

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR PARTS 12 AND 163

CBP DEC. 10-27

USCBP 2008-0052

RIN 1515-AD62

ENTRY REQUIREMENTS FOR CERTAIN SOFTWOOD LUMBER PRODUCTS EXPORTED FROM ANY COUNTRY INTO THE UNITED STATES

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

ACTION: Final rule.

SUMMARY: This document adopts as a final rule the interim amendments to title 19 of the Code of Federal Regulations (19 CFR) that prescribe special entry and documentation requirements applicable to certain softwood lumber and softwood lumber products exported from any country into the United States. This final rule implements Title VIII (“Softwood Lumber Act of 2008”) of the Tariff Act of 1930, as added by section 3301 of Title III, Subtitle D, of the Food, Conservation, and Energy Act of 2008, which requires the President to establish and maintain an importer declaration program with respect to the importation of certain softwood lumber and softwood lumber products and prescribes special entry requirements whereby importers must submit the export price, estimated export charge, if any, and an importer declaration with the entry summary. The Act also established new recordkeeping requirements applicable to certain imports of softwood lumber home packages and kits that are subject to declaration requirements, but that are not subject to the softwood lumber importer declaration program of section 803 of the Act.

EFFECTIVE DATE: AUGUST 26, 2010.

FOR FURTHER INFORMATION CONTACT: Renee D. Chovanec, Chief, International Coordination, Trade Agreements and Planning Division, Office of International Trade, Tel: (202) 863-6384.

SUPPLEMENTARY INFORMATION:

Background

On August 25, 2008, CBP published in the **Federal Register** (73 FR 49934), as Customs and Border Protection Decision (CBP Dec.) 08-32, interim regulations prescribing special entry and documentation requirements applicable to certain softwood lumber and softwood lumber products exported from any country into the United States. These interim regulations, set forth in new § 12.142 of title 19 of the Code of Federal Regulations (19 CFR 12.142), implemented the terms of Title VIII (Softwood Lumber Act of 2008 or “the Act”) of the Tariff Act of 1930, as added by section 3301 of Title III, Subtitle D, of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246, enacted June 18, 2008). The Act required the President to establish and maintain an importer declaration program with respect to the importation of certain softwood lumber and softwood lumber products and prescribe special entry requirements whereby importers must provide the export price, estimated export charge, if any, and an importer declaration with the entry summary documentation. The Act also imposed new recordkeeping requirements applicable to certain imports of softwood lumber home packages and kits.

CBP solicited public comment on the interim rule.

Discussion of Comments

Five commenters responded to the solicitation of comments in CBP Dec. 08-32, and CBP considered all comments that were timely submitted. Several of the commenters raised numerous issues in each of their submissions and these issues are addressed individually in this document. A description of the comments received, together with CBP’s analyses, is set forth below.

Comment:

One commenter notes that while it considers the additional reporting requirements imposed on softwood lumber imports by the Act unnecessary, CBP has nevertheless chosen the best method for collecting the required data. The commenter further suggests that the additional reporting requirements will impose further collection and reporting burdens on importers that will translate into additional costs that importers that will pass down to consumers.

CBP Response:

Pursuant to the terms of the Act, CBP is required to collect the information described in CBP Dec. 08–32. While CBP is cognizant of the additional reporting burden the new softwood lumber entry requirements place on the importer, the agency has devised a method of data collection that minimizes the associated costs and burdens to importers of softwood lumber and softwood lumber products.

Comment:

One commenter suggests that CBP should explain in the final rule that the declaration language set forth in § 12.142(c)(3)(iii)(B)(3), which states that “the exporter has paid, or committed to pay, all export charges due,” includes export charges that may be imposed retroactively after initial export charges are collected.

CBP Response:

Section 12.142(c)(3)(iii)(B)(3) of the interim rule requires the importer to declare, to his best knowledge and belief, that the exporter has paid or committed to pay “all export charges due.” It is CBP’s view that as this language includes export charges imposed retroactively after initial export charges are collected, the commenter’s suggested language is unnecessary.

Comment:

One commenter submits that CBP Dec. 08–32 properly reflects the requirements of the Act and should be adopted as final without change.

CBP Response:

CBP agrees that CBP Dec. 08–32 properly reflects the requirements of the Act.

Comment:

One commenter recommends that the final rule should retain the condition set forth in CBP Dec. 08–32 that an importer declaration is required for each shipment of covered merchandise and that blanket declarations should not be accepted.

CBP Response:

CBP concurs and will continue to require a declaration on each entry summary line item in the final rule.

Comment:

One commenter notes that the 2008 Harmonized Tariff Schedule of the United States (HTSUS) subheading numbers set forth in section 804(a) of the Act, which describe products covered by the Act, may change over time. The commenter states that as section 804(d) of the Act addresses this issue by providing that “the descriptions of the covered articles, rather than the HTS subheading number, control whether a product is covered by the importer declaration program,” § 12.142(b) should be amended accordingly.

CBP Response:

CBP is of the view that § 12.142(b) accurately reflects the scope of the statutory language and does not require further clarification. Section 804(d) of the Act provides, “[F]or purposes of determining if a product is covered by the importer declaration program, the President shall be guided by the article descriptions provided in this section.” Section 804(a) of the Act describes the products covered by the softwood lumber importer declaration program by identifying the applicable HTSUS tariff subheading numbers *and* accompanying article descriptions. The commenter’s concern that potential changes to the 2008 HTSUS subheadings identified in section 804(a) of the Act may have the effect of altering the scope of coverage is unwarranted inasmuch as section 804(d) of the Act ensures that a product’s description will dictate whether it is covered by the Act. The fact that an article, otherwise described in section 804(a) of the Act, may be subsequently classified in a HTSUS subheading that is different from the tariff provisions originally listed in the statute will not preclude that article from being covered by the Act.

Comment:

One commenter is of the opinion that a conflict exists between the manner by which the export price must be reported on the entry summary pursuant to the Softwood Lumber Act of 2008 and the U.S.-Canada Softwood Lumber Agreement (SLA) of 2006. Specifically, the commenter notes that pursuant to the Softwood Lumber Agreement of 2006 the Canadian-issued export permit allows for an aggregated export price. Conversely, pursuant to section 803(b)(1) of the Softwood Lumber Act of 2008, the export price reported on the entry summary may not be aggregated and must be listed for each line with a different line required for each consignee.

CBP Response:

CBP acknowledges that Canadian-issued export permits often present the export price as an aggregate figure. Presenting this data as an aggregate is not prohibited by the terms of the U.S.-Canada Softwood Lumber Agreement of 2006; however, it is prohibited under the terms of the Softwood Lumber Act of 2008, which requires that the export price reported on the entry summary be listed for each line with a different line required for each consignee. To reconcile this situation, CBP advises that in situations where the export price on a Canadian-issued export permit is aggregated, importers should allocate the export price among the lines on the entry summary. For example, if the export price listed on the export permit is \$1000 and there are two line items on the entry summary, divide the \$1000 to reflect each line item's respective percentage of the entered value. If seventy five percent (75%) of the entered value is reported on one line item and twenty five percent (25%) on the other, then list \$750 as the export price on the first line item and \$250 as the export price on the other line item. The export price listed on both line items on the entry summary should add up to the export price on the one line item of the Canadian-issued export permit.

Comment:

One commenter raises the concern that the reconciliation requirements set forth in the Act put into place a process that overlaps with the reconciliation process mandated under the U.S.-Canada Softwood Lumber Agreement of 2006 and that this could cause confusion or delay.

CBP Response:

CBP does not view the data collection and reconciliation requirements mandated by the Softwood Lumber Act of 2008 to be in conflict with those required by the U.S.-Canada Softwood Lumber Agreement of 2006. CBP acknowledges that while some of the data required to be submitted by importers pursuant to the 2008 Act may also be collected by Canada pursuant to the 2006 Agreement, there is no duplication in that a shipper is not required to submit the same information to the same country more than once. The common data elements that are submitted to both the U.S. and Canada should be the same. Therefore data reconciliation as required under the Softwood Lumber Act of 2008 should not affect data reconciliations under the U.S.-Canada Softwood Lumber Agreement of 2006.

