

# U.S. Customs and Border Protection

## *CBP Decisions*

**19 CFR PART 122**

**[CBP Dec. 09–04]**

### **Technical Amendment to List of User Fee Airports: Addition of St. Augustine Airport, St. Augustine, Florida**

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This document amends the Customs and Border Protection (CBP) Regulations by revising the list of user fee airports to reflect the recent user fee airport designation for St. Augustine Airport in St. Augustine, Florida. User fee airports are those airports which, while not qualifying for designation as international or landing rights airports, have been approved by the Commissioner of CBP to receive, for a fee, the services of CBP officers for the processing of aircraft entering the United States, and the passengers and cargo of those aircraft.

**EFFECTIVE DATE:** February 19, 2009.

**FOR FURTHER INFORMATION CONTACT:** Susan Mitchell, Office of Field Operations, 202–344–1850.

**SUPPLEMENTARY INFORMATION:**

#### **BACKGROUND**

Title 19, Code of Federal Regulations (CFR), sets forth at Part 122 regulations relating to the entry and clearance of aircraft in international commerce and the transportation of persons and cargo by aircraft in international commerce.

Generally, a civil aircraft arriving from a place outside of the United States is required to land at an airport designated as an international airport. Alternatively, the pilot of a civil aircraft may re-

quest permission to land at a specific airport, and, if landing rights are granted, the civil aircraft may land at that landing rights airport.

Section 236 of Pub. L. 98–573 (the Trade and Tariff Act of 1984), codified at 19 U.S.C. 58b, created an option for civil aircraft desiring to land at an airport other than an international airport or a landing rights airport. A civil aircraft arriving from a place outside of the United States may ask for permission to land at an airport designated by the Secretary of Homeland Security<sup>1</sup> as a user fee airport.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Commissioner of CBP as delegated by the Secretary of Homeland Security determines that the volume of business at the airport is insufficient to justify customs services at the airport and the governor of the state in which the airport is located approves the designation. Generally, the type of airport that would seek designation as a user fee airport would be one at which a company, such as an air courier service, has a specialized interest in regularly landing.

As the volume of business anticipated at this type of airport is insufficient to justify its designation as an international or landing rights airport, the availability of customs services is not paid for out of appropriations from the general treasury of the United States. Instead, customs services are provided on a fully reimbursable basis to be paid for by the user fee airport on behalf of the recipients of the services.

The fees which are to be charged at user fee airports, according to the statute, shall be paid by each person using the customs services at the airport and shall be in the amount equal to the expenses incurred by the Commissioner of CBP in providing customs services which are rendered to such person at such airport, including the salary and expenses of those employed by the Commissioner of CBP to provide the customs services. To implement this provision, generally, the airport seeking the designation as a user fee airport or that airport's authority agrees to pay a flat fee for which the users of the airport are to reimburse the airport/airport authority. The airport/airport authority agrees to set and periodically review the charges to ensure that they are in accord with the airport's expenses.

The Commissioner of CBP designates airports as user fee airports pursuant to 19 U.S.C. 58b. See 19 CFR 122.15. If the Commissioner decides that the conditions for designation as a user fee airport are satisfied, a Memorandum of Agreement (MOA) is executed between

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<sup>1</sup> Sections 403(1) and 411 of the Homeland Security Act of 2002 (“the Act,” Pub. L. 107–296) transferred the United States Customs Service and its functions from the Department of the Treasury to the Department of Homeland Security; pursuant to section 1502 of the Act, the President renamed the “Customs Service” as the “Bureau of Customs and Border Protection.” Effective on March 31, 2007, DHS changed the name of “Bureau of Customs and Border Protection” to “U.S. Customs and Border Protection (CBP)” (See 72 FR 20131, April 23, 2007).

the Commissioner of CBP and the local responsible official signing on behalf of the state, city or municipality in which the airport is located. In this manner, user fee airports are designated on a case-by-case basis. Section 19 CFR 122.15 sets forth the grounds for withdrawal of a user fee designation and sets forth the list of designated user fee airports.

