commenters had concerns or questions about specific aspects of the Centers' organization and operations. A description of these comments, together with CBP's analysis, is set forth below.

B. Responses to Comments

Comment: Two commenters expressed general approval of the Centers, with one commenter, a law firm, stating that the Centers constitute a vast improvement over the disjointed and inconsistent treatment of entries that resulted from the administration of imports on a port-by-port basis, reflecting the goals of increased administrative efficiencies noted in the Centers

² Eight public comments were submitted to the docket for the Centers IFR; however, two comments were not posted to www.regulations.gov as they were deemed out of scope. Neither of the two comments addressed the Centers and both comments were directed to other agencies regarding other programs. Accordingly, these two comments are not considered in this document.

IFR cost-benefit analysis. The commenter especially highlighted its positive experience in working with various Centers.

Response: The Centers represent a new approach to trade processing that is more in line with the trade community's current business practices, and CBP is pleased to know that the trade community shares the view that the Centers enhance compliance, collaboration, and efficiency.

Comment: One commenter expressed concerns regarding coordination between the Centers and ports, as well as the procedures pertaining to the assignment of importers to the Centers. According to the commenter, the lack of procedures and policies that govern how the Centers and ports coordinate with each other creates difficulties in determining which component serves as the primary decision-maker and/or point of contact regarding these matters. While the commenter acknowledged that the assignment of importers to the Centers may provide clarification as to which component serves as the primary decision-maker and/or point of contact, the commenter also raised additional concerns and questions regarding the assignment of importers to the Centers.

First, the commenter noted that the assignment of importers to the Centers on an account basis rather than based on the predominant commodities of each entry constitutes a reversal of a policy that CBP announced in 2016 for entries requiring review, such that an importer could end up dealing with multiple Centers, for different entries. Second, the commenter inquired whether CBP is prepared to properly allocate importers to the Centers based on their account activity and business model. Specifically, the commenter inquired about the process by which CBP assigns importers with minimal account activity throughout the year to the Centers, and how the Centers coordinate with each other when an importer was assigned to one Center on an account level but enters a small number of shipments with predominant HTSUS tariff classifications covered by a different Center.

Response: CBP disagrees with the commenter's assertion that a lack of coordination in the concurrent decision-making authority of port directors and Center directors creates

uncertainty as to which component serves as the point of contact and primary decision-maker. Either the amended regulations or the corresponding CBP Form specifies which component should be contacted regarding these matters. In order to better enable the Centers to accomplish their trade mission (that is, to strategically enforce commercial import laws while also facilitating the flow of legitimate trade), the regulatory, permanent implementation of the Centers required CBP to make minor adjustments to the Centers' authorities and responsibilities, and CBP's internal policies and procedures. For example, in order to achieve full end-to-end processing of import activity, CBP updated its internal policies and procedures to provide for the required level of coordination and collaboration between the Centers and the ports, including creating instances of concurrent decision-making authority between the Center directors and port directors during the Centers implementation process. Additionally, the Centers IFR included minor modifications to the Centers' responsibilities and authorities, and the process by which importers are assigned to the Centers. Therefore, CBP recognizes that the regulatory implementation of the Centers as a permanent organizational component of the agency has required an adjustment period during which the trade community must become acquainted with the modified processes, including which component serves as the primary decision-maker for certain trade functions and the process by which importers are assigned to the Centers. CBP appreciates the comment as it provided CBP with an opportunity to guide the trade community through the adjustment process.

The Centers centralize and consolidate post-release activities of importers on an account basis. Generally, each importer is assigned to a Center based on the predominant HTSUS tariff classification of the importer's imported goods. Once an importer has been assigned to a specific Center, that Center will process all of the importer's entry summaries, regardless of the predominant HTSUS tariff classification of a specific entry. For example, an importer whose imports are 75 percent footwear and 25 percent miscellaneous items will be assigned to the Center for Apparel, Footwear and Textiles. Once the importer has been assigned to the Center for Apparel, Footwear and Textiles, all of the importer's activities will be processed by that

Center, regardless of whether the predominant HTSUS tariff classification of a specific entry relates to a different industry sector.

The processing of trade activity on an account basis does not prevent the Centers from providing tailored support to importers and handling industry-specific issues. When it is necessary to leverage another Center's expertise, the Centers coordinate with each other, and CBP has streamlined the coordination process over time. However, over time, the Centers have developed a more proficient level of knowledge of their accounts and import activities, which has enabled the Centers to administer trade activity more independently.

