

[FR Doc. 06-2002 Filed 3-6-06; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 35

[Docket No. RM06-13-000]

#### Conditions for Public Utility Market-Based Rate Authorization Holders

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The document corrects an effective date in a final rule published in the **Federal Register** on February 27, 2006. That action amended Commission regulations to include certain rules governing the conduct of entities authorized to make sales of electricity and related products under market-based rate authorizations.

**DATES:** Effective February 27, 2006.

**FOR FURTHER INFORMATION CONTACT:** Frank Karabetsos, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, (202) 502-8273, [Frank.Karabetsos@ferc.gov](mailto:Frank.Karabetsos@ferc.gov).

**SUPPLEMENTARY INFORMATION:** In FR Doc. 06-1719 published on February 27, 2006 (71 FR 9698), make the following correction:

On page 9698, in column 2, under the heading **DATES** correct the effective date to read, "February 27, 2006."

Magalie R. Salas,  
Secretary.

[FR Doc. 06-2153 Filed 3-6-06; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

## DEPARTMENT OF THE TREASURY

#### 19 CFR Part 10

[CBP Dec. 06-06; USCBP-2006-0012]

RIN 1505-AB64

#### Dominican Republic—Central America—United States Free Trade Agreement

**AGENCY:** Customs and Border Protection, Homeland Security; Treasury.

**ACTION:** Interim rule.

**SUMMARY:** This document amends the Customs and Border Protection ("CBP") regulations on an interim basis to set forth the conditions and requirements that apply for purposes of submitting requests to Customs and Border Protection for refunds of any excess customs duties paid with respect to entries of textile or apparel goods entitled to retroactive application of preferential tariff treatment under the Dominican Republic—Central America—United States Free Trade Agreement.

**DATES:** *Effective Date:* Interim rule effective on March 7, 2006; comments must be received by May 8, 2006.

**ADDRESSES:** You may submit comments, identified by docket number, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2006-0012.
- *Mail:* Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

**FOR FURTHER INFORMATION CONTACT:**

*Operational aspects:* Robert Abels, Textile Operations, Office of Field Operations (202) 344-1959.

*Legal aspects:* Cynthia Reese, Tariff Classification and Marking Branch, Office of Regulations and Rulings (202) 572-8812.

**SUPPLEMENTARY INFORMATION:**

### Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See **ADDRESSES** above for information on how to submit comments.

### Background

The Dominican Republic—Central America—United States Free Trade Agreement ("CAFTA-DR" or "Agreement") was entered into by the governments of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the United States on August 5, 2004. The U.S. Congress approved the CAFTA-DR in the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (the "Act"), Public Law 109-53, 119 Stat. 462 (19 U.S.C. 4001 *et seq.*).

Section 205 of the Act implements Article 3.20 of the CAFTA-DR by providing for the retroactive application of the preferential tariff provisions of the Agreement with respect to qualifying textile or apparel goods of eligible CAFTA-DR countries that were entered on or after January 1, 2004, and before the date of entry into force of the Agreement for that country. Specifically, section 205(a) provides that, notwithstanding 19 U.S.C. 1514 or any other provision of law, an entry of a textile or apparel good: (1) Of a CAFTA-DR country that the United States Trade Representative has designated as an eligible country for purposes of section 205; (2) that would have qualified as an originating good under section 203 of the Act if the good had been entered after the date of entry into force of the Agreement for that country; (3) that was made on or after January 1, 2004, and before the date of the entry into force of the Agreement with respect to that country; and (4) for which customs duties were paid in excess of the applicable rate of duty for that good set out in Annex 3.3 of the Agreement, will be liquidated or reliquidated at the applicable rate of duty for that good set out in Annex 3.3 of the Agreement, and the Secretary of

the Treasury will refund any excess customs duties paid with respect to that entry.

Section 205(b) of the Act provides that the United States Trade Representative will determine which CAFTA-DR countries are eligible countries for purposes of this section and will publish a list of those countries in the **Federal Register**.

Section 205(c) of the Act provides that liquidation or reliquidation may be made under section 205(a) with respect to an entry of a textile or apparel good only if a request therefor is filed with CBP, within such period as CBP shall establish by regulation in consultation with the Secretary of the Treasury, that contains sufficient information to enable CBP: (1) To locate the entry or to reconstruct the entry if it cannot be located; and (2) to determine that the good satisfies the conditions set out in section 205(a).