Comment:

One commenter notes that the interim rule set forth in CBP Dec. 08–32 unnecessarily places an increased burden on importers. It also impacts small and medium-sized enterprises, including the U.S. housing industry, and is likely to have a trade dampening effect.

CBP Response:

With regard to the commenter's statement that the interim rule places an unnecessary burden on importers, CBP reiterates that the interim rule merely implements the entry and recordkeeping requirements mandated by the Softwood Lumber Act of 2008. The interim rule does not impose any burdens on trade other than those explicitly required by law. Moreover, the prescribed method of data collection set forth in the regulation is intended to streamline the reporting process and minimize any administrative burden associated with reporting the required information. This process should help mitigate the administration burden for all enterprises, including small and medium-sized businesses.

Comment:

One commenter requests that CBP identify the standard to be used in assessing civil penalties under the Softwood Lumber Act of 2008 by using the standard contained in 19 U.S.C. 1592 in a new 19 CFR 12.142(f).

CBP Response:

CBP does not believe it is necessary to add this language to 19 CFR 12.142 as the standards for assessing civil and criminal penalties are clearly prescribed by section 808 of the Softwood Lumber Act of 2008.

Comment:

One commenter states that CBP Dec. 08–32 does not specify which date should be used as the basis for the export price and export charge listed on the entry summary line. Without specifying the date required as the basis for the export price and export charge, different dates may be used which would create discrepancies between the export permit date and the entry summary data. The commenter suggests using the shipping date to be consistent with the U.S.-Canada Softwood Lumber Agreement of 2006.

CBP Response:

CBP does not believe this change is necessary as importers of softwood lumber and softwood lumber products from Canada need only report the export price listed on the permit issued by the Government of Canada.

Comment:

One commenter notes that CBP Dec. 08–32 does not reflect the fact that Canadian exporters are permitted to cap the export price at \$500 per thousand board feet when calculating the export charge. For this reason, the commenter submits that the export price on the entry summary will be inconsistent with that on the Canadian export permit when capped.

CBP Response:

CBP does not believe this change is necessary as importers of softwood lumber and softwood lumber products only need to report the export price listed on the permit issued by the Government of Canada.

Comment:

One commenter requests that CBP add language to the interim rule that provides that where an international agreement between a country that exports softwood lumber or softwood lumber products and the United States provides greater specificity regarding aspects of the Softwood Lumber Act of 2008, CBP will implement 19 CFR 12.142 in accordance with the more specific law to the extent that it does not conflict with the 2008 Act.

CBP Response:

CBP is of the view that such language is unnecessary. CBP Dec. 08–32 implements the Softwood Lumber Act of 2008 in a manner that does not conflict with international softwood lumber agreements to which the U.S. is a signatory.

Comment:

One commenter strongly supports the requirement for the presentation of the original paper Maritime Lumber Bureau Certificate of Origin, as prescribed in CBP Dec. 08–32. The commenter, however, urges CBP to exclude entirely softwood lumber imported from the Canadian Maritime provinces from the importer declaration program promulgated in 19 CFR 12.142.

CBP Response:

The Softwood Lumber Act of 2008 requires CBP to collect the export price, export charge, if any, and importer declaration on all importations of covered softwood lumber and softwood lumber products. Accordingly, CBP is without authority to except softwood lumber imported from the Canadian Maritime provinces from the importer declaration program. CBP will continue to require the presentation of the original paper Maritime Lumber Bureau Certificate of Origin.

Conclusion

After review of the comments and further consideration, CBP has decided to adopt as final the interim rule published in the **Federal Register** (73 FR 49934) on August 25, 2008, as CBP Dec. 08–32.

Inapplicability of Notice and Delayed Effective Date Requirements

CBP has determined, pursuant to the provisions of 5 U.S.C. 553(b)(B) and (d)(3), that prior public notice and comment procedures on this regulation are unnecessary and contrary to the public interest. These regulations align the CBP regulations to reflect the terms of Title VIII of the Tariff Act of 1930, as added by section 3301 of Title III, Subtitle D, of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246, enacted June 18, 2008), which went into effect August 18, 2008. The regulatory amendments inform the public of the special entry and documentation requirements applicable to certain softwood lumber and softwood lumber products exported from any country into the United States. The regulations are currently in effect as an interim rule and this final rule does not change the interim rule. For these reasons, pursuant to the provisions of 5 U.S.C. 553(d)(3), CBP finds that there is good cause for dispensing with a delayed effective date.

Regulatory Flexibility Act and Executive Order 12866

CBP Dec. 08–32 was issued as an interim rule rather than a notice of proposed rulemaking because CBP had determined there was good cause. The amendments were necessary to inform the public on how to comply with statutory requirements. Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) do not apply. Further, these amendments do not meet the criteria for a “significant regulatory action” as specified in E.O. 12866.

Paperwork Reduction Act

The collections of information in this document are contained in §§ 12.142(c) and (d) (19 CFR 12.142(c) and (d)). This information is used by CBP to fulfill its information collection obligations under Title VIII of the Tariff Act of 1930, as added by section 3301 within Title III, Subtitle D, of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246), whereby importers of certain softwood lumber and softwood lumber products are required to submit the export price, estimated export charge, if any, and an importer declaration with the entry summary information or, where applicable, to submit additional documentation required for home packages and kits. The likely respondents are business organizations including importers and brokers.

The collection of information associated with the entry summary documentation (CBP Form 7501) was previously approved by the Office of Management and Budget under control number 1651–0052. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), CBP has submitted to OMB for review an adjustment to the information provided to OMB for the previously approved OMB control number to account for the changes in this rule. The estimated annual burden associated with the collection of information in this final rule is now estimated to be 1,269 hours per respondent. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Signing Authority

This document is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects

19 CFR Part 12

Bonds, Customs duties and inspection, Entry of merchandise, Imports, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise.

19 CFR Part 163

Customs duties and inspection, Reporting and recordkeeping requirements.

Amendment to the CBP Regulations

Accordingly, the interim rule amending Parts 12 and 163 of the CBP Regulations (19 CFR Parts 12 and 163), which was published at 73 FR 49934 on August 25, 2008, is adopted as a final rule.

ALAN BERSIN

Commissioner

U.S. Customs and Border Protection

Dated: August 23, 2010

TIMOTHY E. SKUD

Deputy Assistant Secretary of the Treasury

[Published in the Federal Register, August 26, 2010 (75 FR 52453)]



19 CFR PART 111

USCBP - 2008-0059

CBP DEC. 10-28

RIN 1651 - AA74

CUSTOMS BROKER LICENSE EXAMINATION INDIVIDUAL ELIGIBILITY REQUIREMENTS

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

ACTION: Final rule.

SUMMARY: This final rule adopts, with one modification, proposed changes U.S. Customs and Border Protection (CBP) regulations regarding the requirements that an individual must satisfy in order to take the written examination for an individual customs broker's license, which is administered by CBP. Under this final rule, in order to be eligible to take the examination, an individual must on the date of examination be a citizen of the United States who has attained the age of 18 years and who is not an officer or employee of the U.S. Government. These changes will facilitate the overall licensing process by enabling individuals who have attained the age of 18 to take the examination in order to gain valuable experience while ensuring they would not be precluded from obtaining a license upon turning 21 because of citizenship or employment status.

EFFECTIVE DATE: This final rule is effective on August 26, 2010.

FOR FURTHER INFORMATION CONTACT: Anita Harris, Chief, Broker Compliance Branch, Office of International Trade, (202) 863-6069.

SUPPLEMENTARY INFORMATION:

Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person (an individual, corporation, association, or partnership) must hold a valid customs broker's license and permit in order to transact customs business on behalf of others, sets forth standards for the issuance of broker's licenses and permits, and provides for the taking of disciplinary action against brokers that have engaged in specified types of infractions. In the case of an applicant for an individual broker's license, § 641 states that the Secretary of the Treasury may conduct an examination to determine such applicant's qualifications for a license. Section 641 also authorizes the Secretary of the Treasury to prescribe rules and regulations relating to the customs business of brokers as necessary to protect importers and the revenue of the United States and to carry out the provisions of § 641.