Periodically, CBP updates the list of user fee airports at 19 CFR 122.15(b) to reflect those that have been currently designated by the Commissioner. This document updates that list of user fee airports by adding St. Augustine Airport, in St. Augustine, Florida to the list. On August 28, 2008, the Commissioner signed a MOA approving the designation of user fee status for St. Augustine Airport.

#### **INAPPLICABILITY OF PUBLIC NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS**

Because this amendment merely updates the list of user fee airports to include an airport already designated by the Commissioner of CBP in accordance with 19 U.S.C. 58b and neither imposes additional burdens on, nor takes away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

#### **THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866**

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. This amendment does not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866.

#### **SIGNING AUTHORITY**

This document is limited to technical corrections of CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b).

#### **LIST OF SUBJECTS IN 19 CFR PART 122**

Air carriers, Aircraft, Airports, Customs duties and inspection, Freight.

#### **AMENDMENTS TO REGULATIONS**

Part 122, Code of Federal Regulations (19 CFR part 122) is amended as set forth below:

## PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 continues to read as follows:

**AUTHORITY:** 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

2. The listing of user fee airports in section 122.15(b) is amended as follows: by adding, in alphabetical order, in the “Location” column “St. Augustine, Florida” and by adding on the same line, in the “Name” column “St. Augustine Airport.”

DATE: February 13, 2009

JAYSON P. AHERN,  
*Acting Commissioner,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, February 19, 2009 (74 FR 7646)]

### *General Notices*

#### PROPOSED COLLECTION; COMMENT REQUEST

##### Guam Visa Waiver Agreement

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

**ACTION:** 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0126.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Guam Visa Waiver Agreement (Form I–760). This request for comment is being made pursuant to the Paperwork Reduction Act (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before April 21, 2009, to be assured of consideration.

**ADDRESS:** Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to the U.S. Customs and Bor-

der Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 344-1429.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

**Title:** Guam Visa Waiver Agreement

**OMB Number:** 1651-0126

**Form Number:** I-760

**Abstract:** This Agreement is intended to ensure that every alien transported to Guam or the Commonwealth of the Northern Mariana Islands (CNMI) meets all of the stipulated eligibility criteria prior to departure to Guam or the CNMI. It also outlines the requirements to be satisfied by the carrier.

**Current Actions:** There are no changes to the information collection. This submission is being made to extend the expiration date.

**Type of Review:** Extension (without change)

**Affected Public:** Individuals

**Estimated Number of Respondents:** 10

**Estimated Time Per Respondent:** 12 minutes

**Estimated Total Annual Burden Hours:** 2

Dated: February 12, 2009

TRACEY DENNING,  
*Agency Clearance Officer,*  
*Customs and Border Protection.*

## AGENCY INFORMATION COLLECTION ACTIVITIES

### Guam Visa Waiver Information

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

**ACTION:** 60-Day Notice and request for comments; Extension of an existing collection of information: 1651-0109.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Guam Visa Waiver Information (Form I-736). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments should be received on or before April 21, 2009, to be assured of consideration.

**ADDRESS:** Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 344-1429.

### SUPPLEMENTARY INFORMATION:

CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

**Title:** Guam Visa Waiver Information

**OMB Number:** 1651-0109

**Form Number:** CBP Form I-736

**Abstract:** Public Law 110–229, enacted on May 8th, 2008, provides for certain aliens to be exempt from the nonimmigrant visa requirement if seeking entry into Guam or the Commonwealth of the Northern Mariana Islands (CNMI) as a visitor. Applicants must present a completed Form I–736 to CBP in order to enter these territories under these provisions.

**Current Actions:** There are no changes to the information collection. This submission is being made to extend the expiration date.

