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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 181

RIN 1515-AE04

CBP Dec. 15- 07

Technical Corrections to the North American Free Trade Agreement Uniform Regulations

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

ACTION: Final rule.

SUMMARY: This document sets forth amendments to the Customs and Border Protection regulations that implement the preferential tariff treatment and other customs-related provisions of the North American Free Trade Agreement (NAFTA) entered into by the United States, Canada, and Mexico. The amendments reflect technical rectifications to the NAFTA Uniform Regulations agreed upon by the three NAFTA Parties, as well as corrections necessitated by changes to the Harmonized Tariff Schedule of the United States. The conforming amendments are required to maintain the United States' obligations under the NAFTA and to ensure that NAFTA traders operate under a uniform tariff and rules of origin regime. The amendments set forth in this document involve no substantive interpretation of the NAFTA or change in policy.

DATES: The corrections are effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

FURTHER INFORMATION CONTACT: Craig T. Clark, Director, Textile and Trade Agreements Division, Office of International Trade, Customs and Border Protection, Tel. (202) 863-6657.

SUPPLEMENTARY INFORMATION:

BACKGROUND

North American Free Trade Agreement

On December 17, 1992, the United States, Canada, and Mexico entered into the North American Free Trade Agreement (NAFTA) which, among other things, provides for preferential duty treatment on goods of those three countries. The North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, was signed into law by the United States on December 8, 1993. For purposes of administration of the NAFTA preferential duty provisions, the three countries agreed to the adoption of verbatim NAFTA Rules of Origin Regulations and additional uniform regulatory standards to be followed by each country in promulgating NAFTA implementing regulations under its national law.

NAFTA Rules of Origin Regulations

The regulations implementing the NAFTA preferential duty and related provisions under United States law are set forth in part 181 of title 19 of the Code of Federal Regulations (19 CFR part 181) which incorporates, in the Appendix, the verbatim NAFTA Rules of Origin Regulations. The NAFTA rules of origin are structured primarily in terms of prescribed changes in tariff classification, with some goods also subject to a content requirement.

Technical Rectifications to the NAFTA Rule of Origin Regulations
Agreed to by the United States, Canada, and Mexico

On April 9, 2009, the United States Trade Representative, the Canadian Minister of International Trade, and the Mexican Secretary of the Economy (Parties) agreed, in an Exchange of Letters, to make certain technical rectifications to the NAFTA Uniform Regulations for Chapter Four and Annex 403.1, subject to the completion of each Party's domestic legal procedures. These technical rectifications are set forth in Appendices 6 and 4, respectively, to the April 9, 2009 Exchange of Letters. The technical rectifications were necessitated by systemic revisions to the international Harmonized Commodity Description and Coding System (Harmonized System) and the implementation of these changes into each Party's national domestic tariff law, effective 2007. In Presidential Proclamation 8097 of December 29, 2006, the President proclaimed modifications to the Harmonized Tariff Schedule of the United States (HTSUS) to reflect the revisions to the Harmonized System (HS).

The technical rectifications to the NAFTA Uniform Regulations for Chapter Four and Annex 403.1 do not constitute policy or substantive changes to the NAFTA and have the sole purpose of maintaining consistency between the NAFTA Annexes and each of the signatory countries' tariff laws. The conforming amendments set forth in this document implement these technical rectifications by updating the HTSUS tariff provisions in the Appendix to part 181 of 19 CFR and are necessary to maintain the United States' obligations under the NAFTA and to ensure that NAFTA traders operate under a uniform tariff and rules of origin regime.