The Homeland Security Act of 2002, 6 U.S.C. 101 *et. seq.*, Public Law 107-296 (Nov. 25, 2002) (the "HSA") established the Department of Homeland Security (DHS) and transferred the U.S. Customs Service from the Department of the Treasury to DHS, effective March 1, 2003. Section 1502 of the HSA renamed the "Customs Service" as the "Bureau of Customs and Border Protection," which has since been renamed U.S. Customs and Border Protection (CBP). *See* 72 FR 20131 (April 23, 2007) and 75 FR 12445 (March 16, 2010).

Treasury Department Order No. 100-16 (*see* Appendix to 19 CFR Part 0) delegates to DHS the authority to prescribe the rules and regulations relating to customs brokers.

The regulations issued under the authority of § 641 are set forth in part 111 of title 19 of the Code of Federal Regulations (19 CFR part 111). Part 111 includes detailed rules regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers. These rules include the qualifications required of applicants and the procedures for applying for licenses and permits. Section 111.11 (19 CFR 111.11) sets forth the basic requirements for obtaining a broker's license. Paragraphs (a)(1) through (a)(4) of § 111.11 provide that, in order to obtain a customs broker's license, an individual must: be a citizen of the United States upon applying for the license and not an officer or employee of the United States; attain the age of 21 prior to the date of application for such license; be of

good moral character; and, obtain a passing grade on the written examination within a 3-year period before submission of the application.

The regulations relating to the written examination for an individual customs broker's license are set forth in § 111.13 (19 CFR 111.13). Paragraph (b) of § 111.13, pertaining to the date and place of the examination, provides that an individual intending to take the examination must advise the appropriate port director in writing at least 30 calendar days prior to the scheduled examination date and remit the \$200 examination fee prescribed in paragraph (a) of § 111.96. There were previously no additional requirements in § 111.13 that were required to be fulfilled in order for an individual to sit for the customs broker's license examination.

Notice of Proposed Rulemaking

On May 27, 2008, CBP published a notice of proposed rulemaking in the **Federal Register** (73 FR 30328; the "NPRM") that proposed to amend § 111.13 to more closely align the basic requirements that an individual must satisfy to take the written examination for a customs broker's license with the basic requirements an individual must satisfy to obtain an customs broker's license. In order to be eligible to take the written examination under the amendments proposed in the NPRM, an individual would be required to be a U.S. citizen on the date of examination and not be an officer or employee of the U.S. Government, and to have attained the age of 21 prior to the date of examination.

The NPRM explained that the proposed amendments would facilitate the overall licensing process by helping to ensure that those sitting for the examination are not automatically precluded from obtaining a license by reason of age, citizenship status, or employment. It was also noted that limiting the examination to U.S. citizens is a reasonable security measure that conforms to the existing citizenship requirement for obtaining a license. In addition, by barring U.S. Government employees from taking the examination, the changes proposed in the NPRM would help to eliminate the appearance of any conflict of interest or unfair advantage that might be associated with their federal government employment.

The NPRM also proposed non-substantive amendments to § 111.13(a), (c), and (e) to reflect the nomenclature changes effected by the transfer of the U.S. Customs Service to the Department of Homeland Security.

Comments were solicited in the NPRM of May 27, 2008. The comment period closed on July 28, 2008.

Discussion of Comments

Four commenters responded to the solicitation of comments in the NPRM. A description of the comments received and CBP's response is set forth below.

Comment:

One commenter did not support the proposed requirement that an individual attain the age of 21 prior to the date of the broker examination because this requirement would inhibit the career potential of individuals who can currently take and pass the examination and subsequently apply to obtain a customs broker's license upon turning 21 years old. In this regard, the commenter suggests that CBP reduce the age limitation proposed in the NPRM.

CBP Response:

After further considering the age limit issue, CBP agrees with the commenter that the limit should be lowered from the proposed 21 years to 18 years of age to provide greater opportunities for individuals who have graduated from high school and are in the process of gaining work experience before being eligible to apply for a broker's license. CBP notes that the age of majority (adulthood) in the United States is generally considered to be 18 years and that age 18 is consistent with the requirement that an application for an individual broker's license must be submitted within a 3-year period after the applicant takes and passes the written examination. *See* 19 CFR 111.12(a). A less restrictive age requirement ensures that an individual will still be able to apply to obtain a license upon turning 21 years old while having the opportunity to work under the supervision and control of a licensed broker or brokerage for a greater time period after having taken the exam. Accordingly, since CBP is adopting the commenter's suggestion to modify the age limit, § 111.13(b) is amended in the final rule to require that an individual must only be 18 years old on the date of the examination.

Comment:

One commenter, an association that provides a preparatory training course for individuals intending to take the written examination, stated that it was initially concerned that the age and citizenship requirements proposed in the NPRM would negatively impact its business by reducing the number of applicants who are eligible to sit for the examination. However, the commenter specifically noted that only one out of 203 applicants enrolled in its course for the October 2008 examination would not have met the age and citizenship re-

quirements to take the examination as proposed in the NPRM. As such, the commenter supports the proposed amendments since there was no economic impact on its business.

CBP Response:

CBP appreciates the commenter's input and its review of the potential impact that the proposed amendments would have had on its business. Since CBP is modifying the age requirement from 21 years to 18 years based upon the input of another commenter, CBP believes there is even less of a restriction on those who would likely enroll in the commenter's preparatory course.

Comment:

A commenter opposed the amendments in the NPRM based upon the amount of time it takes to obtain a license after passing the examination. The commenter would only support the proposed amendments if CBP was required to issue a license within six months of passing the examination.

CBP Response:

CBP understands the commenter's concern regarding the timely issuance of customs brokers' licenses after passing the examination. However, CBP believes that requiring licenses to be issued within a mandatory timeframe would not be operationally practical or in furtherance of CBP's mission of facilitating legitimate trade. In this regard, CBP initially notes that the broker's examination is intended only to evaluate and verify an applicant's knowledge of relevant customs laws and regulations. The background investigation described in § 111.14, which must be completed after an individual passes the examination but before a license is issued, is intended to verify the accuracy of the statements made in the application, the business integrity of the applicant, and the moral character and reputation of the applicant. CBP has a legitimate interest in closely scrutinizing applicants who will be transacting customs business on behalf of importers before granting a license. Considering the general scope of the background investigation, the circumstances unique to each applicant's background that may require more time to investigate, and the number of Federal agencies that may ultimately assist in the investigation (*e.g.*, Federal Bureau of Investigation, U.S. Immigration and Customs Enforcement, CBP), it is clear that imposing a regulatory requirement to issue a license within an arbitrary time frame would not be operationally practical and would hinder CBP's ability to verify that licenses are issued to qualified individuals.

Comments:

One commenter, a large clothing retailer, did not support the amendment in the NPRM to preclude non-U.S. citizens from taking the examination. In support of its position, the commenter states that the private sector does not have an equivalent to the examination and notes that employers may hire and promote individuals based solely upon their ability to pass the examination. In addition, the commenter states that preventing non-U.S. citizens from taking the examination would be discriminatory since it would prevent legal resident aliens from advancing their careers in the sense that the examination is the only measurement of an individual's competence in the trade compliance field.

CBP Response:

CBP initially notes that the customs broker's license examination is not designed to be used as a tool by private sector employers to gauge whether job applicants or current employees possess the requisite knowledge to be employed or promoted in the trade compliance field. Rather, the examination is administered so that CBP can evaluate and verify an applicant's knowledge of relevant customs laws and regulations for purposes of granting an individual customs broker's license. In addition, CBP disagrees that the examination is the only measurement of an individual's competence in the trade compliance field because employers have the option to utilize privately-developed benchmarks or other academic tools to evaluate an individual's aptitude. Moreover, CBP disagrees that preventing non-U.S. citizens from taking the examination would be discriminatory because the amendment set forth in the NPRM and adopted in this document will merely align the requirement for taking the examination with the existing statutory requirement of citizenship for obtaining a license. *See* 19 U.S.C. 1641(b)(2).