**Type of Review:** Extension

**Affected Public:** Individuals

**Estimated Number of Respondents:** 1,560,000

**Estimated Time Per Respondent:** 5 minutes

**Estimated Total Annual Burden Hours:** 129,480

Dated: February 12, 2009

TRACEY DENNING,  
*Agency Clearance Officer,*  
*Customs and Border Protection.*

[Published in the Federal Register, February 20, 2009 (74 FR 7911)]

## AGENCY INFORMATION COLLECTION ACTIVITIES:

### Screening Requirements for Carriers

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

**ACTION:** 30-Day Notice and request for comments; Extension of an existing information collection: 1651–0122.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Screening Requirements for Carriers. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (73 FR 76672) on December 17, 2008, allowing for a 60-day comment period. This notice allows for an additional 30

days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before March 23, 2009.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:**

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Title:** Screening Requirements for Carriers

**OMB Number:** 1651-0122

**Form Number:** None

**Abstract:** The information collected is used to determine whether sufficient steps were taken by a carrier demonstrating improvement in the screening of its passengers in order for the carrier to be eligible for automatic fines mitigation.

**Current Actions:** This submission is being made to extend the expiration date.

**Type of Review:** Extension (without change)

**Affected Public:** Businesses

**Estimated Number of Respondents:** 65

**Estimated Time Per Respondent:** 100 hours

**Estimated Total Annual Burden Hours:** 6,500

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: February 12, 2009

TRACEY DENNING,  
*Agency Clearance Officer,*  
*Customs and Border Protection.*

[Published in the Federal Register, February 20, 2009 (74 FR 7911)]

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS.  
*Washington, DC, February 25, 2009*

The following documents of U.S. Customs and Border Protection (“CBP”), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,  
*Executive Director,*  
*Regulations and Rulings,*  
*Office of International Trade.*

**PROPOSED REVOCATION AND MODIFICATION OF TWO  
RULING LETTERS AND PROPOSED REVOCATION OF  
TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF CERTAIN LIGHT SCULPTURES**

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

**ACTION:** Notice of proposed revocation and modification of nineteen ruling letters and treatment relating to the tariff classification of certain light sculptures.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs

Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to revoke or modify nineteen ruling letters relating to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain light sculptures. CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATE:** Comments must be received on or before April 11, 2009.

**ADDRESS:** Written comments are to be addressed to Customs and Border Protection, Regulations and Rulings of the Office of International Trade, Attention: Tariff Classification and Marking Branch, 799 9th Street, N.W., Mint Annex, Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Greg Connor, Tariff Classification and Marking Branch: (202) 325–0025.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

On December 8, 1993 Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other in-

formation necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP proposes to revoke or modify New York Ruling Letter (NY) N011802, dated June 7, 2007 and NY N012101, respectively set forth as attachments A and B, which pertain to the tariff classification of decorative light sculptures in the shapes of snowmen reindeer and angels. Although in this notice, CBP is specifically referring to the proposed modification and revocation of these ruling letters, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to those identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In the above-referenced rulings, CBP determined that framed light sculptures in the shapes of reindeer, angels, or snowmen were classifiable in subheading 9405.40.60, HTSUS, which provides for: "[l]amps . . . : Other electric lamps and lighting fittings: Of base metal: Other". It is now CBP's position that the subject merchandise is classifiable in subheading 9505.10.25, HTSUS, which provides for: "[f]estive, carnival or other entertainment articles . . . : Articles of Christmas festivities . . . : Christmas ornaments: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify or revoke the above referenced rulings, as well as revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject light sculptures according to the analysis contained in proposed HQ H020852, set forth as Attachment C to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

**DATED:** February 13, 2009

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
N011802  
June 7, 2007  
CLA-2-94:RR:E:NC:1:110  
CATEGORY: Classification  
TARIFF NO.: 9405.40.6000

MS. AMY MORGAN  
COSTCO WHOLESALE CORP.  
*999 Lake Drive*  
*Issaquah, WA 98027*

RE: The tariff classification of light sculptures from China.