In order to ensure that an importer is assigned to the Center that corresponds with the importer's business model, the assignment process differs slightly in a limited number of circumstances. For example, CBP may assign an importer to a Center other than the Center reflecting the predominant HTSUS tariff classification of the importer's goods, if such deviation from the regular assignment process is supported by information such as: (1) the importer's associated business practice within an industry; (2) the intended use of the predominant number of goods imported; and (3) the high relative value of the imported goods. Additionally, since the business practices of brokers do not align within a particular industry sector, the import activities of brokers acting as Importers of Record (IORs) are processed on an entry-by-entry basis, meaning that each entry summary will be assigned to a specific Center based on the entry summary's predominant HTSUS tariff classification. Import activities of importers with minimal account activity throughout the year who have not yet been assigned to a specific Center are processed similarly. Furthermore, importers are permitted to appeal the assignment to a Center at any time and can seek re-assignment to a different Center. *See* 19 CFR 101.10(c). As a result, CBP finds that the current assignment process properly allocates importers to Centers based on the importers' account activity and business models.

Comment: One commenter requested that CBP assign entries filed by express courier brokers to the Centers on the basis of the overall post-release account activity of the ship-to

party, or in the alternative, create a separate Center for express courier brokers. According to the commenter, the exclusion of express courier brokers from participation in the Centers model is anathema to the purpose of the Centers—that is, to focus CBP’s trade expertise on industry-specific issues and tailored support for importers. The commenter explained that, although express courier brokers serve as IORs on entries, the predominant tariff classification of the entries is not driven by the express courier broker’s business model but the business model of the ship-to party (formerly known as consignee), who serves as the party causing the importation and often serves as an IOR itself on other (unrelated) entries. Accordingly, the commenter requested that CBP assign entries filed by express courier brokers to the Centers on the basis of the overall post-release account activity of the ship-to party, instead of the post-release account activity of the importer of record (that is, the express courier broker), or in the alternative, create a separate Center for express courier brokers.

Response: CBP appreciates the comment as it underscores the importance of the roles of filers and brokers in the importation process and agrees that express courier brokers do not squarely fit within one of the ten defined industry sectors because their business practices cross all industry sectors. Nonetheless, CBP finds that the Centers are well equipped to handle the activities of express courier brokers as they fit within the trade community’s overall business practices.

The Centers process trade activity from a national perspective, at the IOR and ultimate consignee level, and, therefore, have full visibility into the trade community’s normal business practices, including the activities of express courier brokers. Like the trade activities of other brokers acting as IORs, the import activities of express courier brokers are also processed on an entry-by-entry basis, meaning that each entry summary will be assigned to a specific Center based on the entry summary’s predominant HTSUS tariff classification. As such, it is CBP’s position that the Centers are well equipped to handle the activities of express courier brokers

because the Centers' current operating model accounts for the fact that express courier brokers enter merchandise across all industry sectors.

Express courier brokers are not excluded from participation in the Centers model, as the commenter suggested. To the contrary, the Centers have gained experience on industry-specific issues, which has led to an improved level of service to express courier brokers. This includes the creation of cross-educational opportunities that will serve to inform express courier brokers on compliance issues and CBP on the trade community's current business practices, including the express courier brokers' processes. CBP is committed to ensuring that the business processes of all members of the trade community are accounted for in the Centers' operational approach and continues to strengthen relationships in a coordinated effort to secure the U.S. economy through lawful trade and travel.

Comment: One commenter commended CBP on the creation of the Centers but suggested several minor technical revisions to the language of the CBP regulations pertaining to the Centers (Centers regulations). For example, the commenter noted that several provisions of the Centers regulations provide that certain documents or payments may be filed with CBP, "either at the port of entry or electronically." The commenter explained that the phrase "either at the port of entry or electronically" implies that the Centers only accept electronic submissions of these types of documents or payments. The commenter also noted that, in the context of paragraph (b) of section 174.12, the phrase conflicts with the regulatory language in paragraph (d), which permits but does not require electronic filing.

Additionally, the commenter pointed out that the fact that protests filed with the Centers can cover entries filed at multiple ports of entry constitutes a major change to CBP's protest procedures, and as such, should be highlighted in the regulatory text. Therefore, the commenter requested that CBP amend paragraph (d) of section 174.12 by adding the following sentence: "A protest filed with the Center director may include entries filed at multiple ports of entry."

Response: CBP understands that the implementation of the Centers led to an initial adjustment period during which members of the trade community had to become acquainted with the Centers' processes, including the submission process for documents and payments. While CBP believes that any uncertainty as to the submission process was resolved as part of the initial adjustment period, CBP appreciates the comment as it provides CBP with an opportunity to clear up any potentially remaining uncertainty.

The use of the phrase "either at the port of entry or electronically" does not imply that the Centers only accept electronic submissions of certain documents and payments, as suggested by the commenter. As part of the transition of certain trade functions from the ports of entry to the Centers, the Centers IFR shifted certain staff positions from the port directors' chain of command to the Center directors' chain of command. While the reallocated personnel now report to a Center director rather than a port director, the reallocated personnel continue to handle the same trade functions. In order to remain accessible to the trade community and to assist with enforcement and compliance issues as they arise, the reallocated personnel remain in their previous locations—primarily, at the ports of entry. The realignment was merely virtual. Thus, in the phrase "either at the port of entry or electronically," the use of the preposition "*at*" (rather than "with") establishes that hard copies of the documents or payments can be filed *at* the ports of entry (*with* staff of either the port of entry or the Centers). Like electronic submissions, the submissions will then be forwarded to and processed by the Center assigned to that particular submission.