Conclusion

After analysis of the comments and further review of matter, CBP has decided to adopt as final, with the modification discussed above in the comment analysis, the NPRM published in the **Federal Register** (73 FR 30328) on May 27, 2008. In addition, minor editorial changes have been made to the regulatory text for clarity.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), it is certified that the amendments in this document do not have a significant economic impact on a substantial

number of small entities because the final rule more closely aligns the requirements for taking the written examination for an individual customs broker’s license with the requirements for actually obtaining a customs broker’s license as to citizenship and employment. Accordingly, the amendments set forth in this document are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This final rule does not meet the criteria to be considered an economically “significant regulatory action” under Executive Order 12866 because it will not result in the expenditure of over \$100 million in any one year. The Office of Management and Budget (OMB) has not reviewed this rule under that Order.

Signing Authority

This document is being issued by CBP in accordance with § 0.1(b)(1) of the CBP regulations (19 CFR 0.1(b)(1)).

List of Subject in 19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports, Licensing, Reporting and recordkeeping requirements.

Amendments to the CBP Regulations

For the reasons set forth in the preamble, part 111 of title 19 of the Code of Federal Regulations (19 CFR part 111) is amended as set forth below.

PART 111 – CUSTOMS BROKERS

1. The general authority citation for part 111 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * *

2. In § 111.13:

a. Paragraph (a) is amended by removing the words “Customs Headquarters” and adding in its place, the words “Customs and Border Protection (CBP) Headquarters”;

b. Paragraph (b) is amended by revising the heading and adding a new first sentence;

c. Paragraph (c) is amended by removing the word “Customs” each place it appears and adding in its place, the term “CBP”; and

d. Paragraph (e) is amended by removing the word “Customs” in the first sentence and adding in its place, the term “CBP”.

The additions and revision to paragraph (b), referenced above, read as follows:

§ 111.13 Written examination for individual license.

* * * * *

(b) *Basic requirements, date, and place of examination.* In order to be eligible to take the written examination, an individual must on the date of examination be a citizen of the United States who has attained the age of 18 years and who is not an officer or employee of the United States Government. * * *

* * * * *

Dated: August 18, 2010

ALAN BERSIN
Commissioner
U.S. Customs and Border Protection

[Published in the Federal Register, August 26, 2010 (75 FR 52456)]



**19 CFR PARTS 4, 10, 12, 18, 101, 103, 118, 122, 141, 146, 159,
162, AND 192**

CBP DEC. 10-29

**TECHNICAL CORRECTIONS TO CUSTOMS AND BORDER
PROTECTION REGULATIONS**

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

ACTION: Final rule.

SUMMARY: Customs and Border Protection (CBP) periodically reviews its regulations to ensure that they are current, correct, and consistent. Through this review process, CBP discovered a number of discrepancies. This document amends various sections of title 19 of the Code of Federal Regulations to amend those discrepancies.

DATES: The final rule is effective August 26, 2010.

FOR FURTHER INFORMATION CONTACT: Robert Shervette, Regulations and Rulings, Office of International Trade, (202) 325-0274.

SUPPLEMENTARY INFORMATION:**Background**

It is the policy of Customs and Border Protection (CBP) to periodically review title 19 of the Code of Federal Regulations to ensure that it is as accurate and up-to-date as possible so that the importing and general public are aware of CBP programs, requirements, and procedures regarding import-related activities. As part of this review policy, CBP has determined that certain corrections are necessary affecting parts 4, 10, 12, 18, 101, 103, 118, 122, 141, 146, 159, 162, and 192 of the CBP regulations (19 CFR parts 4, 10, 12, 18, 101, 103, 118, 122, 141, 146, 159, 162, and 192).

Discussion of Changes**Part 4**

Section 4.12 of the CBP regulations (19 CFR 4.12), involving the process of notifying CBP of a manifest discrepancy, contains a typographical error in the designation of paragraph “(a)(5)(a)”. The paragraph should properly read as “(a)(5)”. Accordingly, this document amends § 4.12 by replacing the paragraph designation “(a)(5)(a)” with “(a)(5)”.

Part 10

Section 10.31(g) of the CBP regulations (19 CFR 10.31(g)) provides for free entry of particular classes of products which have previously been entered if the “original entry was made on the basis of a clerical error, mistake of fact, or other inadvertence within the meaning of section 520(c)(1) of the Tariff Act of 1930, as amended.” Section 520(c) of the Tariff Act of 1930 (19 U.S.C. 1520(c)), which was an exception to the finality of the liquidation of an entry under section 514 of the Tariff Act of 1930 (19 U.S.C. 1514), was repealed by section 2105 of the Miscellaneous Trade and Technical Corrections Act of 2004 (“Trade Act of 2004”) (Public Law 108–429, 118 Stat. 2598 (December 3, 2004)). Section 2103(1)(A) of the Trade Act of 2004 also amended section 514(a) of the Tariff Act of 1930 (19 U.S.C. 1514(a)) to include clerical errors, mistakes of fact, and other inadvertence as bases of protest of CBP decisions. *See* Public Law 108–429, 118 Stat. 2597. Therefore, in order to reflect the inclusion of clerical error, mistake of fact, or other inadvertence as bases of protest in section 514(a) and the removal of section 520(c), § 10.31(g) is amended to replace the reference to section 520(c)(1) of the Tariff Act of 1930, as amended, with a reference to section 514(a) of the Tariff Act of 1930, as amended. In addition, § 10.31(g) is being amended by replacing

outdated references to “Customs custody”, “the Customs Service”, and “Customs territory” with “CBP custody”, “CBP”, and “customs territory”, respectively. This is consistent with the transfer of the legacy U.S. Customs Service of the Department of the Treasury to the Department of Homeland Security (DHS) in 2003 and the subsequent renaming of the agency as U.S. Customs and Border Protection by DHS on March 31, 2007 (see 72 FR 20131, dated April 23, 2007). *See also* 75 FR 12445, dated March 16, 2010.

Section 10.36(b) of the CBP regulations (19 CFR 10.36(b)), pertaining to the temporary importation under bond of theatrical effects and other articles contains a reference to subheading 9813.00.65, Harmonized Tariff Schedule of the United States (HTSUS), 19 U.S.C. 1202. This tariff number was replaced on January 4, 1995, with subheading 9817.00.98, HTSUS, by Presidential Proclamation 6763 (December 23, 1994). Section 10.36(b) is amended to replace the outdated subheading with subheading 9817.00.98, HTSUS. Section 10.36 is also being amended to replace outdated nomenclature references to reflect the changes effected by the transfer of CBP to DHS.

Sections 10.191(b)(1) and 10.195(b)(1) of the CBP regulations (19 CFR 10.191(b)(1) and 10.195(b)(1)), involving regulations implementing the Caribbean Basin Economic Recovery Act (CBERA), are being amended to conform to amendments to the CBERA enacted in the 2005 Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (CAFTA-DR Act) (Public Law 109–53, 119 Stat. 462). Section 402(a) and (c) of the CAFTA-DR Act amended sections 212(a)(1) and 213(a)(1), respectively, of the CBERA (19 U.S.C. 2702(a)(1) and 2703(a)(1)). As a result of these amendments, any cost or value of materials or direct costs of processing operations attributable to “former beneficiary countries” may be included for purposes of satisfying the 35 percent value-content requirement under the CBERA (*see* 19 U.S.C. 2702(a)(1)(B)). “Former beneficiary countries” are defined in the 2005 CAFTA-DR Act as countries that are no longer designated beneficiary countries under the CBERA because they have become parties to a free trade agreement with the United States.

This document amends § 10.191(b)(1) by adding language stating that when the word “former” is used in conjunction with “beneficiary country” it means a country that ceases to be designated as a beneficiary country because the country has become a party to a separate free trade agreement with the United States. Section 10.191(b)(1) is also being amended in this document by adding references to General Notes 7(a) and 7(b)(i)(C), HTSUS, which list the CBERA beneficiary countries and former beneficiary countries, respectively. In addition,

this document amends § 10.195(b)(1) by adding a reference to “former beneficiary country.” Currently, “former beneficiary countries” consist of the 6 countries that are parties to the CAFTA-DR (other than the United States)—Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua.

Section 10.411(a)(2)(vi) of the CBP regulations (19 CFR 10.411(a)(2)(vi)), involving the certification of origin import requirements under the United States-Chile Free Trade Agreement (CFTA), contains an incorrect reference to § 10.411(e). The correct reference should be to § 10.411(f), which is the paragraph that lists the preference criteria that should be included on the certification of origin documentation. Section 10.411(e) has nothing to do with the “preference criterion” reference in § 10.411(a)(2)(vi). This document amends § 10.411(a)(2)(vi) by replacing the reference to “paragraph (e)” with “paragraph (f)”.