DEAR MS. MORGAN:

In your letter dated May 23, 2007, you requested a tariff classification ruling.

Under consideration are two styles of light sculptures identified as the Glistening Snowman, item number 663613, and the Grapevine Angel, item number 663620. Both are three-dimensional pre-assembled metal frames covered with a string of lights, and are intended for outdoor display. The Glistening Snowman sculpture is 60 inches high, features 450 lights, and is shaped like a snowman decorated with a top hat and a red and green scarf. The Grapevine Angel sculpture is 60 inches high, features 300 lights, and is shaped to resemble an angel holding a 5-pointed star.

The applicable subheading for the Glistening Snowman, item number 663613, and the Grapevine Angel, item number 663620, will be 9405.40.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Lamps and lighting fittings . . . : Other electric lamps and lighting fittings: Of base metal: Other." The general rate of duty will be 6 percent ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is im-

ported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Campanelli at 646-733-3016.

ROBERT B. SWIERUPSKI,  
*Director,*  
*National Commodity Specialist Division.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
N012101  
June 7, 2007  
CLA-2-94:RR:E:NC:1:110  
CATEGORY: Classification  
TARIFF NO.: 9505.10.2500, 9405.40.6000

MS. AMY MORGAN  
COSTCO WHOLESALE CORP.  
999 Lake Drive  
Issaquah, WA 98027

RE: The tariff classification of light sculptures from China.

DEAR MS. MORGAN:

In your letter dated May 23, 2007, you requested a tariff classification ruling.

Under consideration are four styles of light sculptures identified as the Sleigh Light Sculpture (item number 663611), the Standing Reindeer Light Sculpture (item number 663609), the Feeding Reindeer Light Sculpture (item number 663610), and the Snowman Family Light Sculpture Set (item number 663619).

All four light sculptures are three-dimensional pre-assembled metal frames covered with light strings and transparent polystyrene and polycarbonate "diamond cut" pieces, which create a glowing effect when the lights reflect upon their surfaces. The Sleigh sculpture measures 36 inches tall by 48 inches wide, and is a replica of Santa Claus's sleigh. The Standing Reindeer sculpture measures 40 inches tall by 60 inches wide, and is shaped to resemble a standing reindeer buck with its head held aloft. The Feeding Reindeer sculpture measures 36 inches tall and 60 inches wide, and is shaped to resemble a standing reindeer buck with its head lowered to the ground. The Snowman Family sculpture includes three sizes of snowman-shaped sculptures—60 inches high, 48 inches high, and 36 inches high. All models are intended for outdoor display.

The applicable subheading for the Sleigh Light Sculpture (item number 663611) will be 9505.10.2500, Harmonized Tariff Schedule of the United States (HTSUS) which provides for "Festive, carnival or other entertainment articles . . . Articles for Christmas festivities . . . : Christmas ornaments: Other: Other." The general duty rate will be Free.

The applicable subheading for the Standing Reindeer Light Sculpture (item number 663609), the Feeding Reindeer Light Sculpture (item number 663610), and the Snowman Family Light Sculpture Set (item number 663619), will be 9405.40.6000, Harmonized Tariff Schedule of the United

States (HTSUS), which provides for “Lamps and lighting fittings . . . : Other electric lamps and lighting fittings: Of base metal: Other.” The general rate of duty will be 6 percent ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Campanelli at 646-733-3016.

