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May 14, 2021

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Re: Mandatory Advance Electronic Information for International Mail Shipments Interim Final Rule; Docket No. USCBP-2021-0009 CBP Dec. 21-04; 86 FR 14245

Dear Secretary Mayorkas:

The Chamber submits these comments in response to the request for comments from the U.S. Customs and Border Protection (CBP) regarding the *Mandatory Advance Electronic Information for International Mail Shipments* interim final rule (IFR or Rule).¹ This IFR implements portions of the Synthetics Trafficking and Overdose Prevention Act of 2018 (STOP Act).²

We are grateful to the Department for issuing this IFR. This Rule is critical to advancing the STOP Act's fundamental goal "to help stop dangerous synthetic drugs like fentanyl and carfentanil from being shipped through our borders to drug traffickers here in the United States" because it requires the U.S. Postal Service (USPS) to provide CBP with advance electronic data of certain shipments entering the U.S.³ Requiring the USPS to provide advance electronic data (AED) to CBP, and to refuse any inbound international packages that lack this data, is a significant step towards curbing the importation of these drugs – as well as many other illicit goods including counterfeits – into the U.S.

However, we strongly urge you to make several changes to the IFR. These changes are important to align the Rule with congressional intent. Further, these changes will address the significant loopholes in the IFR that are easily exploitable by illicit shippers. Failure to act will result in not meeting the standards set forth by Congress and continue the significant harm from the dangerous synthetic drugs, counterfeits, and other illicit goods that are shipped into our country.

Specifically, your Department should make the following changes to the IFR:

¹ 86 FR 14245

² *Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act*, Title VIII, P.L. 115-271, October 24, 2018.

³ "Portman, Klobuchar, Rubio, Hassan Introduce Legislation to Address Overdose Spike from Synthetic Opioids," February 17, 2017. <https://www.portman.senate.gov/newsroom/press-releases/portman-klobuchar-rubio-hassan-introduce-legislation-address-overdose-spike>

Expand the AED requirements to all international mail that could contain goods

The IFR provides exemptions for certain classes of mail.⁴ As goods and opioids can be transmitted through something as small as a personal letter, these exemptions provide easily exploitable loopholes for nefarious shippers to avoid the advanced electronic data reporting requirements that help CBP to perform its important activities. Simply put, CBP should require AED on all letters and packages that *could* contain goods and contraband. To accomplish this goal, CBP should utilize its own definitions of mail requiring AED, along the lines set out above, rather than relying on Universal Postal Union (UPU) definitions which may be changed, with little to no input by CBP, to undermine the intent of the STOP Act.

For example, the IFR excludes items such as express mail service (EMS) and parcel post items that do not contain goods, letter post for documents, and others from the AED requirements. This creates a significant loophole that allows shippers to send fentanyl and other illicit goods into the US undetected through unregulated mail products, undermining the purpose of the STOP Act. To correct this loophole, CBP should amend the Rule in two ways:

- CBP should make the definition of mail items covered by these regulations non-exhaustive. Tying the definitions of “EMS,” “letter post,” and “parcel post” in the U.S. Code of Federal Regulations to definitions maintained by the UPU undermines CBP’s enforcement efforts. For example, the UPU will be able to amend their definitions without input from CBP and potentially alter the scope and applicability of the STOP Act. It also allows the UPU to establish new product categories (e.g., the recently created UPU E-Commerce Programme or ECOMPRO parcel) containing goods that fall outside the scope of the STOP Act. The STOP Act makes plain that congressional intent is for the federal government to seek changes to any international law that frustrates the STOP Act, and therefore the Rule should be amended to not reference UPU definitions.⁵
- CBP should develop a plan of action to improve the targeting of document-focused mail products (e.g., letters, flats, etc.), including AED. Letters, flats, and other document-focused products can contain illicit items. In the STOP Act, Congress clearly intended that CBP should receive and analyze data on all international mail items that are able to contain goods (including the very small amounts of fentanyl often found in shipments), regardless of how the UPU or USPS classifies them. If necessary, stronger CBP definitions of covered mail in the final regulations could provide a longer period of restrained or flexible enforcement for letter post items not currently covered by the IFR.

Remove the exclusion for returned goods and goods in transit

The IFR should close the loophole that excludes returned U.S. origin goods from the AED requirement for postal shipments. U.S. origin goods are vulnerable to tampering in a foreign country, and thereby create an opportunity for shippers to introduce illicit goods like fentanyl into these shipments. Private carriers already collect U.S. origin of goods data, so

⁴ 86 FR 14248

⁵ *Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act*, Title VIII, Sec. 8004, P.L. 115-271, October 24, 2018.

excluding USPS from this responsibility only maintains a vulnerability that illicit shippers will exploit.

CBP should also require AED for goods-in-transit. This is consistent with existing rules on air cargo carriers who provide air cargo advance screening (ACAS) and full manifest information on all goods entering the U.S. Otherwise, CBP will deny itself access to data already being provided by other carriers that is necessary for its critical oversight responsibilities. Indeed, CBP previously dismissed a recommendation that goods-in-transit be exempt from AED requirements while implementing the AED final rule that was part of the Trade Act of 2002, stating, “The CBP disagrees. Such cargo could pose a cargo safety or security risk to the same extent as other cargo that arrives in the United States.”⁶ CBP should follow congressional intent to develop a comprehensive and compatible approach given the fragmented nature of the postal network.