To effect the agreed upon numerical and text changes to the NAFTA Rules of Origin Regulations for the United States, technical rectifications are made to the following provisions within the Appendix to 19 CFR part 181:

- Part II, Section 5, subsection (4)(i), pertaining to exceptions to the de minimis rule for non-originating materials that do not undergo, subject to authorization, a required tariff change.
- Part III, Section 6, subsection (6)(d)(iv), pertaining to regional value content and application of the net cost method in certain circumstances.
- Part VI, Section 16, subsection (3), pertaining to exceptions to transshipment rules for certain goods.
- Schedule IV, pertaining to the list of tariff provisions for the purposes of section 9 of the Appendix.¹

Additional Technical Corrections to the Schedule IV Light-Duty Automotive Tracing List
Necessitated by Pre-2007 Revisions to the HTSUS

In addition to the technical rectifications trilaterally agreed to by the NAFTA Parties in the 2009 Exchange of Letters, described above, this document makes additional technical corrections to the Schedule IV light-duty automotive tracing list within the Appendix to 19 CFR part 181 to reflect pre-2007 modifications to the HTSUS. As noted above, the HTSUS is periodically updated to reflect systemic revisions to the HS. The periodic revisions to the HTSUS result in certain tariff provisions being added or removed, or certain goods being transferred to different or newly-created tariff provisions. As a result of pre-2007 systemic HTSUS revisions, the existing Schedule IV light-duty automotive tracing list in the Appendix to part 181 contains outdated tariff provisions that are no longer consistent with Annex 403.1 of the NAFTA. This document makes technical corrections

¹ Schedule IV of the Appendix to part 181 of 19 CFR (“List of Tariff Provisions for the Purposes of Section 9 of the Appendix” or commonly referred to as the “Schedule IV Light-Duty Automotive Tracing List”) implements the NAFTA Annex 403.1 tariff provisions. Within Part V (“Automotive Goods”) of the Appendix to part 181, section 9 lists special NAFTA valuation rules for certain light-duty automotive goods. The section 9 rules are based on a regional value-content (RVC) calculation that requires producers and exporters to determine whether non-originating materials used in the production of light-duty automotive goods are “traced materials” (*i.e.*, those materials classifiable under specific HTSUS provisions listed in Annex 403.1 of the NAFTA).

to the numerical tariff references in the tracing list so as to conform to the current version of the HTSUS and maintain the United States' obligations under the NAFTA.

INAPPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), agencies generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed regulatory amendments, consider public comments in deciding on the content of the final amendments, and publish the final amendments at least 30 days prior to their effective date. Section 553(a)(1) of the APA provides that the standard prior notice and comment procedures do not apply to an agency rulemaking to the extent that it involves a foreign affairs function of the United States. CBP has determined that these technical corrections involve a foreign affairs function of the United States because they implement preferential tariff treatment and related provisions of the NAFTA. In addition, because the amendments set forth in this document are necessary to conform the NAFTA Rules of Origin Regulations within the Appendix to 19 CFR part 181 to the technical corrections to the NAFTA Uniform Regulations for Chapter Four and Annex 403.1 agreed to by the U.S., Canada, and Mexico, as well as to systemic revisions to the Harmonized System, pursuant to 5 U.S.C. 553(b)(B), CBP finds that good cause exists for dispensing with notice and public procedure as unnecessary. For these reasons, pursuant to 5 U.S.C. 553(a)(1) and (d)(3), CBP finds that good cause exists for dispensing with the requirement for a delayed effective date and the rulemaking requirements under the APA do not apply. It is further noted, that although the APA's delayed effective date requirement is inapplicable to this rulemaking, CBP has determined to delay the effective date of these technical rectifications for a

period of 60 days from the date of publication of this document in the **Federal Register**. In consideration of the fact that two of the amendments to the CBP regulations correct tariff listings that have been out of date since 1995, the delayed effective date is offered by CBP to allow the trade, if necessary, to make adjustments to their business practices.

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, as amended (5 U.S.C. 601 et seq.).

EXECUTIVE ORDER 12866

As these amendments to the regulations reflect technical rectifications to the NAFTA agreed to by the United States, Canada, and Mexico, as well as revisions to the Harmonized Tariff Schedule of the United States, they do not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866.

SIGNING AUTHORITY

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions. Accordingly, it is being signed under the authority of 19 CFR 0.1(b)(1).

List of Subjects in 19 CFR Part181

Administrative practice and procedure, Canada, Customs duties and inspection, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements (North American Free Trade Agreement).

AMENDMENT TO THE REGULATIONS

For the reasons stated above, part 181 of title 19 of the Code of Federal Regulations (19 CFR part 181) is amended as set forth below.