Additionally, CBP disagrees that it is necessary to amend paragraph (d) of section 174.12 to further clarify that a single protest can now pertain to multiple entries filed at multiple ports of entry. CBP finds that the regulatory language in paragraph (b) of section 174.13 sufficiently establishes that a single protest can now pertain to multiple entries filed at multiple ports of entry.

III. Conclusion

Based on the analysis of the comments and further consideration, CBP adopts as final the interim rule (Centers IFR), CBP Dec. 16-26, published in the *Federal Register* (81 FR 92978) on December 20, 2016, as modified by the Technical Correction, CBP Dec. 19-11, published in the *Federal Register* (84 FR 46676) on September 5, 2019, without changes.

IV. 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. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB).

1. Purpose of the Rule

Prior to the launch of the Centers test, CBP port directors overseeing imports were solely responsible for facilitating lawful importation; protecting U.S. revenue by assessing and collecting customs duties, taxes, and fees; and detecting, interdicting, and investigating illegal international trafficking in arms, munitions, counterfeit goods, currency, and acts of terrorism at their U.S. port of entry. Before the implementation of the Centers, when a shipment reached the United States, the IOR (*i.e.*, the owner, purchaser, or licensed customs broker designated by the owner, purchaser, or consignee) would file entry documents and a bond for the imported goods with the director of the port where the merchandise was entered. If necessary, CBP staff working under the port director would then hold or examine the shipment or validate the entry

documents to ensure the merchandise's safety, security, and customs compliance with U.S. importing guidelines, or its general admissibility. The port director would release the shipment from CBP's custody if no legal or regulatory violations occurred, allowing post-cargo release (hereafter, post-release) processing to commence. Within 10 working days of the merchandise's entry at a designated customhouse, CBP would require the importer to file entry summary documentation consisting of the entry package returned to the importer, broker, or authorized agent by CBP at the time the merchandise was released and an entry summary (CBP Form 7501), and to deposit any estimated duties on the shipment. In some cases, CBP would send a formal request for other invoices and documents (via CBP Form 28: Request for Information) to the importer to assess duties, collect statistics, or determine that import requirements have been satisfied prior to processing the entry summary. Before completing the importation process, CBP Import Specialists and Entry Specialists working under the port director would review and process all entry summary and related documentation; classify and appraise the merchandise; collect final duties, taxes, and fees on the goods entered; and liquidate entry summaries. If necessary, the CBP trade personnel would also review and process protests, perform importer interviews, and initiate monetary trade penalties and liquidated damages cases.

Due to CBP's port-by-port trade processing authority and scope, elements of the cargo entry and release process, such as holds, exams, document submission requirements, and final determinations regarding admissibility, varied widely among ports of entry and resulted in the length of the process varying greatly as well. Importers often claimed to receive disparate processing treatment for similar goods entered at different ports of entry, causing trade disruptions, increased transaction costs, and information lapses for not only the importer but also CBP. With an intent to facilitate trade, provide consistent import processing treatment, reduce transaction costs, and strengthen the agency's trade knowledge and enforcement posture, CBP began testing an organizational concept in 2011 that grouped agency trade expertise and operational responsibilities by industry and related import accounts into designated Centers.

Since the commencement of the Centers test, the Centers have successfully met their trade enhancement goals. Based on the Centers test's success, CBP published the Centers IFR in the *Federal Register* (81 FR 92978) on December 20, 2016, which discontinued the Centers test and established the Centers as permanent organizational components of CBP through regulatory amendments. The Centers regulations were later modified by the Technical Correction published in the *Federal Register* (84 FR 46676) on September 5, 2019.

This rule adopts the Centers IFR, as modified by the Technical Correction, as a final rule, without changes, and finalizes the transition of certain trade enforcement responsibilities and the majority of post-release trade functions from the purview of port directors to Center directors.³ Port directors continue to retain singular authority over matters pertaining to the control, movement, examination, and release of cargo. The Centers focus on nationwide entry summary processing and other trade oversight on a per-importer account basis through virtual means, which replaces traditional post-release import processing *per* entry at *each* port of entry with processing by a single assigned Center according to the importer account. To conduct such national, industry-focused processing, CBP has permanently staffed the Centers with personnel specializing in trade matters through an internal realignment, which imposed no costs on CBP. Centers personnel have generally remained at their previous locations, primarily at ports of entry, to stay accessible to the trade community and continue to assist with enforcement and compliance issues that arise at ports of entry with the physical importation of cargo. CBP remotely manages Centers employees through multidisciplinary teams located across the nation, thereby enabling CBP to extend the Centers' hours of service to trade members, maintain a high level of industry expertise in major port cities, and staff the Centers with industry experts from across the country.