Section 205(d) states that, as used in section 205, the term "entry" includes a withdrawal from warehouse for consumption.

Pursuant to section 205(c) of the Act, CBP, in consultation with the Department of the Treasury, has determined that requests for refunds of any excess customs duties paid with respect to entries of textile or apparel goods of an eligible CAFTA-DR country must be filed with CBP by the later of December 31, 2006, or the date that is 90 days after the entry into force of the Agreement with respect to that country. As required by section 205(c) of the Act, CBP is amending the CBP regulations by adding a new Subpart J to Part 10 and new § 10.699 to set forth the time period within which requests for refunds must be submitted to CBP, as well as the other legal conditions and requirements that apply for purposes of requesting refunds pursuant to section 205 of the Act.

It is noted that, in accordance with the recent decision of the U.S. Court of Appeals for the Federal Circuit in *Orlando Foods Corp. v. United States*, No. 04-1612 (Federal Cir. Sept. 14, 2005), new § 10.699 provides that any refund of excess customs duties made pursuant to that section will be accompanied by interest from the date of the affected entry.

#### **Inapplicability of Notice and Delayed Effective Date Requirements**

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. However, section 553(a)(1) of the APA provides that the standard 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 this interim rule involves a foreign affairs function of the United States because it implements certain preferential tariff treatment provisions of the CAFTA-DR.

In addition, section 553(b)(B) of the APA provides that notice and public procedure are not required when an agency for good cause finds them impracticable, unnecessary, or contrary to the public interest. CBP finds that providing notice and public procedure for these regulations would be impracticable, unnecessary, and contrary to the public interest because they set forth procedures that the public needs to know as soon as possible in order to claim the benefit of the retroactive tariff preference provisions of the Act.

Finally, sections 553(d)(1) and (d)(3) of the APA exempt agencies from the requirement of publishing notice of final rules at least 30 days prior to their effective date when a substantive rule grants or recognizes an exemption or relieves a restriction and when the agency finds that good cause exists for not meeting the advance publication requirement. For the reasons described above, CBP has determined that these regulations grant an exemption and relieve restrictions and that good cause exists for dispensing with a delayed effective date.

#### **Executive Order 12866 and Regulatory Flexibility Act**

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and implements certain preferential tariff treatment provisions of an international agreement, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866. Because a notice of proposed rulemaking is not required under section 553(b) of the APA for the reasons described above, CBP notes that the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, CBP also notes that this interim rule is not subject to the regulatory analysis requirements

or other requirements of 5 U.S.C. 603 and 604.

#### **Paperwork Reduction Act**

These regulations are being issued without prior notice and public procedure pursuant to the APA, as described above. For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) on February 22, 2006, under control number 1651-0125.

The collection of information in these regulations is in § 10.699. This information is required in connection with requests for refunds of any excess customs duties paid with respect to entries of textile or apparel goods entitled to retroactive application of preferential tariff treatment under the CAFTA-DR and the Act and will be used by CBP to determine eligibility for such refunds under the CAFTA-DR and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

*Estimated total annual reporting burden:* 4,000 hours.

*Estimated average annual burden per respondent:* 96 minutes.

*Estimated number of respondents:* 2,500.

*Estimated annual frequency of responses:* 4.

Comments concerning the collections of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

#### **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 delegate) to approve regulations related to certain CBP revenue functions.

#### **List of Subjects in 19 CFR Part 10**

Customs duties and inspection, Entry, Imports, Preference Programs, Reporting

and recordkeeping requirements, Trade agreements.

### Amendments to the Regulations

■ Accordingly, chapter I of title 19, Code of Federal Regulations (19 CFR chapter I), is amended as set forth below.

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

■ 1. The general authority citation for part 10 continues, and the specific authority for new Subpart J is added, to read as follows:

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

\* \* \* \* \*

Section 10.699 also issued under Pub. L. 109-53, 119 Stat. 462.

