

empowered the Presiding Officers to lead the hearing process.

- In light of these Congressional concerns, why does today's proposal move away from using independent ALJs as Presiding Officers? How can we avoid public perception that the Commission is politicizing the rulemaking process if the Chair appoints the Presiding Officer?

- How can we preserve the independence of the Presiding Officer if the Commission, not the Presiding Officer, decides which issues will be discussed at the hearing and which parties will be permitted to testify, conduct cross-examination, and offer rebuttal evidence?

- How can the Commission ensure we get a neutral and thorough accounting of evidence and data instead of a cherry-picked record that serves an agenda?

- Under the revised rules, the Commission, not the Presiding Officer, will determine the list of disputed issues of material facts. How can stakeholders ensure that their proposed factual disputes will be part of the rulemaking record if their input is out of step with the majority view of the Commission?

*Second, with respect to procedural limitations that impact public understanding and opportunities for input:* The rule revisions remove self-imposed restrictions I view as deliberate choices by this agency to comply not just with the letter of our Congressional mandate but the spirit of the law. Following our rulemaking spree in the 1970s, the FTC was stripped of funding, stripped of legal authorities, and required to institute new and substantial rulemaking steps to foster public trust in our trade rules.<sup>9</sup> Recognizing this agency was on the brink of being shuttered, our rules of practice adopted a number of rulemaking procedures that provided for additional public comment periods, publication of a staff report, and multiple opportunities for the public to weigh in on disputed issues of material fact. While the procedures as revised may comply with the statute as drafted, I support the FTC's existing approach that provides for robust additional public input.

- If the agency is preparing to remove discretionary steps from our rulemaking process, are we concerned the more limited process will fail to identify unintended consequences of proposed rules, particularly those that could harm

small businesses and marginalized communities?

- Is the Commission concerned that the public will view the more limited opportunities to comment on proposed rules as running counter to the democratic rationales for rulemaking my colleagues have previously espoused?

Additionally, rulemaking efforts are enhanced when the public has the input from expert staff at agencies overseeing the rulemaking process. The FTC has built transparency into our rules of practice by requiring that rulemaking staff publish a staff report containing their analysis of the rulemaking record and recommendations as to the form of the final rule. But the new rules eliminate the staff report requirement.

- Considering the value of staff reports, how will the Commission build trust in the enforcement of new trade rules without transparency into staff's recommendations?

- In what ways will the public's understanding of any final rules suffer because the Commission will no longer publish a report from expert FTC staff highlighting key issues and formulating recommendations based on the record?

The Commission's proposal to revise its rules of practice related to Section 18 rulemaking procedures is not a small adjustment enacted to improve efficiency. These changes have the potential to usher in a return to aggressive, unbounded rulemaking efforts that could transform entire industries without clear theories of law violations and empirical foundations for recommended regulatory burdens. Even as we speak, Congress is considering bills that run the gamut from giving the FTC expansive new authority and resources to eliminating the agency's jurisdiction. In the midst of so much criticism and scrutiny from so many angles regarding so many aspects of our jurisdiction, why are we embarking on this path of revisiting an era that led to such significant constraints on our jurisdiction?

As the saying goes, if you don't acknowledge the mistakes of the past, you are doomed to repeat them. One striking example of this disregard for history can be found in the House Judiciary Committee's Majority Staff Report, which 12 different times points to railroad regulation as a model for Big Tech.<sup>10</sup> In a stunning omission,

<sup>10</sup> For other reactions to the Majority Staff Report, see Christine S. Wilson, Remarks for American Bar Association Webcast, Interview with Commissioner Wilson and Barry Nigro on the House Judiciary Report, (Nov. 13 2020), [https://www.ftc.gov/system/files/documents/public\\_statements/1588040/aba\\_interview\\_with\\_commissioner\\_wilson\\_on\\_the\\_house\\_judiciary\\_report.pdf](https://www.ftc.gov/system/files/documents/public_statements/1588040/aba_interview_with_commissioner_wilson_on_the_house_judiciary_report.pdf) and Christine S. Wilson,

nowhere in its 450 pages or 2,500 footnotes does the report mention the fact of the bipartisan repeal of this regulatory framework because it harmed consumers and stifled innovation; neither does it mention the benefits that came from deregulation.<sup>11</sup>

There are many at the FTC who lived through the 1970s and 1980s and experienced the public and Congressional backlash during those dark days of the agency's history. There are many others who worked with and learned from those who lived through that period. Current management would be wise to seek their guidance.