ROBERT B. SWIERUPSKI,  
*Director,*  
*National Commodity Specialist Division.*

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[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H020852  
**CLA-2 OT:RR:CTF:TCM H020852 GC**  
**CATEGORY:** Classification  
**TARIFF NO.:** 9505.10.2500

TERRIE A. GLEASON, ESQ.  
BAKER & MCKENZIE LLP  
815 Connecticut Avenue, NW  
Washington, DC 20006-4078

**RE:** Revocation of NY N011802 and modification of NY N012101; Tariff classification of light sculptures of snowman, reindeer and angel

DEAR MS. GLEASON:

This is in response to your letter, dated December 5, 2007, on behalf of your client, Costco Wholesale Corporation (Costco), requesting that we reconsider New York Ruling Letters (NY) N011802 and N012101, both dated June 7, 2007.\*

**FACTS:**

The subject light sculptures, identified as the “Glistening Snowman” (item 663613), “Grapevine Angel” (item 663620), “Standing Reindeer Light Sculpture” (item 663609) (Standing Reindeer), “Feeding Reindeer Light Sculpture” (item 663610) (Feeding Reindeer) and “Snowman Family Light Sculpture Set” (item 663619) (Snowman Family Set), are three-dimensional representations of deer, snowmen or angels composed of a pre-assembled metal frame covered with a string of lights and may include metal stakes.

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\*You also requested a prospective ruling in your December 5, 2007 correspondence concerning similar merchandise. This letter will only address the request for reconsideration.

Each item contains an Underwriters Laboratory (UL) tag warning the ultimate purchaser that the items are “[f]or temporary (90 days max) installation and use only.”

The Glistening Snowman is approximately 60 inches tall and is composed of a pre-assembled metal frame covered with PVC tinsel and a string of 450 lights to outline the shape of the frame. The snowman has a green and red striped scarf and a sprig of holly in its blue hat.

The Grapevine Angel also measures approximately 60 inches high, and is composed of a pre-assembled metal and grapevine frame covered with a string of 300 lights that outline the shape of the angel. The angel has a halo and wings and is holding a 5-pointed star.

The Standing Reindeer measures 40 inches tall by 60 inches wide, and resembles a standing buck with its head held aloft.

The Feeding Reindeer is of similar proportions, but the buck’s head is lowered as though it were eating grass.

The Snowman Family Set consists of three different sized of snowman, measuring 60 inches, 48 inches, and 36 inches high respectively. Each snowman is wearing a red and white striped scarf and a hat that contains a sprig of holly.

You indicate in your letters and photograph attachments that Costco sells the light sculptures in the holiday/seasonal aisle of its stores as well as in the “holiday & seasonal – outdoor décor” section of its website. The light sculptures are sold for a limited time, usually taking place over a fourteen week period starting in late August and continuing until December 24th. The light sculptures are not sold after Christmas, as Costco instructs its stores to remove all Christmas related items, including the subject light sculptures, from display no later than December 26th.

In NY N011802, CBP classified the Glistening Snowman and Grapevine Angel under heading 9405, of the Harmonized Tariff Schedule of the United States (HTSUS), as lamps. In NY N012101, CBP classified, in relevant part, the Standing Reindeer, Feeding, and Snowman Family Set under heading 9405, HTSUS, which provides for lamps.

**ISSUE:**

Whether the subject light sculptures are classified under heading 9405, HTSUS, as lamps, or heading 9505, HTSUS, as festive articles?

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration in this case are as follows:

9405	Lamps and lighting fittings including searchlights and spotlights and part thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
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9405.40	Other electric lamps and lighting fittings: Of base metal:
9405.40.6000	Other
	* * *
9505	Festive, carnival or other entertainment articles, including magic tricks and other practical joke articles; parts and ac- cessories thereof:
9505.10	Articles for Christmas festivities and parts and accesso- ries thereof:
	Christmas Ornaments:
	Other:
9505.10.2500	Other

Note 1(l) to chapter 94, HTSUS, states that chapter 94 does not cover:

Toy furniture or toy lamps or lighting fittings (heading 9503), billiard tables or other furniture specially constructed for games (heading 9504), furniture for magic tricks or decorations (other than electric garlands) such as Chinese lanterns (heading 9505).

Note 1(t) to chapter 95, HTSUS, states that chapter 95 does not cover, “[e]lectric garlands of all kinds (heading 9405).”