Section 10.442(d)(1) of the CBP regulations (19 CFR 10.442(d)(1)) sets forth the circumstances under which CBP may deny post-importation duty refund claims under the CFTA. These circumstances include a determination by the port director that the imported good did not qualify as an originating good at the time of importation “following initiation of an origin verification”. This document amends § 10.442(d)(1) by removing the potentially misleading words “initiation of” from the above-quoted phrase to more accurately reflect when determinations are made by CBP based upon the results of origin verifications.

Section 10.470(a) of the CBP regulations (19 CFR 10.470(a)), concerning verifications by CBP of CFTA preference claims, inadvertently omits any reference to post-importation duty refund claims made under § 10.442. This document amends the introductory text of § 10.470(a) to add a reference to “§ 10.442” immediately after the reference to “10.410” to clarify that the port director may initiate a verification with respect to both post-importation duty refund claims and preference claims made at the time of importation.

Section 10.809(d)(7) of the CBP regulations (19 CFR 10.809(d)(7)), involving terms that are defined for the purposes of the rules of origin under the United States-Bahrain Free Trade Agreement (BFTA), contains an incorrect reference to “paragraph (d)(5)”. This does not accurately reflect section 202(i)(3)(G) of the United States-Bahrain Free Trade Agreement Implementation Act, Public Law 109–169, 119 Stat. 3581 (19 U.S.C. 3805 note). The correct reference should be to “paragraph (d)(6)”. This document amends § 10.809(d)(7) by replacing the reference to “paragraph (d)(5)” with “paragraph (d)(6)”.

In § 10.809(n) of the CBP regulations (19 CFR 10.809(n)), which defines “simple combining or packaging operations”, the words “or packing or repacking” toward the end of the definition should read “and repacking and packaging” to be consistent with the implementing statute, section 202(i)(10) of the United States-Bahrain Free Trade Agreement Implementation Act. This document amends § 10.809(n) to replace the words “or packing or repacking” with the words “and repacking and packaging”.

Section 10.811(a)(1) of the CBP regulations (19 CFR 10.811(a)(1)) sets forth the maximum percentage of the production weight of fibers and yarns not originating in Bahrain or the United States that may be used in the production of a textile or apparel good and still qualify the good for preferential tariff treatment under the BFTA. There is an omission in this paragraph with reference to the words “. . . the total weight of all such fibers is not more . . .”. These words should read “. . . the total weight of all such fibers *or yarns* is not more . . .” (emphasis added). See section 202(h)(1)(A) of the United States-Bahrain Free Trade Agreement Implementation Act. This document amends § 10.811(a)(1) by adding the words “or yarns” following the words “all such fibers”.

Part 12

Section 12.8 of the CBP regulations (19 CFR 12.8), involving the inspection, bonding, and release of meat and meat-food products, contains a reference to “section 306, Tariff Act of 1930”. That provision was repealed by section 10418(a)(5) of the Farm Security and Rural Investment Act of 2002 (Public Law 107–171, 116 Stat. 507 (May 13, 2002)). Currently, the regulation of meat and meat-food products entering the United States is covered by the Animal Health Protection Act (7 U.S.C. 8301, *et seq.*). Accordingly, this document amends part 12 of the CBP regulations (19 CFR part 12) to remove the reference and reflect the correct authority citation in § 12.8. In addition, § 12.8 is being amended by replacing references to “Customs” with “CBP”.

Section 12.74 of the CBP regulations (19 CFR 12.74), which relates to the documentation required for importation of nonroad and stationary engines relative to the emission standards set by the Environmental Protection Agency (EPA), contains inaccurate citations to the regulations of the EPA. The EPA published a final rule in the **Federal Register** on July 11, 2006 (71 FR 39154), which established new standards of performance for stationary compression ignition internal combustion engines, and was effective on September 11,

2006. Accordingly, this document amends part 12 of the CBP regulations (19 CFR part 12) to conform § 12.74 to the current EPA regulations.

Section 12.112(b) of the CBP regulations (19 CFR 12.112(b)) pertains to the importation of chemicals that can be used as pesticides, but are not imported for use as pesticides. This section contains an inaccurate reference to “the Abbreviated List of Pesticides compiled by the Environmental Protection Agency”. This document amends § 12.112(b) to remove the incorrect reference and replace it with the correct title of the EPA Handbook which contains the listing of the pesticide products and a cite to that agency’s website for the public’s convenience.

Section 12.123(b) of the CBP regulations (19 CFR 12.123(b)) contains a reference to “Customs Form 7551, 7553, or 7595”. These forms were abolished and replaced by CBP Form 301 in order to modernize the CBP bond structure and simplify the transactions between CBP and the importing community. *See* Treasury Decision (T.D.) 84-213, 49 FR 41171. This document amends § 12.123(b) to remove the outdated references to these forms and replace them with the correct reference to CBP Form 301.

Parts 12 and 141

Sections 12.1(a), 12.3(a), and 141.113(c) of the CBP regulations (19 CFR 12.1(a), 12.3(a), 141.113(c)) set forth, in part, joint regulations issued by the Food and Drug Administration (FDA), Department of Health and Human Services, and the Department of the Treasury concerning the admissibility of imported food, drugs, devices, and cosmetics pursuant to sections 701(b) and 801 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 371(b) and 381). On June 22, 2009, the Family Smoking Prevention and Tobacco Control Act (Public Law 111-31, 123 Stat. 1776) was signed by the President into law and amended the FFDCA to give the FDA the authority to regulate tobacco products, including imported tobacco products. Accordingly, this document amends §§ 12.1(a), 12.3(a), and 141.113(c) of the CBP regulations to reflect the addition of “tobacco products” to the list of imported products subject to regulation under the FFDCA.

Part 18

Section 18.11(e) of the CBP regulations (19 CFR 18.11(e)), involving entries for immediate transportation without appraisalment, contains a typographical error in the first sentence. Section 18.11(e) employs the word “of” in the phrase “merchandise subject to detention of supervision” (emphasis added) when the word “or” should have been

used. This document amends § 18.11(e) to correct the error to clarify that the entries for immediate transportation without appraisalment are subject to *either* detention *or* supervision by any Federal agency. In addition, this document amends § 18.11(e) to remove the word “shall” in the first and third sentences and replace it with “must” in order to reflect the mandatory nature of these requirements.

Part 101

Section 101.3 of the CBP regulations (19 CFR 101.3), which contains a list of Ports of Entry and Service Ports, contains an incomplete CBP Decision number for the Port of Entry of Fargo, North Dakota. This document amends § 101.3 to include the correct reference to the decision which established Fargo, North Dakota as a Port of Entry: CBP Dec. No. 03–09, which was published in the **Federal Register** (68 FR 42587) on July 18, 2003.

Part 103

Section 103.31 of the CBP regulations (19 CFR 103.31) contains an outdated reference to the CBP Data Center. This document amends § 103.31(e)(2) to include the correct reference to the CBP Technology Support Center, with the correct telephone number.

Part 118

Section 118.3 of the CBP regulations (19 CFR 118.3), regarding the written agreements between CBP and Centralized Examination Station (CES) operators, is being amended to comply with the McNamara-O’Hara Service Contract Act of 1965 (SCA) (41 U.S.C. 351, *et seq.*). The SCA applies to every contract entered into by the United States or the District of Columbia in excess of \$2,500, the principal purpose of which is to furnish services to the United States through the use of service employees. (41 U.S.C. 351(a)). The SCA applies to the written agreement between CBP and the operator of a CES because this agreement obligates the operator of a CES to perform the specific services listed in § 118.4 of the CBP regulations (19 CFR 118.4), and therefore the principal purpose of the agreements is the furnishing of services desired by the United States Government. Section 118.3 of the CBP regulations (19 CFR 118.3) currently provides that the duration of agreements with CES operators “will not be less than three years nor more than six years.” The term “six years” is in conflict with § 353(d) of SCA, which mandates that contracts to which the SCA applies may not exceed five years. (41 U.S.C. 353(d)). Because the SCA requires that such agreements cannot exceed a term of five years, CBP is amending § 118.3 to reflect the proper time frame. CBP will honor existing agreements and will

process future agreements with the revised term limits upon the effective date of this rule. Section 118.3 is also being amended in this document by replacing references to “Customs” with “CBP”.