2. Costs and Benefits of Rule

³ See 81 FR 92978, 92983 – 93003 (December 20, 2016) and 84 FR 46676, 46677 (September 5, 2019), for a detailed list of trade function transitions.

Since CBP received no comments critical of the economic impact analysis on the interim final rule, and one positive comment generally reflecting the analysis, and because CBP is not making any changes in the final rule, CBP largely adopts the Centers IFR's economic analysis, with updated data. CBP also made minor changes to the analysis to better reflect how the rule was implemented in practice. In this regulatory impact analysis, CBP discusses the costs and benefits that CBP and trade members experience with the regulatory implementation of the Centers in qualitative and, when possible, quantitative or monetary terms. CBP incurred sunk costs related to travel, equipment, and supplies and materials, as well as some other costs during the Centers test phase, related to establishing and transitioning to Centers, totaling approximately \$760,000 from 2012 to February of 2014. The document "Program Assessment of the Centers of Excellence and Expertise," available in the docket, assesses the impacts of the Centers test phase in more detail. As in the analysis for the interim final rule, we do not include these costs as costs of the rule. We report them here to give the reader a more complete understanding of the costs for the entire lifecycle of the Centers, including the test period.

For the purpose of this analysis, the complete Centers rulemaking effort, including the Regulatory Implementation of the Centers of Excellence and Expertise interim final rule, the Technical Correction to Centers of Excellence and Expertise Regulations, and this final rule, are collectively referred to as "the Centers rule" or "this rule."

a. Costs

This rule introduces minimal costs to CBP and the trade community because it largely meets its objectives through low- to no-cost internal organization changes. The transition of post-release import processing and trade-related responsibilities from ports of entry to the Centers neither affects the duties, taxes, and fees payment and entry summary submission processes for importers, nor does it adversely affect other post-release activities (*e.g.*, processing duty refund claims, reviewing protests). Even with the Centers, importers may continue to file payments and paper entry summary documentation with CBP either at the port of entry or

electronically. All payments from the trade community, whether submitted to a Center, at a port of entry, or electronically, continue to go directly to CBP's Office of Finance. If trade enforcement or post-release processing issues emerge, CBP continues to maintain its formal importer notification and remedy processes. Upholding these administrative processes generates no related costs to the agency.

At the time the Centers IFR was published, CBP anticipated that if an importer or broker submitted paper entry summary documentation at a port of entry without an appropriate Center representative on site, CBP staff at the port would reroute the documents internally by electronic means to the Center assigned to manage the importer's account. In practice, electronic rerouting has been found to be unnecessary due to the implementation of the Automated Commercial Environment (ACE); therefore, CBP incurs no cost for document rerouting as predicted in the Centers IFR.⁴

CBP does experience costs from processing (*i.e.*, reviewing and making a determination on) Center assignment appeals. Generally, CBP assigns each importer to a specific Center based on the HTSUS tariff classification and industry sector corresponding to the predominant number of goods the importer imports.⁵ An importer that is displeased with its Center assignment may appeal the assignment at any time by submitting a written appeal to CBP by mail or email. Appeals must include the following information: (1) current Center assignment; (2) preferred Center assignment; (3) all affected IOR numbers and associated bond numbers; (4) written justification for the change in Center assignment; and (5) import data, as described in the "Finalization of the Centers of Excellence and Expertise Test" section of the Centers IFR. CBP data shows that importers file significantly fewer Center assignment appeals than what was

⁴ Source: CBP's Office of Field Operations, February 18, 2020.

⁵ The list of HTSUS numbers that will be used by CBP for the importer's placement in a Center is the same list of HTSUS numbers that is referenced in the definition for Centers (*see* §101.1). Factors that may cause CBP to place an importer in a Center not based on the HTSUS tariff classification of the predominant number of goods imported include the importer's associated business practices within an industry, the intended use of the predominant number of goods imported, or the high relative value of goods imported.

predicted in the Centers IFR. CBP receives two Center assignment appeals each year compared to the 60 that was predicted in the Centers IFR.⁶ Each appeal takes 30 minutes (0.5 hours), on average, for CBP Headquarters staff to process, which is half as long as predicted in the Centers IFR.⁷ CBP generally notifies trade members of its Center appeal decisions by electronic means, thus imposing no additional cost on the agency.⁸ Based on the number of Center appeals submitted annually and CBP's time burden to manage each appeal, CBP sustains an annual cost of \$96.61 from the Centers rule's Center assignment appeals process.⁹

As outlined in this final rule, the responsibilities of the trade community remain largely unchanged with the Centers' regulatory implementation. Importers may continue to file cargo release documentation and payments where their merchandise is entered. Importers and brokers who file electronically can continue to use CBP's automated systems, such as the Automated Broker Interface, to submit required import data and payments to CBP. Meanwhile, CBP continues to maintain a consistent formal notification and remedy process regarding post-release and other trade-related issues with the Centers' establishment. Trade members only incur costs from this rule when appealing a Center assignment.