The Harmonized Commodity Description and Coding System Explanatory Note (EN) to heading 8543, HTSUS, supports this conclusion. In understanding the language of the HTSUS, the ENs may be utilized. The ENs, though not dispositive or legally binding, may provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. CBP believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The ENs to heading 9505, HTSUS, provide, in pertinent part:

This heading covers:

(A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

\* \* \*

(2) Articles traditionally used at Christmas festivities, e.g., artificial Christmas trees, nativity scenes, nativity figures and animals, angels, Christmas crackers, Christmas stockings, imitation yule logs, Father Christmases.

Although all the subject light sculptures incorporate a string of electric lights around a frame, the light sculptures are not electric garlands. See *Primal Lite, Inc. v. United States*, 15 F.Supp. 2d 915 (1998), aff’d, 182 F.3d 1362 (1999). The articles at issue here form three-dimensional shapes. Such light sculptures are not similar to electric garlands. Accordingly, the above mentioned exclusion note to Chapter 95, HTSUS, does not apply.

In accordance with Note 1(l) to Chapter 94, HTSUS, we must determine if the subject merchandise constitutes “festive articles” within the scope of heading 9505, HTSUS. In *Midwest of Cannon Falls v. United States*, 122

F.3d 1423 (Fed. Cir. 1997) (*Midwest*), the court discussed the scope of heading 9505, HTSUS, specifically the class or kind of merchandise termed “festive articles”. In general, merchandise is classified as a festive article in heading 9505, HTSUS, when the article, as a whole:

1. Is not predominantly of precious or semiprecious stones, precious metal or metal clad with precious metal;
2. Functions primarily as a decoration or functional item used in the celebration of, and entertainment on, a holiday; and
3. Is associated with or used on a particular holiday.

*See also Park B. Smith, Ltd. v. United States*, 347 F.3d 922 (Fed. Cir. 2003)(*Park B. Smith*).

In addition to the criteria listed above, the *Midwest* Court considered the general criteria for classification set forth in *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), cert. denied, 429 U.S. 979 (*Carborundum*) to determine the principal use of the articles at issue therein. Therefore, with respect to decorative articles related to holidays and symbols not specifically recognized in *Midwest* or *Park B. Smith*, CBP will also consider the general criteria set forth in *Carborundum* to determine whether a particular good belongs to the class or kind “festive articles”. Those criteria include the general physical characteristics of the article, the expectation of the ultimate purchaser, the channels of trade, the environment of sale (accompanying accessories, manner of advertisement and display), the use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use.

The ultimate purchaser of the instant light sculptures in the shapes of reindeer, angels, and snowmen would have the expectation of using the articles to decorate the outside of their home during the holiday season. As you have stated, the environment of sale will be a portion of the store, existing only from late August through Christmas, devoted to displaying Christmas or holiday items. The subject merchandise is available on the Costco website in the same manner. The recognition in the trade would be as Christmas articles. Accordingly, we find the instant reindeer, snowman, and angel light sculptures to be of a class or kind of merchandise which is bought to decorate the home during the Christmas season.

However, we note that not all reindeer, snowman and angel ornaments are automatically festive, nor will the presence of other Christmas-related images automatically qualify the articles for classification as a festive article. This is the case because the images may appear with articles that are inconsistent with festive use. Likewise, the mere appearance of articles in a Christmas catalogue is not sufficient to bring the article into the class of festive articles; however, such an appearance is useful evidence toward that end. *See* Headquarters Ruling Letter (HQ) 963198, dated September 26, 2000 (citing HQ 961839, dated March 9, 1999). The subject light sculptures satisfy the above-referenced standard in the sense that the *Carborundum* factors, taken together, lead to the conclusion that the subject reindeer, snowman and angel light sculptures are within the same class of merchandise principally used during Christmas.