Part 122

Section 122.42(b)(2) of the CBP regulations (19 CFR 122.42(b)(2)) sets forth the requirement for aircraft making entry into the United States at other than an international airport. As written, § 122.42(b)(2) makes a reference to § 122.34, which no longer exists. Section 122.34 was redesignated as § 122.14 by a final rule published as Treasury Decision (T.D.) 92–90 in the **Federal Register** (57 FR 43395) on September 21, 1992. Although T.D. 92–90 also amended § 122.33(a)(2) to change a reference to § 122.34 with § 122.14 to reflect the above redesignation, T.D. 92–90 failed to amend 122.42(b)(2) as well to reflect the change. Additionally, § 122.42(b)(2) should include a reference to the section in the regulations on user fee airports (§ 122.15) because § 122.42(b)(2) references airports other than international airports; and user fee airports are not international airports. Accordingly, this document amends § 122.42(b)(2) of the CBP regulations by replacing the reference to § 122.34 with § 122.14 and by adding a reference to § 122.15.

Part 141

Section 141.4 of the CBP regulations (19 CFR 141.4) sets forth exceptions to the requirement that imported merchandise must be entered. There is an incorrect reference in § 141.4(c) to “General Note 19(e)” which should reference “General Note 3(e).” General Note (GN) 19(e) was transferred to GN 3(e) pursuant to the implementation of the 2003 Singapore Free Trade Agreement (SFTA). This document amends § 141.4(c) to reflect the correct reference to General Note 3(e).

Part 146

Section 146.35 of the CBP regulations (19 CFR 146.35) pertains to the procedures for the temporary deposit of merchandise in a foreign trade zone (FTZ). Pursuant to section 146.35, CBP allows the temporary unloading of merchandise in an FTZ where the information or documentation necessary to complete CBP Form 214 (“Application for Foreign Trade Zone Admission and/or Status Designation”) is not available at the time the merchandise arrives within the jurisdiction of the port. As currently written, § 146.35(e) requires that CBP Form 214 be submitted within five working days and allows the port director to grant an extension of this time period.

Sections 656 and 658 of the Customs Modernization Act provisions of the North American Free Trade Agreement Implementation Act

(Public Law 103–182, 107 Stat. 2057, Dec. 8, 1993) gave the Secretary of the Treasury the authority to prescribe the time by which CBP is to be notified of unladen merchandise for which entry has not been made. On September 25, 1998, CBP published in the **Federal Register** (63 FR 51283), Treasury Decision (T.D.) 98–74, amending §§ 4.37, 122.50, and 123.10, to require a carrier’s obligated party to notify CBP within fifteen calendar days after unloading of the presence of unladen, unentered merchandise. On February 11, 1999, CBP published in the **Federal Register** (64 FR 6801) a correction to T.D. 98–74 noting that it had inadvertently omitted § 146.40(c)(3) (19 CFR 146.40(c)(3)) concerning the time period that merchandise be admitted to an FTZ after arrival into the port from within five working days to fifteen calendar days, when it changed the regulations to reflect a fifteen calendar day period for unladen merchandise to be entered into general order. It has now come to CBP’s attention that it also inadvertently omitted § 146.35(e) when it was changing the time frame for merchandise to be admitted into a zone. This document changes the time required to file CBP Form 214 from five working days to fifteen calendar days and eliminates the port director’s discretion to grant an extension to make this provision consistent with the previous regulatory changes. Accordingly, the document amends § 146.35(e) to be consistent with the terms of §§ 4.37, 122.50, 123.10, and 146.40(c)(3) requiring the CBP Form 214 to be filed within the same time period.

Part 159

Section 159.11(b) of the CBP regulations (19 CFR 159.11(b)) sets forth the applicability of the provisions concerning the statutory time frame limit of one year for the liquidation of entries but excluded drawback entries in pending drawback claims from this time frame. However, section 1563(e) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429, 118 Stat. 2434, Dec. 3, 2004) amended 19 U.S.C. 1504 to include the applicability of the one year deadline to the liquidation of drawback entries or claims for drawback. Congress made this correction because it found that without a time limitation, CBP was not liquidating drawback claims within a reasonable period of time and therefore, this resulted in an open-ended time period that a drawback claimant’s claim remained subject to a challenge by CBP. By including drawback claims within the one year statutory time frame that applies to liquidation of entries, Congress removed the contingent liability of the drawback claimant having to reimburse the U.S. Treasury of any drawback monies paid to the claimant from when the claim was actually filed and money was paid to the drawback claimant under the accelerated

drawback program until the claim liquidated. *See* Senate Report No. 108–28, at 114 (Mar. 20, 2003).

Accordingly, this document amends § 159.11(b) by removing the language that excluded drawback entries from falling under the statutory liquidation time limit of one year.

Part 162

Section 162.23 of the CBP regulations (19 CFR 162.23) pertains to seizures effectuated under section 596(c), Tariff Act of 1930, as amended (19 U.S.C. 1595a(c)) (Act). The Act was amended by Public Law 109–177, Title III, § 311(d), 120 Stat. 192 (March 9, 2006), which added a new paragraph (d) that subjects merchandise exported contrary to law, proceeds thereof, and facilitating property to seizure and forfeiture. Accordingly, this document amends § 162.23 to conform the regulation to the Act. Section 162.23 is also being updated in this document by replacing references to “Customs” with “CBP”.

Part 192

Section 192.14(d) of the CBP regulations (19 CFR 192.14(d)), which pertains to the electronic information that is required in advance of departure for outward cargo, contains an outdated reference to the exemptions from reporting requirements for export cargo located in title 15 of the CFR. On June 2, 2008, the Bureau of the Census announced amendments to its regulations to implement provisions in the Foreign Relations Authorization Act, which went into effect on September 30, 2008 (*see* 73 FR 31548). Since the implementation of these amendments, the citation in § 192.14(d) of the CBP regulations to the exemptions from reporting requirements contained in the Bureau of the Census’ regulations are incorrect. Accordingly, this document amends § 192.14(d) by removing the incorrect reference to 15 CFR 30.50 through 30.58, which now pertain to import requirements, and adding the correct renumbered citation to the Census regulations, namely, 15 CFR 30.35 through 30.40.

Inapplicability of Notice and Delayed Effective Date

Because the technical corrections set forth in this document merely conform to existing law and regulation, CBP finds that good cause exists for dispensing with notice and public procedure as unnecessary under 5 U.S.C. 553(b)(B). For this same reason, pursuant to 5 U.S.C. 553(d)(3), CBP finds that good cause exists for dispensing with the requirement for a delayed effective date.

Regulatory Flexibility Act

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Executive Order 12866

These amendments do 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 the CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b)(1).

List of Subjects

19 CFR Part 4

Reporting and recordkeeping requirements.

19 CFR Part 10

Bonds, Customs duties and inspection, Entry, Reporting and recordkeeping requirements.

19 CFR Part 12

Air pollution control, Bonds, Customs duties and inspection, Meats, Pesticides, Reporting and recordkeeping requirements.

19 CFR Part 18

Bonds, Customs duties and inspection, Merchandise in transit, Reporting and recordkeeping requirements, Transportation in bond.

19 CFR Part 101

Administrative practice and procedure, Customs duties and inspection, Customs ports of entry, Customs service ports, Customs management centers, Harbors, Organization and functions (Government agencies), Reporting and recordkeeping requirements, User fee facilities.

19 CFR Part 103

Administrative practice and procedure, Computer technology, Confidential business information, Customs duties and inspection, Freedom of information, Privacy, Reporting and recordkeeping requirements.

19 CFR Part 118

Administrative practice and procedure, Customs duties and inspection, Examination stations, Exports, Imports, Licensing, Reporting and recordkeeping requirements.

19 CFR Part 122

Administrative practice and procedure, Customs duties and inspection, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 141

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 146

Customs duties and inspections, Entry, Foreign trade zones, Imports, Reporting and recordkeeping requirements.