PART 181 – NORTH AMERICAN FREE TRADE AGREEMENT

1. The general and specific authority citations for part 181 continue to read as follows:

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314.

* * * * *

2. In the Appendix to part 181:

a. Part II, Section 5, under the heading “Exceptions,” subsection 4(i) is revised;

b. Part III, Section 6, under the heading “Net Cost Method Required in Certain Circumstances,” subsection (6)(d)(iv) is amended by removing “subheading 8469.11” and adding in its place “heading 8469”;

c. Part VI, Section 16, under the heading “Exceptions for Certain Goods,” subsection (3) is revised;

d. In Schedule IV:

i. Remove the listing “8407.34.05, 8407.34.15 and 8407.34.25” and add in its place the listing “8407.34.05, 8407.34.14, 8407.34.18 and 8407.34.25”;

ii. Remove the listing “8407.34.35, 8407.34.45 and 8407.34.55” and add in its place the listing “8407.34.35, 8407.34.44, 8407.34.48 and 8407.34.55”;

iii. Remove the listing “8519.93” and add in its place the listing “ex 8519.81”;

- iv. Remove the listing “8708.29.10 ”;
- v. Remove the listing “8708.29.20” and add in its place the listing “8708.29.21 and 8708.29.25”;
- vi. Remove the listing “8708.39” and add in its place the listing “8708.30”;
- vii. Remove the listing “8708.60”;
- viii. Add in numerical order the listing “8708.95”;
- ix. Remove the listing “8708.99.09, 8708.99.34 and 8708.99.61”;
- x. Remove the listing “8708.99.12, 8708.99.37 and 8708.99.64”;
- xi. Remove the listing “8708.99.15, 8708.99.40 and 8708.99.67” and add in its place the listing “8708.99.16, 8708.99.41 and 8708.99.68”;
- xii. Remove the listing “8708.99.18, 8708.99.43 and 8708.99.70”;
- xiii. Remove the listing “8708.99.21, 8708.99.46 and 8708.99.73”;
- xiv. Remove the listing “8708.99.24, 8708.99.49 and 8708.99.80; and
- xv. Add in numerical order the listing “8708.99.23, 8708.99.48 and 8708.99.81”.

The revisions read as follows:

APPENDIX TO PART 181 – RULES OF ORIGIN REGULATIONS

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PART II

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SECTION 5. DE MINIMIS

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Exceptions

(4) * * *

(i) a non-originating material that is used in the production of any non-portable gas stoves or ranges of subheading 7321.11 or 7321.19, subheadings 8415.10, 8415.20 through 8415.83, 8418.10 through 8418.21, household type refrigerators, other than electrical absorption type of subheading 8418.29, subheadings 8418.30 through 8418.40, 8421.12, 8422.11, 8450.11 through 8450.20 and 8451.21 through 8451.29 and tariff items 8479.89.55 (trash compactors) and 8516.60.40 (electric stoves or ranges);

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PART VI

Section 16. TRANSSHIPMENT

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Exceptions for Certain Goods

(3) Subsection (1) does not apply with respect to:

(a) a “smart card” of subheading 8523.52, containing a single integrated circuit, where any further production or other operation that that good undergoes outside the territories of the NAFTA countries does not result in a change in the tariff classification of the good to any other subheading;

(b) a good of any of subheadings 8541.10 through 8541.60 or subheadings 8542.31

through 8542.39, where any further production or other operation that that good undergoes outside the territories of the NAFTA countries does not result in a change in the tariff classification of the good to a subheading outside subheadings 8541.10 through 8542.90;

(c) an electronic microassembly of subheading 8543.70, where any further production or other operation that that good undergoes outside the territories of the NAFTA countries does not result in a change in the tariff classification of the good to any other subheading; or

(d) an electronic microassembly of subheading 8548.90, where any further production or other operation that that good undergoes outside the territories of the NAFTA countries does not result in a change in the tariff classification of the good to any other subheading.

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R. Gil Kerlikowske
Commissioner

Approved: May 5, 2015

Timothy E. Skud

Deputy Assistant Secretary of the Treasury

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