Importers may choose to appeal their Center assignment for a number of reasons, including the expectation of better service or product knowledge at another Center. As previously discussed, if an importer chooses to appeal its Center assignment, it must submit a written appeal to CBP by mail or email that includes information about its current and preferred Center assignments (*see* "Finalization of the Centers of Excellence and Expertise Test" section of the Centers IFR for specific appeal requirements). CBP estimates that each appeal takes 45 minutes (0.75 hours) for an importer to complete.¹⁰ The opportunity cost estimate is equal to the

⁶ Source: CBP's Office of Field Operations, February 18, 2020.

⁷ Source: CBP's Office of Field Operations, February 18, 2020.

⁸ Source: CBP's Office of Field Operations, January 15, 2015.

⁹ This cost is monetized by multiplying one hour by the fully-loaded wage of a CBP Officer (\$96.61). CBP bases this wage on the FY 2022 salary and benefits of the national average of CBP Agriculture Specialist positions, which is equal to a GS-12, Step 5. Source: CBP's Office of Finance, June 27, 2022.

¹⁰ Source: CBP's Office of Field Operations, February 18, 2020.

median hourly wage of an importer (\$34.81) multiplied by the hourly time burden for an importer to complete and submit a Center assignment appeal (0.75 hour), and then rounded.¹¹ This results in an opportunity cost of \$26.11 for a single appeal. Due to the relative affordability of submitting a Center assignment appeal via email rather than mail, CBP believes that the vast majority of importers file appeals electronically. Therefore, CBP does not consider the printing or mailing costs for an importer to submit a Center assignment appeal in this analysis. By applying the cost for importers to complete and submit a Center assignment appeal to the expected number of Center assignment appeals filed annually, CBP finds that this rule's appeals process generates \$52.22 in yearly costs to the trade community.¹² This cost is lower than the Centers IFR estimated annual cost to the trade community of \$1,803 largely due to the difference in projected (60) and actual (2) Center appeals received.

Certain trade members, particularly CBP-accredited laboratories and CBP-approved gaugers, may incur added costs with this rule's amendments to their obligations outlined in 19 CFR 151.12(c)(5) and (6), and 19 CFR 151.13(b)(5) and (6).¹³ As amended, CBP requires CBP-accredited laboratories to notify an additional CBP representative, the Center director, of "any circumstance which might affect the accuracy of work performed as an accredited laboratory, . . .

¹¹ CBP calculated this loaded wage rate by first multiplying the Bureau of Labor Statistics' (BLS) 2021 median hourly wage rate for Cargo and Freight Agents (\$22.55), which CBP assumes best represents the wage for importers, by the ratio of BLS' average 2021 total compensation to wages and salaries for Office and Administrative Support occupations (1.4819), the assumed occupational group for importers, to account for non-salary employee benefits. This figure is in 2021 U.S. dollars and CBP assumes an annual growth rate of 4.15 percent based on the prior year's change in the implicit price deflator, published by the Bureau of Economic Analysis. Source of median wage rate: U.S. Bureau of Labor Statistics. Occupational Employment Statistics, "May 2021 National Occupational Employment and Wage Estimates United States." Updated March 31, 2022. Available at https://www.bls.gov/oes/current/oes_nat.htm. Accessed May 25, 2022. The total compensation to wages and salaries ratio is equal to the calculated average of the 2021 quarterly estimates (shown under Q01, Q02, Q03, Q04) of the total compensation cost per hour worked for Office and Administrative Support occupations (\$29.6125) divided by the calculated average of the 2021 quarterly estimates (shown under Q01, Q02, Q03, Q04) of wages and salaries cost per hour worked for the same occupation category (\$19.9825). Source of total compensation to wages and salaries ratio data: U.S. Bureau of Labor Statistics. Employer Costs for Employee Compensation. "ECEC Civilian Workers - 2004 to Present." March 2022. Available at <https://www.bls.gov/web/ecec.supp.toc.htm>. Accessed May 25, 2022.

¹² The annual opportunity cost to the trade industry is equal to the median hourly wage of an importer (\$34.81) multiplied by the hourly time burden for an importer to complete and submit a Center assignment appeal (0.75 hours), multiplied by the number of Center assignment appeals (2), and then rounded.