Indeed, CBP has considered certain light sculptures utilized during Christmas as recognized symbols of the Christmas holiday to be classifiable in heading 9505. *See* HQ 963198; HQ 962965, dated November 9, 1999; NY R02191, dated February 16, 2005; NY R01191, dated January 12, 2005; NY

K86401, dated June 14, 2004; and NY H87842. The instant light sculptures are classifiable as festive articles of heading 9505, HTSUS. They are excluded from Chapter 94, HTSUS, by Note 1(l) to Chapter 94, HTSUS.

**HOLDING:**

By application of GRI 1, the subject light sculptures are classified in heading 9505, HTSUS, as festive articles, and they are specifically provided for in subheading 9505.10.25, HTSUS, which provides for: “[f]estive, carnival or other entertainment articles, including magic tricks and other practical joke articles . . . : Christmas ornaments: [o]ther: [o]ther.” The column one, general rate of duty is free.

Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov/tata/hts/](http://www.usitc.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

NY N011802, dated June 7, 2007 is hereby REVOKED. NY N012101, dated June 7, 2007, is hereby MODIFIED.

MYLES B. HARMON,

*Director,*

*Commercial and Trade Facilitation Division.*



**GENERAL NOTICE**

**19 CFR PART 177**

**PROPOSED REVOCATION OF RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO  
CLASSIFICATION OF *DOG & CAT GET AWAY***

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

**ACTION:** Notice of proposed revocation of a ruling letter and revocation of treatment relating to the classification of *Dog & Cat Get Away*.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (“CPB”) intends to revoke a ruling concerning the classification of *Dog & Cat Get Away*, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB intends to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATE:** Comments must be received on or before April 11, 2009.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade—Regulation and Rulings, Attention: Regulations Branch, 799 9th Street, N.W., Washington, D.C. 20001. Comments submitted may be inspected at 799 9th St. N.W. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Allyson Mattanah, Tariff Classification and Marking Branch (202) 325–0029.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 8, 1993, Title VI (CBP Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP intends to revoke a ruling pertaining to the classification of *Dog & Cat Get Away*. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) R02157, dated August 8, 2005, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, in-

ternal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY R02157 (Attachment "A"), CBP ruled that *Dog & Cat Get Away* was classified in subheading 3824.90.91, HTSUS, which provides for: "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other." The referenced ruling is incorrect because the natural chemical product is used as a pest repellent and therefore classified in subheading 3808.90.95, HTSUS, which provides for: "Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY R02157, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter W968435. (*see* Attachment "B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: February 18, 2009

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
NY R02157  
August 8, 2005  
CLA-2-38:RR:NC:2:239 R02157  
CATEGORY: Classification  
TARIFF NO.: 3824.90.9190

MS. JILL THURAU  
PETS<sup>®</sup>MART, INC.  
19601 N. 27th Ave.  
Phoenix, AZ 85027

RE: The tariff classification of "Dog & Cat Get Away".

DEAR MS. THURAU:

In your letter dated June 17 2005, you requested a tariff classification ruling for "Dog & Cat Get Away" which is an animal repellent sold in liquid form. It is sprayed on a specific area to keep dog and cats away. It is composed of allyl isothiocyanate, capsaicin and related capsaicinoids, and vegetable and mineral oil.

The applicable subheading will be 3824.90.9190, Harmonized Tariff Schedule of the United States (HTS), which provides for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: other. The rate of duty will be 5 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Andrew Stone at 646-733-3032.

ROBERT B. SWIERUPSKI,  
*Director,*  
*National Commodity Specialist Division.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
**HQ W968435**  
**CLA-2 OT:RR:CTF:TCM W968435 ARM**  
**CATEGORY:** Classification  
**TARIFF NO.:** 3808.99.95

MS. JILL THURAU  
PETS<sup>®</sup>MART, INC.  
19601 N. 27th Ave.  
Phoenix, AZ 85027

**RE:** Revocation of NY R02157; Dog & Cat Get Away

DEAR MS. THURAU:

This letter is to inform you that Customs and Border Protection (“CBP”) has reconsidered New York (NY) Ruling Letter R02157, issued to you on August 8, 2005, regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of *Dog & Cat Get Away*. CBP classified the merchandise in subheading 3824.90.91, HTSUS, which provides for: “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other.” We have reviewed that ruling and determined it is in error.