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### 19 CFR Part 145

[CBP Dec. 21-08]

RIN 1651-AB33

#### Mandatory Advance Electronic Information for International Mail Shipments; Correction

**AGENCY:** U.S. Customs and Border Protection, DHS.

**ACTION:** Interim final rule; correcting amendments.

Remarks for the 2020 Global Forum on Competition, (Dec. 7 2020), [https://www.ftc.gov/system/files/documents/public\\_statements/1589376/wilson-oecd-2020remarks.pdf](https://www.ftc.gov/system/files/documents/public_statements/1589376/wilson-oecd-2020remarks.pdf).

<sup>11</sup> See Majority Staff Of H. Comm. On The Judiciary, 116th Cong., Investigation Of Competition In Digital Markets 7 (2020), [https://judiciary.house.gov/uploadedfiles/competition\\_in\\_digital\\_markets.pdf](https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf) at 380 ("In the railroad industry, for example, a congressional investigation found that the expansion of common carrier railroads into the coal market undermined independent coal producers, whose wares the railroads would deprioritize in to give themselves superior access to markets. In 1893, the Committee on Interstate and Foreign Commerce wrote that '[n]o competition can exist between two producers of a commodity when one of them has the power to prescribe both the price and output of the other.' Congress subsequently enacted a provision to prohibit railroads from transporting any goods that they had produced or in which they held an interest."); *id.* at 382 ("The 1887 Interstate Commerce Act, for example, prohibited discriminatory treatment by railroads."); *id.* at 383 ("Historically, Congress has implemented nondiscrimination requirements in a variety of markets. With railroads, the Interstate Commerce Commission oversaw obligations and prohibitions applied to railroads designated as common carriers"); see also Christine S. Wilson & Keith Klovers, *The growing nostalgia for past regulatory misadventures and the risk of repeating these mistakes with Big Tech*, 8 J. Antitrust Enforcement 10, 12-14 (2019), <https://academic.oup.com/antitrust/article/8/1/10/564371> (discussing the benefits from dissolving the ICC).

<sup>9</sup> *Id.* See also J. Howard Beales III, The Federal Trade Commission's Use of Unfairness Authority: Its Rise, Fall, and Resurrection, 22 J. Pub. Pol'y & Mktg. 192 (2003).

**SUMMARY:** On March 15, 2021, U.S. Customs and Border Protection (CBP) published in the **Federal Register** an Interim Final Rule, which amends the CBP regulations to provide for mandatory advance electronic data (AED) for international mail shipments. That document inadvertently misnumbered the regulatory text listing the circumstances when AED is not required for international mail shipments and made a typographical error in the authority citation.

**DATES:** Effective July 22, 2021.

**FOR FURTHER INFORMATION CONTACT:** For policy questions related to mandatory AED for international mail shipments, contact Quintin Clarke, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs and Border Protection, by telephone at (202) 344-2524, or email at [quintin.g.clarke@cbp.dhs.gov](mailto:quintin.g.clarke@cbp.dhs.gov). For legal questions, contact James V. DeBergh, Chief, Border Security Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, by telephone at 202-325-0098, or email at [jamesvan.debergh@cbp.dhs.gov](mailto:jamesvan.debergh@cbp.dhs.gov).

**SUPPLEMENTARY INFORMATION:** On March 15, 2021, CBP published in the **Federal Register** (86 FR 14245) an Interim Final Rule entitled Mandatory Advance Electronic Information for International Mail Shipments. As published, the Interim Final Rule inadvertently misnumbered the regulatory text found in 19 CFR 145.74(b)(2), which lists circumstances when AED is not required for international mail shipments. Specifically, section 145.74(b)(2) contains two subparagraphs numbered “(iii)”. CBP is correcting the numbering by re-numbering the current subparagraphs (iv) and (v) as subparagraphs (v) and (vi) respectively. CBP is further correcting the numbering by renumbering the second subparagraph (iii) as subparagraph (iv). Finally, CBP is correcting a typographical error in the Authority section.

#### List of Subjects in 19 CFR Part 145

Exports, Lotteries, Postal Service, Reporting and recordkeeping requirements.

For reasons stated in the preamble, 19 CFR part 145 is amended by making the following correcting amendments:

#### PART 145—MAIL IMPORTATIONS

■ 1. The general authority citation for part 145 is revised to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 3(i)), Harmonized Tariff Schedule of the United States, 1624.