■ 2. Part 10, CBP regulations, is amended by adding a new Subpart J to read as follows:

#### Subpart J—Dominican Republic—Central America—United States Free Trade Agreement

#### Retroactive Preferential Tariff Treatment for Textile and Apparel Goods

##### § 10.699 Refunds of Excess Customs Duties

(a) *Applicability.* The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or Agreement) was entered into by the governments of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the United States on August 5, 2004. The Congress approved the CAFTA-DR in the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (the Act), Public Law 109-53, 119 Stat. 462 (19 U.S.C. 4001 *et seq.*). Section 205 of the Act provides for the retroactive application of the Agreement and payment of refunds for any excess duties paid with respect to entries of textile and apparel goods of eligible CAFTA-DR countries that meet certain conditions and requirements. Those conditions and requirements are set forth in paragraphs (b) and (c) of this section.

(b) *General.* Notwithstanding 19 U.S.C. 1514 or any other provision of law, and subject to paragraph (c) of this section, a textile or apparel good of an eligible CAFTA-DR country that was entered or withdrawn from warehouse for consumption on or after January 1,

2004, and before the date of the entry into force of the Agreement with respect to that country will be liquidated or reliquidated at the applicable rate of duty for that good set out in the Schedule of the United States to Annex 3.3 of the Agreement, and CBP will refund any excess customs duties paid with respect to such entry, with interest accrued from the date of entry, provided:

(1) The good would have qualified as an originating good under § 203 of the Act if the good had been entered after the date of entry into force of the Agreement for that country; and

(2) Customs duties in excess of the applicable rate of duty for that good set out in the Schedule of the United States to Annex 3.3 of the Agreement were paid.

(c) *Request for liquidation or reliquidation.* Liquidation or reliquidation may be made under paragraph (b) of this section with respect to an entry of a textile or apparel good of an eligible CAFTA-DR country only if a request for liquidation or reliquidation is filed with the CBP port where the entry was originally filed by the later of December 31, 2006, or the date that is 90 days after the date of the entry into force of the Agreement for that country, and the request contains sufficient information to enable CBP:

(1) To locate the entry or to reconstruct the entry if it cannot be located; and

(2) To determine that the good satisfies the conditions set forth in paragraph (b) of this section.

(d) *Definitions.* For purposes of this section:

(1) “Eligible CAFTA-DR country” means a country that the United States Trade Representative has determined, by notice published in the **Federal Register**, to be an eligible country for purposes of section 205 of the Act; and

(2) “Textile or apparel good” means a good listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)), other than a good listed in Annex 3.29 of the Agreement.

**Deborah J. Spero,**

*Acting Commissioner of Customs and Border Protection.*

Approved: February 28, 2006.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 06-2070 Filed 3-6-06; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

#### Definition of Contribution in Aid of Construction Under Section 118(c)

##### CFR Correction

In Title 26 of the Code of Federal Regulations, part 1 (§§ 1.61 to 1.169), revised as of April 1, 2005, on page 495, reinstate § 1.118-2 to read as follows:

##### § 1.118-2 Contribution in aid of construction.

(a) *Special rule for water and sewerage disposal utilities—(1) In general.* For purposes of section 118, the term *contribution to the capital of the taxpayer* includes any amount of money or other property received from any person (whether or not a shareholder) by a regulated public utility that provides water or sewerage disposal services if—

(i) The amount is a contribution in aid of construction under paragraph (b) of this section;

(ii) In the case of a contribution of property other than water or sewerage disposal facilities, the amount satisfies the expenditure rule under paragraph (c) of this section; and

(iii) The amount (or any property acquired or constructed with the amount) is not included in the taxpayer's rate base for ratemaking purposes.

(2) *Definitions—(i) Regulated public utility* has the meaning given such term by section 7701(a)(33), except that such term does not include any utility which is not required to provide water or sewerage disposal services to members of the general public in its service area.

(ii) *Water or sewerage disposal facility* is defined as tangible property described in section 1231(b) that is used predominately (80% or more) in the trade or business of furnishing water or sewerage disposal services.

(b) *Contribution in aid of construction—(1) In general.* For purposes of section 118(c) and this section, the term *contribution in aid of construction* means any amount of money or other property contributed to a regulated public utility that provides water or sewerage disposal services to the extent that the purpose of the contribution is to provide for the expansion, improvement, or replacement of the utility's water or sewerage disposal facilities.

(2) *Advances.* A contribution in aid of construction may include an amount of money or other property contributed to