

U.S. Customs and Border Protection



19 CFR Parts 4 and 10

CBP Dec. 10–33

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 remedy those discrepancies.

DATES: The final rule is effective December 15, 2010.

FOR FURTHER INFORMATION CONTACT: Robert Shervette, Trade and Commercial Regulations Branch, 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 (19 CFR) to ensure that it is accurate and up-to-date so that the importing and general public is aware of CBP programs, requirements, and procedures regarding import-related activities. As part of this review policy, CBP has determined that certain corrections to 19 CFR parts 4 and 10 are necessary.

Discussion of Changes

Part 4

Sections 4.2, 4.3, 4.9, and 4.60 of the CBP regulations (19 CFR 4.2, 4.3, 4.9, and 4.60) govern the arrival, entry, and clearance of vessels.

Currently, these regulatory provisions require, in part, that U.S. vessels carrying bonded merchandise must report their arrival, make formal entry, and obtain formal clearance, when arriving or departing a port or place within the United States. These regulatory provisions are not in conformance with their respective controlling statutes. Sections 1452(a)(1), (2), and (3) of the Tariff Suspension and Trade Act of 2000 (“Trade Act”) (Public Law 106–476, 114 Stat. 2167 (2000)) amended 19 U.S.C. 1433(a)(1)(C), 19 U.S.C. 1434(a)(3), and 46 U.S.C. 60105(a)(2)¹ to exempt arriving and departing vessels of the United States that are carrying bonded merchandise from these arrival, entry, and clearance requirements. Accordingly, this document makes conforming changes to §§ 4.2(a), 4.3(a)(3), 4.9(b), and 4.60(a)(3) to reflect these statutory amendments.

Part 10

Section 10.121 of the CBP regulations (19 CFR 10.121) governs CBP’s role in administering the duty-free importation of qualifying visual and auditory materials under the “Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character” made at Beirut, Lebanon in 1948 (also referred to as the “Beirut Agreement of 1948”) (Public Law 89–634, 80 Stat. 879 (October 8, 1966)). Executive Order 11311, 31 FR 13413 (Oct. 18, 1966), implemented the United States’ obligations under the Agreement and designated the United States Information Agency (USIA) to carry out its provisions. The USIA was abolished in 1999 by the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105–277, 112 Stat. 2681–776 (1998)), and its functions transferred to the U.S. Department of State. This document amends 19 CFR 10.121 to reflect this fact.

This document also amends § 10.121(a) to reflect the changes made to subheading 9817.00.40 of the Harmonized Tariff Schedule of the United States (HTSUS), and to the U.S. Notes in Subchapter XVII, Chapter 98, HTSUS. Subheading 9817.00.40, HTSUS, permits duty-free treatment for certain articles that are determined to be visual or auditory materials of an educational, scientific, or cultural character within the meaning of Article I of the Agreement. The U.S. Notes to Subchapter XVII were changed by Presidential Proclamation. See Proclamation No. 5978, 54 FR 21187 (May 17, 1989). The note related to the Agreement for subheading 9817.00.40, HTSUS, was changed from “note 1” to “note 1(a)(i)”. Section 10.121(a) currently references “U.S. Note 1,” which is amended to reference “U.S. note 1(a)(i).”

¹ The Trade Act amended 46 U.S.C. App. 91. However, 46 U.S.C. App. 91 was recodified to 46 U.S.C. 60105 by statute (Pub. L. 109–304, 120 Stat.1675 (Oct. 9, 2006)).

In addition, this document amends § 10.121(b) to remove the word “shall” in the first, second and last sentences and to replace it with the word “will” in order to conform this regulation with the plain English mandate. Lastly, the word “immediately” is deleted from the last sentence because the use of this term conflicts with the phrase “in the ordinary course” as a consumption entry would liquidate on a set schedule and not immediately as the sentence currently reads.

Other Changes

This document also makes non-substantive amendments to 19 CFR to reflect the nomenclature changes made necessary by the transfer of the legacy U.S. Customs Service of the Department of the Treasury to the Department of Homeland Security (DHS) and DHS’s subsequent renaming of the agency as U.S. Customs and Border Protection on March 31, 2007 (*see* 72 FR 20131 (April 23, 2007)).