\* \* \* \* \*

#### Subpart G also issued under 19 U.S.C. 1415, 1436.

#### § 145.74 [Amended]

■ 2. Amend § 145.74 by redesignating the second paragraph (b)(2)(iii), and paragraphs (b)(2)(iv) and (v) as paragraphs (b)(2)(iv), (v), and (vi).

**Alice A. Kipel,**

*Executive Director, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection.*

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### 19 CFR Chapter I

#### Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico

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

**ACTION:** Notification of continuation of temporary travel restrictions.

**SUMMARY:** This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border. Such travel will be limited to “essential travel,” as further defined in this document.

**DATES:** These restrictions go into effect at 12 a.m. Eastern Daylight Time (EDT) on July 22, 2021 and will remain in effect until 11:59 p.m. EDT on August 21, 2021, unless amended or rescinded prior to that time.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Watson, Office of Field Operations Coronavirus Coordination Cell, U.S. Customs and Border Protection (CBP) at 202-325-0840.

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 24, 2020, DHS published notice of its decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-

Mexico border to “essential travel,” as further defined in that document.<sup>1</sup> The document described the developing circumstances regarding the COVID-19 pandemic and stated that, given the outbreak and continued transmission and spread of the virus associated with COVID-19 within the United States and globally, DHS had determined that the risk of continued transmission and spread of the virus associated with COVID-19 between the United States and Mexico posed a “specific threat to human life or national interests.” DHS later published a series of notifications continuing such limitations on travel until 11:59 p.m. EDT on July 21, 2021.<sup>2</sup>

DHS continues to monitor and respond to the COVID-19 pandemic. As of the week of July 12, 2021, there have been over 186 million confirmed cases globally, with over 4 million confirmed deaths.<sup>3</sup> There have been over 33.7 million confirmed and probable cases within the United States,<sup>4</sup> over 1.4 million confirmed cases in Canada,<sup>5</sup> and over 2.6 million confirmed cases in Mexico.<sup>6</sup>

DHS also notes positive developments in recent weeks. CDC reports that, as of July 15, over 336 million vaccine doses have been administered in the United

<sup>1</sup> 85 FR 16547 (Mar. 24, 2020). That same day, DHS also published notice of its decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to “essential travel,” as further defined in that document. 85 FR 16548 (Mar. 24, 2020).

<sup>2</sup> See 86 FR 32766 (June 23, 2021); 86 FR 27800 (May 24, 2021); 86 FR 21189 (Apr. 22, 2021); 86 FR 14813 (Mar. 19, 2021); 86 FR 10816 (Feb. 23, 2021); 86 FR 4967 (Jan. 19, 2021); 85 FR 83433 (Dec. 22, 2020); 85 FR 74604 (Nov. 23, 2020); 85 FR 67275 (Oct. 22, 2020); 85 FR 59669 (Sept. 23, 2020); 85 FR 51633 (Aug. 21, 2020); 85 FR 44183 (July 22, 2020); 85 FR 37745 (June 24, 2020); 85 FR 31057 (May 22, 2020); 85 FR 22353 (Apr. 22, 2020). DHS also published parallel notifications of its decisions to continue temporarily limiting the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to “essential travel.” See 86 FR 32764 (June 23, 2021); 86 FR 27802 (May 24, 2021); 86 FR 21188 (Apr. 22, 2021); 86 FR 14812 (Mar. 19, 2021); 86 FR 10815 (Feb. 23, 2021); 86 FR 4969 (Jan. 19, 2021); 85 FR 83432 (Dec. 22, 2020); 85 FR 74603 (Nov. 23, 2020); 85 FR 67276 (Oct. 22, 2020); 85 FR 59670 (Sept. 23, 2020); 85 FR 51634 (Aug. 21, 2020); 85 FR 44185 (July 22, 2020); 85 FR 37744 (June 24, 2020); 85 FR 31050 (May 22, 2020); 85 FR 22352 (Apr. 22, 2020).

<sup>3</sup> WHO, Coronavirus disease 2019 (COVID-19) Weekly Epidemiological Update (June 8, 2021), available at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports> (accessed July 15, 2021).

<sup>4</sup> CDC, COVID Data Tracker: United States COVID-19 Cases, Deaths, and Laboratory Testing (NAATs) by State, Territory, and Jurisdiction, [https://covid.cdc.gov/covid-data-tracker/#cases\\_casesper100klast7days](https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days) (accessed July 15, 2021).

<sup>5</sup> WHO, Situation by Region, Country, Territory & Area, available at <https://covid19.who.int/table> (accessed July 15, 2021).

<sup>6</sup> *Id.*