¹³ The text of 19 CFR 151.12 and 19 CFR 151.13 still refers to CBP as Customs.

their consequences, and any corrective action taken or that needs to be taken” and “of any attempt to impede, influence, or coerce laboratory personnel in the performance of their duties, or of any decision to terminate laboratory operations or accredited status.”¹⁴ Similarly, CBP requires CBP-approved gaugers to notify an additional CBP representative, the Center director, of “any circumstance which might affect the accuracy of work performed as an approved gauger, . . . their consequences, and any corrective action taken or that needs to be taken” and “of any attempt to impede, influence, or coerce gauger personnel in the performance of their duties, or of any decision to terminate gauger operations or approval status.”¹⁵ Under previous, pre-Centers regulations, CBP mandated CBP-accredited laboratories and CBP-approved gaugers to contact the port director and Executive Director, Laboratories and Scientific Services, on the matters described above. Given that CBP did not receive any notifications previously required under 19 CFR 151.12(c)(5) and (6) and 19 CFR 151.13(b)(5) and (6) in the past 20 years prior, CBP assumes that this rule’s additional CBP notification step for CBP-accredited laboratories and CBP-approved gaugers will continue to not introduce any costs to these parties.¹⁶

In all, the Centers rule introduces annual costs of \$96.61 to CBP and \$52.22 to trade members for a total of \$148.83.

b. Benefits

The Centers rule produces valuable benefits to CBP and the trade community. This section of the analysis largely discusses the benefits of the rule qualitatively due to quantitative data limitations. Based on the success of the Centers test and public comments on the Centers IFR, CBP believes that, as permanent organizational components, the Centers continue to provide uniform post-release processing and trade-related decision-making, strengthen critical agency knowledge of industry practices and products, heighten CBP’s trade enforcement skills,

¹⁴ 19 CFR 151.12(c)(5) and 151.12(c)(6).

¹⁵ 19 CFR 151.13(b)(5) and 151.13(b)(6).

¹⁶ Based on the number of notifications received by CBP’s Laboratories and Scientific Services as of February 2020. Source: CBP’s Office of Field Operations, February 18, 2020, and October 26, 2022.

and improve trade communication. CBP also believes this occurs on a much grander scale than observed during the test phase because CBP has since assigned all current eligible importers to a Center. CBP continues to assign new importers to Centers, if eligible, once the Center alignment can be determined based on their import history.

The Centers allow CBP to conduct uniform entry summary processing and trade-related decision-making nationwide on an industry-specific, importer account basis by transitioning the post-release processing of an importer's goods from a transactional level at each port of entry to one assigned Center. Public comments support this assessment. One comment from a law firm explained that their clients have seen benefits, including increased efficiency, consistency, and more accurate treatment in their interactions with Centers compared to the "disjointed and inconsistent treatment that resulted from having to deal with individual Ports of Entry."

As permanent CBP components, the Centers require fewer information requests and conduct better informed trade compliance actions than in the pre-Centers environment, leading to time and cost savings to CBP and trade members. Prior to the implementation of the Centers, when an importer entered similar merchandise at different U.S. ports of entry that required supplemental information for entry summary processing, CBP personnel at each port of entry generally submitted a CBP Form 28: Request for Information to the importer. In that case, the importer responded to each request, even if the responses were identical, and CBP personnel at each port of entry reviewed the duplicative information received from the importer. With the Centers, the importer receives only one CBP Form 28 for the merchandise's entry summary processing, requiring CBP personnel to review the importer's supplemental information only once. For each avoidance of a CBP Form 28, CBP saves 10 minutes (0.17 hours) of time in issuing the request and reviewing the requested information.¹⁷ Importers save an estimated 120

¹⁷ Source: U.S. Office of Management and Budget, Office of Information and Regulatory Affairs. RegInfo.gov. "Supporting Statement Request for Information 1651-0023." February 28, 2022. Available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202112-1651-008. Accessed October 28, 2022.

minutes (2.0 hours) in preparation time for each avoided CBP Form 28 response¹⁸ and \$69.62 in averted opportunity costs.¹⁹ Internal CBP data shows that there has been more than a 61 percent (14,958 submissions) decrease in CBP Form 28 submissions for 2022 compared to 2014 and more than a 55 percent (11,977 submissions) decrease since the Centers IFR was implemented in 2016.²⁰ However, due to regulatory changes the trade industry has seen since the Centers IFR, the limitations of CBP systems, trade remedies, and the fact that several importers still have not been assigned to a Center, it is not possible to determine how much the drop in CBP Form 28 submissions can be attributed to this rule. CBP and some importers may experience additional printing and mailing cost savings through reduced CBP Form 28 submissions, though the extent of these savings is unknown.

With a single Center conducting all post-release processing for a particular importer, determinations on protests, marking, and classification matters are now consistent rather than sometimes inconsistent as in the pre-Centers environment. In the pre-Centers environment, importers occasionally received different determinations on similar trade compliance issues depending on the port of entry where their merchandise was processed, which sometimes required duplicative action on behalf of CBP and the importer. The Centers' consistency may enhance importers' awareness of CBP's positions on trade compliance issues, possibly leading to improved compliance and an unknown amount of subsequent savings to both parties in the future. To the extent that the Centers' uniform processing and determinations also decrease post-summary corrections, exams, hold times, and other trade obstacles, the benefits of this rule will be higher.