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

Administrative practice and procedure, Arrival, Bonds, Cargo vessels, Customs duties and inspection, Entry, Imports, Merchandise, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 10

Customs duties and inspection, Entry, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

AMENDMENTS TO THE REGULATIONS

For the reasons set forth above, parts 4 and 10 of the CBP regulations (19 CFR parts 4 and 10) are amended as set forth below.

PART 4 – VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general and specific authority citations for part 4 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 4.2 also issued under 19 U.S.C. 1441, 1486;
Section 4.3 also issued under 19 U.S.C. 288, 1441;

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Section 4.9 also issued under 42 U.S.C. 269;

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§ 4.2 [Amended]

2. In § 4.2:

a. Paragraph (a) is amended: by removing the word “Customs” each time that it appears and adding in its place the term “CBP”; in the first sentence, by removing the words “bonded merchandise or”, and by removing the word “shall” and adding in its place the word “must”, and; in the second sentence, by removing the word “shall” and adding in its place the word “may”;

b. Paragraph (b) is amended by removing the word “Customs” and adding in its place the word “customs”;

c. Paragraph (c) is amended, in the first sentence, by removing the word “may” and adding in its place the word “must”, and by removing the word “shall” and adding in its place the word “must”; and; in the last sentence, by removing the word “shall” and adding in its place the word “will”, and by removing the word “may” and adding in its place the word “must”; and

d. Paragraph (d) is amended by removing the word “shall” and adding in its place the word “must”.

§ 4.3 [Amended]

3. In § 4.3:

a. Paragraph (a)(3) is amended by removing the words “merchandise on board which is being transported in-bond (not including bonded ship’s stores or supplies), or”, and adding the words “on board” after the words “foreign merchandise”; and

b. Paragraph (b)(2) is amended by removing the word “Customs” each time that it appears and adding in its place the term “CBP”.

§ 4.9 [Amended]

4. In § 4.9:

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

b. Paragraph (b) is amended in the second sentence by removing the words “when they have merchandise aboard which is being transported in-bond, or”, by removing the third and fourth sentences, and by removing the word “Customs” in the last sentence and adding in its place the term “CBP”.

§ 4.60 [Amended]

5. In § 4.60:

a. Paragraph (a) is amended by removing the words “the Customs Service” and adding in their place the term “CBP”;

b. Paragraph (a)(3) is amended by removing the words “merchandise on board that is being transported in-bond (not including bonded ship’s stores or supplies), or”;

c. Paragraph (b)(1) is amended by removing the word “Customs” and adding in its place the word “customs”;

d. Paragraph (c) is amended by removing the word “shall” and adding in its place the word “will”;

e. Paragraph (d) is amended, in the first sentence, by removing the words “shall be reported” and adding in their place the words “must be reported”, and by removing the words “shall note” and adding in their place the words “will note”, and; in the last sentence, by removing the word “shall” each time that it appears and adding in its place the word “must”; and

f. Paragraph (e) is amended by removing the word “shall” and adding in its place the word “will”.

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

6. The general authority citation for part 10 continues 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.

* * * * *

7. § 10.121 is revised:

The revision to § 10.121 reads as follows:

§ 10.121 Visual or auditory materials of an educational, scientific, or cultural character.

(a) Where photographic film and other articles described in subheading 9817.00.40, Harmonized Tariff Schedule of the United States (HTSUS), are claimed to be free of duty under subheading 9817.00.40, HTSUS, there must be filed, in connection with the entry covering such articles, a document issued by the U.S. Department of State certifying that it has determined that the articles are visual or auditory materials of an educational, scientific, or cultural character within the meaning of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character as required by U.S. note 1(a)(i), Subchapter XVII, chapter 98, HTSUS.

(b) Articles entered under subheading 9817.00.40, HTSUS, will be released from CBP custody prior to submission of the document required in paragraph (a) of this section only upon the deposit of estimated duties with the port director. Liquidation of an entry covering merchandise which has been released under this procedure will be suspended for a period of 90 days from the date of entry or until the required document is submitted, whichever occurs first. In the event that the director of the port of entry does not receive the required document within the 90-day period, the merchandise will be classified and liquidated in the ordinary course, without regard to subheading 9817.00.40, HTSUS.

Dated: November 9, 2010

DAVID V. AGUILAR
Acting Commissioner
U.S. Customs and Border Protection