**FACTS:**

The merchandise at issue is identified as *Dog & Cat Get Away*. It is a mixture of allyl isothiocyanate (the chemical compound responsible for the pungent taste of mustard, horseradish and wasabi), capsaicin and related compounds (the active components of chili peppers), that has been put up in a spray bottle for retail sale. It is intended for use as a vertebrate animal repellent. *Dog & Cat Get Away* is registered with the U.S. E.P.A. (EPA REG. No. 50932-9) for the control of cats, deer, dogs, rabbits, raccoons, and squirrels.

**ISSUE:**

Is *Dog & Cat Get Away* classified as a “pesticide” under heading 3808, HTSUS, or as a chemical compound not elsewhere specified or included in heading 3824, HTSUS?

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, HTSUS, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

The 2009 HTSUS provisions under consideration are as follows:

3808	Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers):
3808.99	Other:
	Other:
3808.99.95 00	Other .....
* * *	* * *
3824	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:
3824.90	Other:
	Other:
	Other:
3824.90.91	Other .....

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitutes the official interpretation of the HTSUS at the international level. The ENs, although not dispositive, are used to determine the proper interpretation of the HTSUS by providing a commentary on the scope of each heading of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). The ENs to heading 3808 state, in pertinent part, the following:

This heading covers a range of products (**other than** those having the character of medicaments, including veterinary medicaments – **heading 30.03 or 30.04**) intended to destroy pathogenic germs, insects (mosquitoes, moths, Colorado beetles, cockroaches, etc.), mosses and moulds, weeds, rodents, wild birds, etc. Products intended to repel pests or used for disinfecting seeds are also classified here.

These insecticides, disinfectants, herbicides, fungicides, etc., are applied by spraying, dusting, sprinkling, coating, impregnating, etc., or may necessitate combustion. They achieve their results by nerve-poisoning, by stomach-poisoning, by asphyxiation or by odour, etc.

Heading 3824, HTSUS, only includes products that are “not elsewhere specified or included.” Therefore, if the product is specified by the terms of heading 3808, HTSUS, it cannot be classified in heading 3824, HTSUS.

Pests are defined as “any organism which injures man, his property or his environment, or which annoys him. Such organisms include principally certain insects, nematoedes, fungi, weeds, birds, and rodents, or any other terrestrial or aquatic plant or animal life, or virus, bacteria, or other organisms (except microorganisms on or in living man or other living animals.” MEISTERPRO CROP PROTECTION HANDBOOK 2006, D 322, (Richard T. Meister, ed., Meister Pub. Co. 2006). The instant product repels cats, deer, dogs, rabbits, raccoons, and squirrels away from lawns and landscaping. Squirrels are rodents ([www.ucmp.berkeley.edu/mammal/reodentia/rodentia.html](http://www.ucmp.berkeley.edu/mammal/reodentia/rodentia.html)).

The EN to heading 38.08, HTSUS, states that products intended to repel pests are classified in the heading and mentions odor as one of the ways that these products achieve their results. Accordingly, *Dog and Cat Get Away*, put up in spray bottles for retail sale, meets the terms of heading 3808, HTSUS, as a rodenticide and is described by EN 38.08. Insofar as the merchandise is classifiable in heading 3808, HTSUS, resort to heading 3824, HTSUS, is not necessary.

**HOLDING:**

By application of GRI 1, *Dog and Cat Get Away* is classified in heading 3808, HTSUS. Specifically, the merchandise is classified in subheading 3808.99.95, HTSUS, which provides for: "Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Other: Other." The 2009, column one general rate of duty is 5% ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

NY R02157, dated August 8, 2005, is revoked.

MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*