¹⁸ Source: U.S. Office of Management and Budget, Office of Information and Regulatory Affairs. RegInfo.gov. "Supporting Statement Request for Information 1651-0023." February 28, 2022. Available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202112-1651-008. Accessed October 28, 2022.

¹⁹ The opportunity cost estimate is equal to the assumed median hourly wage of an importer (\$34.81) multiplied by the hourly time burden for an importer to complete a CBP Form 28 response (2.0 hours), and then rounded.

²⁰ Source: CBP's Office of Field Operations, February 18, 2020, and October 26, 2022.

In addition to creating uniform post-release processing and determinations, the Centers strengthen CBP trade personnel's industry knowledge by concentrating their expertise into a specific import industry set as opposed to the entire range of import industries. According to outreach conducted for this rule, such focused expertise has already enriched CBP relations with the trade community, as demonstrated through a Centers test participant's claim that Center account managers are very knowledgeable of their industry and are now more familiar with their imports and trade issues.²¹ Several public commenters on the Centers IFR also expressed positive experiences with the Centers. Increasing Centers staff awareness of importers and their merchandise may also contribute to a decline in requests for information, exams, or holds, which provides time and cost savings to CBP and trade members.

The Centers' industry focus has also enriched trade enforcement. Using knowledge gathered through processing solely entry summaries for the electronics industry, Electronics Center employees uncovered a counterfeit electronic adapter import operation. Since discovering the counterfeiting operation, the Electronics Center has worked with the rights holder to add a trademark onto its electronic device to prevent future intellectual property rights (IPR) violations and subsequent economic losses.²² Based on the benefits of enhanced industry knowledge gained during the Centers test phase and since the Centers IFR went into effect, CBP believes the permanent establishment of the Centers enhances CBP relations with the trade community, facilitates trade, and results in an improved ability to identify high-risk commercial importations that could enhance import safety, increase revenue protection, and reduce economic losses associated with trade violations.

Furthermore, the Centers streamline communication between CBP and the trade community by replacing communication with each port of entry with communication with one

²¹ Source: Teleconference with CBP's Pharmaceuticals, Health & Chemicals Center test participant on December 19, 2013.

²² Source: Teleconference with CBP's Electronics Center on December 3, 2013.

Center. The Centers serve as a single source of information and point of contact for trade members regarding importing requirements, IPR infringement or other trade violations, merchandise holds, and Partner Government Agencies (PGA) issues, eliminating the need for trade members to contact multiple CBP employees and for multiple CBP employees to share duplicative information with members of the trade. Such a decrease in redundant information requests and sharing produces time and cost savings to the trade community and CBP. The Centers also allow for enhanced communication with importers by offering extended hours of service compared to port of entry service hours, which may expedite trade. Without information on the amount of duplicative communication eliminated with the emergence of the Centers or the volume of trade expedited through the Centers' extended hours of service, the overall value of these communication benefits is unknown.

c. Net Impact of Rule

In summary, the Centers rule introduces both costs and benefits. CBP sustains \$96.61 in added costs each year from reviewing Center assignment appeals, while trade members bear an annual cost of \$52.22 attributable to Center assignment appeals. CBP and trade members also experience benefits from this rule's decreased import costs and time burdens, streamlined trade processing, broadened industry and trade compliance knowledge, enhanced trade enforcement posture, and improved communication, though the overall value of these benefits is unknown. Although not quantified, CBP believes this rule's benefits to CBP and the trade community are considerable, while its costs to these parties are relatively negligible. For these reasons, CBP asserts that the benefits of this rule outweigh its costs, thus providing an overall net benefit to the agency and members of the trade community.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any

independently owned and operated business not dominant in its field that qualifies as a small business concern per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people). CBP initially issued the Centers rule as an interim final rule under the agency management and personnel and procedural rule exceptions of the Administrative Procedure Act. Thus, a Regulatory Flexibility Act analysis was not required. *See* 5 U.S.C. 553. Nonetheless, CBP considered the economic impact of the Centers IFR on small entities. Since CBP did not receive any comments on the Centers IFR relating to the Regulatory Flexibility Act analysis, CBP adopts the Centers IFR’s Regulatory Flexibility Act analysis with updated data, as presented next.

Through the Centers final rule, CBP finalizes the transition of certain trade enforcement responsibilities and the majority of post-release trade functions from the purview of port directors to Center directors.²³ Port directors continue to retain singular authority over regulations pertaining to the control, movement, examination, and release of cargo. Because the Centers introduce a new post-release processing method for all U.S. imports, this rule’s regulatory changes affect all importers and brokers who enter goods into the United States, including those considered “small” under the Small Business Administration’s (SBA) size standards.²⁴ Since the vast majority of importers are small businesses, this rule impacts a substantial number of small entities.²⁵

This rule generates costs and benefits to importers and related members of the trade. As outlined throughout this rule, the responsibilities of the trade community remain largely unchanged due to the Centers rule. However, trade members experience costs when filing a Center assignment appeal and when notifying a Center under the requirements of amended 19 CFR 151.12(c)(5) and (6), and 19 CFR 151.13(b)(5) and (6).