Define and limit the widespread country exclusions

The IFR codifies the specific criteria under the STOP Act that the CBP, in consultation with the USPS, must follow to consider excluding a country from the AED requirements.⁷ The Rule incorporates these criteria under new 19 CFR 145.74(e). During a recent hearing before the Senate Committee on Homeland Security and Government Affairs, officials for CBP and USPS acknowledged that over 130 countries – including the United Kingdom – are excluded from these requirements based on these criteria. All together, these exclusions apply to approximately 70% of the world’s countries.⁸

These exclusions provide opportunities for illicit shippers to evade detection by CBP, and we are concerned that these shippers will not take long to learn which countries can be exploited. There is already a long-standing and routine practice, known as “re-mailing,” where shippers take advantage of countries’ lower terminal dues and route packages through these countries as a “pass through” for shipments ultimately bound for the U.S. It will not be difficult for shippers to utilize the infrastructure for this practice and apply it to delivering illicit goods into the U.S. without detection. This greatly undermines the value of AED collected from foreign posts that are not exempt from these requirements. We expect that illicit shippers will simply utilize “re-mailing” and move their packages on postage from exempt countries, rather than continuing to utilize foreign posts that must collect AED according to CBP’s requirements.

Further, this fact appears to undermine the rationale for CBP’s decision to exempt so many countries from the AED requirements. According to the STOP Act, CBP may exempt a country, in part, if the country “represents a low risk for mail shipments that violate relevant

⁶ Customs Bulletin and Decisions, Vol. 37, No. 52, December 24, 2003. p. 43.

<https://www.cbp.gov/bulletins/37genno52.pdf>

⁷ 86 FR 14279; *see also* Section 343(a)(3)(K)(iv) of the Trade Act of 2002 (P. Law 107–210), as amended by the STOP Act.

⁸ Senate Homeland Security and Government Affairs Committee, Permanent Subcommittee on Investigations (December 10, 2020). *Combating the Opioid Crisis: Oversight of the Implementation of the STOP Act*, <https://www.hsgac.senate.gov/subcommittees/investigations/hearings/combating-the-opioid-crisis-oversight-of-the-implementation-of-the-stop-act>

United States laws and regulations.”⁹ While exempting one country may pose a low risk of this kind, CBP’s decision to exempt so many countries appears to fly in the face of the rationale for the exemption criteria in the first place. In essence, CBP is applying the requirements of the STOP Act to a minority of the world’s countries rather than the other way around. The result is that CBP has created a framework whereby the value of AED collection is minimized because of the small number of countries CBP requires to collect it, while most countries are exempt. This is a major vulnerability that will be easily exploited by shippers of illicit goods.

A 2020 report by the Office of the Inspector General (OIG) for the USPS found that 135 countries and territories were not able to send AED to USPS.¹⁰ But the OIG criticized the CBP’s slow implementation of the STOP Act as an important factor for this unreadiness.¹¹ The IFR provides important clarity around AED requirements, *i.e.*, its publication removes a possible excuse of other countries in their implementation of the AED requirements. Therefore, we urge CBP to eliminate these widespread country exclusions as soon as possible and focus its efforts on countries that have fundamental challenges to meeting these AED requirements.

CBP should conform postal and private carrier AED requirements moving forward

The Rule identifies a list of mandatory and optional data points that CBP must receive from USPS. CBP has historically amended the list of data requirements it must receive from private carriers to improve its oversight responsibilities, and the Chamber recommends that CBP not exempt USPS from these requirements if the agency makes changes in the future. Otherwise, this will create a disparity between private carriers and USPS that will be exploited by illicit shippers. Therefore, if CBP determines to amend its list of data elements that carriers provide to the agency, CBP should include USPS with the other carriers.

CBP should provide consistent enforcement

CBP should continue to ensure that USPS makes reasonable progress towards full compliance with this Rule and the STOP Act. For example, USPS is not submitting AED on 100% of its shipments, as of the date of this filing, violating with the original STOP Act mandate at the end of 2020 as well as the extension through March 15, 2021 as provided in the Covid-19 relief package (cite). CBP should also subject USPS to identical audits and rules that are applicable to other logistics providers, including ensuring data is being provided on all shipments coming through postal channels in accordance with the STOP Act’s 100% mandate regardless of country of origin, which is similar to the manifest requirements that currently apply to express carriers.

Despite increased attention over the past few years regarding the importance of AED for enforcement purposes, foreign posts are not providing sufficient AED for their shipments. CBP must enforce the provisions of this IFR effectively. This Rule is a critical step to filling an

⁹ Section 343(a)(3)(K)(vi)(II)(bb) of the Trade Act of 2002 (P. Law 107–210), as amended by the STOP Act.

¹⁰ *Implementing Advance Electronic Data: Challenges and Opportunities*. Office of the Inspector General, United States Postal Service, Report Number RISC-WP-20-010, September 30, 2020.

<https://www.uspsog.gov/sites/default/files/document-library-files/2020/RISC-WP-20-010.pdf>

¹¹ *Ibid.* p. 6

enforcement gap that protects the security, safety, and health of the American people. Therefore, as further discussed above, exceptions and extensions should not be the norm in implementing and enforcing this important Rule.

Conclusion

Thank you for your attention to our concerns. The STOP Act is an important addition to your Department's tools to combat the importation of dangerous goods and products into our country and we look forward to the full implementation of this important law.

Sincerely,

A handwritten signature in black ink, appearing to read "John Drake". The signature is written in a cursive style with a large, stylized initial "J" and "D".

John Drake