19 CFR Part 159

Customs duties and inspections, Liquidation of entries for merchandise.

19 CFR Part 162

Customs duties and inspection, Exports, Law enforcement, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Seizures and forfeitures.

19 CFR Part 192

Customs duties and inspection, Exports, Reporting and recordkeeping requirements.

Amendments to CBP Regulations

For the reasons set forth above, parts 4, 10, 12, 18, 101, 103, 118, 122, 141, 146, 159, 162, and 192 of the CBP regulations (19 CFR parts 4, 10, 12, 18, 101, 103, 118, 122, 141, 146, 159, 162, and 192) are amended as set forth below.

PART 4 – VESSELS IN FOREIGN AND DOMESTIC TRADE

1. The general authority citation for part 4 and the specific authority citation for § 4.12, CBP regulations, continue to read as follows:

Authority: 5. U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

* * * * *

Section 4.12 also issued under 19 U.S.C. 1584;

* * * * *

§ 4.12 [Amended]

2. Section 4.12 is amended by redesignating paragraph (a)(5)(a) as paragraph (a)(5).

PART 10- ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

3. The general authority citation for part 10, CBP regulations, is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

§ 10.31 [Amended]

4. § 10.31(g):

a. The words “Customs custody” are removed each place that they appear and, in their place, is added the term “CBP custody”;

b. The term “520(c)(1)” is removed and, in its place, is added the term “514(a)”;

c. The words “the Customs Service” are removed and, in their place, is added the term “CBP”; and

d. The words “Customs territory” is removed and, in their place, are added the words “customs territory”.

§ 10.36 [Amended]

5. In § 10.36:

a. Paragraphs (a) and (c) are amended by removing the words “Customs invoice” each place that they appear and adding in their place, the term “CBP invoice”;

b. Paragraph (b) is amended by removing the number “9813.00.65” and adding, in its place, the number “9817.00.98”;

c. Paragraph (b) is further amended by removing the words, “U.S. Customs Service” and adding, in their place, the words, “U.S. Customs and Border Protection”;

d. Paragraphs (b) and (c) are amended by removing the words “Customs territory” each place that they appear, and adding, in their place, the words “customs territory”;

e. Paragraphs (b) and (c) are further amended by removing the words “Customs officers” and adding, in their place, the words “CBP officers”, and

f. Paragraphs (b) and (c) are further amended by removing the words “through Customs” and adding, in their place, the words “through CBP”.

6. In § 10.191:

a. Paragraph (b)(1) is revised by adding three new sentences at the end of the paragraph;

b. Paragraph (b)(2)(iv) is amended by removing the words “Harmonized Tariff Schedule of the United States (HTSUS)” and adding in their place the term “HTSUS”.

The revision reads as follows:

§ 10.191 General.

* * * * *

(b) * * *

(1) * * * *See* General Note 7(a), Harmonized Tariff Schedule of the United States (HTSUS). For purposes of this paragraph, when the word “former” is used in conjunction with the term “beneficiary country”, it means a country that ceases to be designated as a beneficiary country under the CBERA because the country has become a party to a free trade agreement with the United States. *See* General Note 7(b)(i)(C), HTSUS.

* * * * *

§ 10.195 [Amended]

7. Section 10.195(b) is amended by removing the words “and U.S. Virgin Islands” in the paragraph heading and adding in their place the words “, U.S. Virgin Islands, and former beneficiary countries”.

8. Section 10.195(b)(1) is amended at the end of the first sentence by removing the words “and U.S. Virgin Islands” and adding in their place the words “, U.S. Virgin Islands, and any former beneficiary country” and in the middle of the second sentence by adding the words “or any former beneficiary country” immediately after the word “Islands.”

§ 10.411 [Amended]

9. Section 10.411(a)(2)(vi) is amended by removing the reference to “paragraph (e)” and adding in its place a reference to “paragraph (f)”.

§ 10.442 [Amended]

10. Section 10.442(d)(1) is amended by removing the words “initiation of”.

§ 10.470 [Amended]

11. The introductory text of § 10.470(a) is amended by adding a reference to “or § 10.442” immediately following the reference to “§ 10.410”.

§ 10.809 [Amended]

12. Section 10.809(d)(7) is amended by removing the reference to “paragraph (d)(5)” and adding in its place a reference to “paragraph (d)(6)”.

13. Section 10.809(n) is amended by removing the words “or packing or repacking” and adding in their place the words “and repacking and packaging”.

§ 10.811 [Amended]

14. Section 10.811(a)(1) is amended by adding the words “or yarns” immediately after the words “all such fibers”.

PART 12 - SPECIAL CLASSES OF MERCHANDISE

15. The general authority citation for part 12, CBP regulations, is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

§ 12.1 [Amended]

16. Section 12.1(a) is amended by removing the words “and cosmetics” and adding in their place the words “cosmetics, and tobacco products”.

§ 12.3 [Amended]

17. Section 12.3(a) is amended by adding the words “tobacco product,” immediately after the word “cosmetic.”.

§ 12.8 [Amended]

18. In § 12.8:

a. Paragraph (a) is amended by revising the first sentence to read as follows: “All imported meat and meat-food products offered for entry into the United States are subject to the regulations prescribed by the Secretary of Agriculture under the Animal Health Protection Act. (7 U.S.C. 8301, *et seq.*).”;

b. Paragraph (a) is further amended in the third sentence by removing the words “Such meat, meat-food products, horse meat and

horse meat food products shall” and adding, in their place, the words “Such meat and meat-food products will”; and

c. Paragraph (a) is further amended by removing the word “Customs” each time that it appears and adding, in its place, the term “CBP”.

19. In § 12.74:

a. The section heading is revised.

b. Paragraph (a) is revised.

c. Paragraph (b)(1) is revised.

d. Paragraph (b)(2) is amended by removing the words “a period of at least 5” and adding, in their place, the words “at least five”, and by removing the word “Customs” each time that it appears and adding in its place the term “CBP”;

e. Paragraph (c)(1) is amended by removing the phrase “paragraphs (c)(3)(i) through (c)(3)(iv)” and adding, in its place, the phrase “paragraph (c)(3)”;

f. Paragraph (c)(2) is amended, in the first sentence, by removing the phrase “paragraphs (c)(3)(i) through (c)(3)(iv)” and adding, in its place, the phrase “paragraph (c)(3)”, by removing the number “5” and adding in its place the word “five”, by removing the word “Customs” each time that it appears and adding in its place the term “CBP”; and, in the last sentence, by removing the terms “89.612–96(d), 90.613(c) & (d), 91.705(c) & (d)” and adding, in their place, the terms “89.612(d), 90.613(c) and (d), 94.805(c) and (d), and 1068.335”;

g. Paragraph (c)(3)(i) is amended by removing the terms “89.611–96(b)(1), 90.612(b)(1), 91.704(b)(1);” and adding, in their place, the terms “89.611(b)(1), 90.612(b)(1), 94.804(b)(1), 1068.325(a).”;

h. Paragraph (c)(3)(ii) is amended by removing the terms “89.611–96(b)(2), 90.612(b)(2), 91.704(b)(2);” and adding, in their place, the terms “89.611(b)(2), 90.612(b)(2), 94.804(b)(2), 1068.325(b).”;

i. Paragraph (c)(3)(iii) is amended by removing phrase “Precertification (see 40 CFR 89.611–96(b)(3), 89.06); and” and adding, in its place, the phrase “Display (see 40 CFR 89.611(b)(4), 90.612(b)(3), 94.804(b)(4), 1068.325(c).”;

j. Paragraph (c)(3)(iv) is amended by removing the phrase “Display (see 40 CFR 89.611–96(b)(4), 90.612(b)(3), 91.704(b)(3)” and adding, in its place, the phrase “Precertification (see 40 CFR 89.611(b)(3)).”;

k. Paragraph (d) is amended by removing the term “Customs” and adding, in its place, the term “CBP”;

1. Paragraph (e) is amended in the first sentence by adding the words “or stationary” after the word “nonroad”, and by removing the term “Customs” and adding, in its place, the term “CBP”, and in the second sentence by adding the words “or stationary” after the word “nonroad”, and by removing the word “otherwise” and adding, in its place, the word “other”.