²³ *See* 81 FR 92978, 92983 – 93003 (December 20, 2016) and 84 FR 46676, 46677 (September 5, 2019), for a detailed list of trade function transitions.

²⁴ *See* 13 CFR 121.101 – 121.201

²⁵ Source: CBP Report: Importer SBA Analysis 2022, dated May 11, 2022.

As previously mentioned in the “Executive Orders 13563 and 12866” section, importers incur an opportunity cost of \$26.11 per Center assignment appeal. With two appeals expected each year, the annual cost of Center assignment appeals to the entire trade community equals \$52.22. It is likely that some small entities file Center assignment appeals, though the exact number is unknown. Regardless of the number of small entities impacted by this requirement, CBP does not believe that a cost of \$26.11 to file a Center assignment appeal amounts to a “significant” level to these entities.

Under previous, pre-Centers regulations, CBP mandated CBP-accredited laboratories and CBP-approved gaugers to contact the port director and Executive Director of Laboratories and Scientific Services on the matters previously described in 19 CFR 151.12(c)(5) and (6), and 19 CFR 151.13(b)(5) and (6). Given that CBP did not receive any such notifications in the past 20 years, CBP assumes that this rule’s added requirement to contact a Center director per amended 19 CFR 151.12(c)(5) and (6), and 19 CFR 151.13(b)(5) and (6), will continue to not impact a substantial number of small entities. In the event that a CBP-accredited laboratory or CBP-approved gauger considered “small” has to notify an additional CBP representative according to these regulatory changes, CBP does not believe that requiring one more telephone call, letter, or email will have a significant economic impact on the entity.

Besides costs, importers and brokers experience benefits from this rule, though the value of these benefits is unknown due to data limitations. The trade community likely benefits from the Centers rule’s uniform post-release processing and decision-making, increased agency knowledge of industry practices and products, and improved communication with CBP, based on observations from the Centers test and Centers IFR. CBP expects the Centers’ uniform post-release processing and trade-related determinations to decrease administrative burdens on the trade, resulting in time and cost savings. This uniformity may also enhance the trade community’s awareness of CBP’s position on trade compliance issues, which may improve compliance and generate an unknown amount of subsequent savings to trade members in the

future. The Centers' strengthened industry focus likely enhances CBP relations with the trade community, facilitates trade, and results in an improved ability to identify high-risk commercial importations that could increase import safety, increase revenue protection, and reduce economic loss associated with trade violations. By replacing port-by-port communication with communication with one Center, the Centers serve as a single source of information for trade members regarding such subjects as importing requirements, IPR or other trade violation reports, merchandise holds, and PGA issues. This sole communication source eliminates the need for members of the trade community to contact multiple CBP resources, potentially producing additional time and cost savings. The Centers also allow for enhanced communication between CBP and the trade community by offering extended hours of service compared to port of entry service hours, which may expedite trade. Despite their unknown value, CBP notes that the economic impact of these changes on small entities, if any, is entirely beneficial. Although this rule affects a substantial number of small entities, CBP does not believe that the economic impact of this rule on small entities is significant. Accordingly, CBP certifies that this regulation does not have a significant economic impact on a substantial number of small entities.

C. 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. As this document does not involve any collections of information under the Act, the provisions of the Act are inapplicable.

Signing Authority

This document is being issued in accordance with 19 CFR 0.2(a), which provides that the authority of the Secretary of the Treasury with respect to CBP regulations that are not related to customs revenue functions was transferred to the Secretary of DHS pursuant to section 403(1) of the Homeland Security Act of 2002 (Pub. L. 107-296, 116 Stat. 2178, 6 U.S.C. 203(1)).

Accordingly, this final rule adopting the interim amendments to such regulations as final may be signed by the Secretary of DHS (or his delegate).

Amendments to the CBP Regulations

For the reasons given above, the Centers IFR amending parts 4, 7, 10, 11, 12, 24, 54, 101, 102, 103, 113, 132, 133, 134, 141, 142, 143, 144, 145, 146, 147, 151, 152, 158, 159, 161, 162, 163, 173, 174, 176, and 181 of title 19 of the Code of Federal Regulations (19 CFR Parts 4, 7, 10–12, 24, 54, 101–103, 113, 132–134, 141–147, 151, 152, 158, 159, 161–163, 173, 174, 176, and 181), which was published in the *Federal Register* at 81 FR 92978 on December 20, 2016 (CBP Dec. 16-26), as amended by the technical correction published in the *Federal Register* at 84 FR 46676 on September 5, 2019 (CBP Dec. 19-11), is adopted as a final rule, without change.

Alejandro N. Mayorkas,
Secretary,
Department of Homeland Security.

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