Revised section heading and revised paragraphs (a) and (b)(1) read as follows:

§ 12.74 Nonroad and stationary engine compliance with Federal antipollution emission requirements.

(a) *Applicability of EPA regulations.* The requirements governing the importation of nonroad and stationary engines subject to conformance with applicable emissions standards of the U.S. Environmental Protection Agency (EPA) are contained in EPA regulations, issued under the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*). These EPA regulations should be consulted for detailed information as to the admission requirements for subject nonroad and stationary engines. *See* 40 CFR part 1068, subpart D, with the following exceptions:

(1) For nonroad compression-ignition regulated under 40 CFR part 89, *see* 40 CFR part 89, subpart G. This applies to certain engines through the 2011 model year.

(2) For nonroad spark-ignition engines at or below 19 kilowatts regulated under 40 CFR part 90, *see* 40 CFR part 90, subpart G. This applies to certain engines through the 2011 model year.

(3) For marine compression-ignition engines regulated under 40 CFR part 94, *see* 40 CFR part 94, subpart I. This includes propulsion engines and auxiliary engines installed on marine vessels. This applies to certain engines through the 2013 model year.

(b) *Admission of nonconforming nonroad engines.* (1) *EPA declaration form required.* EPA Form 3520–21, “Importation of Engines, Vehicles, and Equipment Subject to Federal Air Pollution Regulations”, must be completed by the importer and retained on file by him before making a customs entry for such nonroad or stationary engines/vehicles/equipment.

* * * * *

§ 12.112 [Amended]

20. Section 12.112(b) is amended by removing the words “Abbreviated List of Pesticides compiled by the Environmental Protection Agency” and adding, in their place, the words “Index of Pesticide Products located in the Environmental Protection Agency’s handbook

entitled *Recognition and Management of Pesticide Poisonings*, found at www.epa.gov".

§ 12.123 [Amended]

21. In § 12.123:

a. Paragraph (b) is amended by removing the words "Customs form 7551, 7553, or 7595" and adding, in their place, the words "CBP Form 301, containing the conditions set forth in § 113.62 of this chapter";

b. Paragraph (b) is further amended by removing the third sentence; and

c. Paragraph (b) is also amended by removing the word "Customs" and adding, in its place, the term "CBP".

PART 18- TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

22. The general authority citation for part 18, CBP regulations, and the specific authority for § 18.11 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623, 1624.

* * * * *

Section 18.11 also issued under 19 U.S.C. 1484;

* * * * *

§ 18.11 [Amended]

23. In § 18.11:

a. Paragraph (e) is amended in the first sentence by removing the word "of" and replacing it with the word "or"; and

b. Paragraph (e) is further amended in the first sentence and the third sentence by removing the word "shall" and replacing it, in each sentence, with the word "must".

PART 101- GENERAL PROVISIONS

24. The general authority citation for part 101, CBP regulations, continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624, 1646a.

Section 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b.

* * * * *

§ 101.3 [Amended]

25. In § 101.3(b)(1), the table of the list of Customs ports of entry is amended in the entry for Fargo, North Dakota, in the column headed “Limits of port”, by adding the numbers “09” after the phrase “CBP Dec. 03-”.

PART 103- AVAILABILITY OF INFORMATION

26. The general authority citation for part 103, CBP regulations, continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * *

§ 103.31 [Amended]

27. In § 103.31:

a. Paragraph (e)(2) is amended by removing the phrase “CBP Data Center” each time that it appears and adding, in its place, the term “CBP Technology Support Center”; and

b. Paragraph (e)(2) is further amended, in the last sentence, by removing the phrase “CBP Data Center, on (703) 921–6000”, and adding, in its place, the phrase “CBP Technology Support Center at 1–800–927–8729.”

PART 118- CENTRALIZED EXAMINATION STATIONS

28. The general authority citation for part 118, CBP regulations, continues to read as follows:

Authority: 19 U.S.C. 66, 1499, 1623, 1624; 22 U.S.C. 401; 31 U.S.C. 5317.

* * * * *

§ 118.3 [Amended]

29. In § 118.3:

a. The word “six” is removed and, in its place, is added the word “five”; and

b. The word “Customs” is removed and, in its place, is added the term “CBP”.

PART 122 – AIR COMMERCE REGULATIONS

30. The general authority citation for part 122, CBP regulations, 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.

* * * * *

§ 122.42 [Amended]

31. Section 122.42(b)(2) is amended by removing the reference to “122.34” and adding in its place a reference to “122.14, 122.15,”.

PART 141 – ENTRY OF MERCHANDISE

32. The general authority citation for part 141, CBP regulations, continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

§ 141.4 [Amended]

33. The introductory text to § 141.4(c) is amended by removing the reference to “19(e)” and adding in its place a reference to “3(e)”.

§ 141.113 [Amended]

34. In § 141.113:

a. Paragraph (c) is amended by removing the words “and cosmetics” in the paragraph heading and adding in their place the words “cosmetics, and tobacco products”.

b. Paragraph (c)(1) is amended by removing the words “or cosmetic” in the first sentence and adding in their place the words, “cosmetic, or tobacco product”.

c. Paragraph (c)(3) is amended by removing the words “device or cosmetic” in the first sentence and adding in their place the words, “device, cosmetic, or tobacco product”.

PART 146 – FOREIGN TRADE ZONES

35. The authority citation for part 146, CBP regulations, continues to read as follows:

Authority: 19 U.S.C. 66, 81a-81u, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624.

36. In § 146.35, paragraph (e) is revised.

The revision reads as follows:

§ 146.35 Temporary deposit in a zone; incomplete documentation.

* * * * *

(e) *Submission of CBP Form 214.* A complete and accurate CBP Form 214 must be submitted, as provided in § 146.32, within 15

calendar days with no exceptions granted by the port director, or the merchandise will be placed in general order.

PART 159 – LIQUIDATION OF DUTIES

37. The general authority citation for part 159, CBP regulations, continues to read as follows:

Authority: 19 U.S.C. 66, 1500, 1504, 1624.

* * * * *

§ 159.11 [Amended]

38. Section 159.11(b) is amended at the end of the paragraph by removing the words “, but shall not apply to drawback entries”.

PART 162- INSPECTION, SEARCH, AND SEIZURE

39. The general authority citation for part 162, CBP regulations, and the specific authority for § 162.23 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624, 6 U.S.C. 101, 8 U.S.C. 1324(b).

* * * * *

Section 162.23 also issued under 19 U.S.C. 1595a(c).

* * * * *

40. In § 162.23:

a. Paragraphs (c) and (e) are amended by removing the word “Customs” and adding, in its place, the term “CBP”; and

b. A new paragraph (f) is added.

The addition reads as follows:

§ 162.23 Seizure under section 596(c), Tariff Act of 1930, as amended (19 U.S.C. 1595a(c)).

* * * * *

(f) *Exportations contrary to law.* Merchandise exported or sent, or attempted to be exported or sent, from the United States contrary to law, or the proceeds or value thereof, and property used to facilitate the exporting or sending, or attempted exporting or sending, of such merchandise, will be seized and subject to forfeiture. In addition, the receipt, purchase, transportation, concealment or sale of such merchandise prior to exportation will result in its seizure and forfeiture to the United States.

PART 192- EXPORT CONTROL

41. The general authority citation for part 192, CBP regulations, continues to read as follows:

Authority: 19 U.S.C. 66, 1624, 1646c. Subpart A also issued under 19 U.S.C. 1627a, 1646a, 1646b; subpart B also issued under 13 U.S.C. 303; 19 U.S.C. 2071 note; 46 U.S.C. 91.

* * * * *

§ 192.14 [Amended]

42. In § 192.4:

a. Paragraph (d) is amended by removing the phrase “§§30.50 through 30.58” and replacing it with the phrase “§§30.35 through 30.40”; and

b. Paragraph (d) is further amended by removing the phrase “(15 CFR 30.50 through 30.58)” and replacing it with the phrase “(15 CFR 30.35 through 30.40)”.

Dated: August 23, 2010

ALAN BERSIN
Commissioner
U.S. Customs and Border Protection

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