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**DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection**

DEPARTMENT OF THE TREASURY

19 CFR Part 12

CBP Dec. No. 17-04

RIN: 1515-AE22

**Merchandise Produced by Convict, Forced, or Indentured Labor;
Conforming Amendment and Technical Corrections**

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

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection regulations to reflect section 910 of the Trade Facilitation and Trade Enforcement Act of 2015 by removing the “consumptive demand” clause from the regulations concerning the prohibition on the importation of merchandise produced by convict, forced, or indentured labor. It also updates the regulations to reflect the correct name of the agency and includes a minor procedural change with regard to the filing of proof of admissibility.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Thomas Kendrick, Trade Remedy Law Enforcement Directorate, Office of Trade, Thomas.Kendrick@dhs.gov, (202) 863-6057.

SUPPLEMENTARY INFORMATION:

I. Background

Section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307) prohibits the importation of merchandise that has been mined, produced, or manufactured, wholly or in part, in any foreign country by forced labor, including prison labor and forced child labor. Despite this general prohibition, the Tariff Act of 1930 included a “consumptive demand” clause, which allowed for the importation of forced-labor-derived goods if the goods were not produced in such quantities in the United States as to meet the “consumptive demands” of the United States.

On February 24, 2016, the President signed into law the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Public Law No. 114-125). Section 910 of TFTEA repeals the “consumptive demand” clause in section 307 of the Tariff Act of 1930, thereby eliminating the consumptive demand exception to the prohibition on importation of goods made with convict labor, forced labor, or indentured servitude. This amendment went into effect on March 10, 2016.

II. Amendments to the Regulations to Remove the “Consumptive Demand” Clause

The regulations corresponding to section 307 of the Tariff Act of 1930, as amended, are contained within title 19 of the Code of Federal Regulations (CFR) at 19 CFR 12.42 – 12.45, “Merchandise Produced by Convict, Forced, or Indentured Labor.” This document amends these regulations to remove the “consumptive demand” exception from the general prohibition against the importation of goods produced by convict, forced, or indentured labor. While U.S. Customs and Border Protection (CBP) has been enforcing the ban on the importation of merchandise produced through convict, forced, or indentured labor without taking consumptive demand into consideration since section 910 of TFTEA has gone into effect, this conforming amendment is necessary to ensure that 19 CFR reflects the recent statutory amendment. This rulemaking is limited to this conforming amendment and other minor non-substantive amendments.

The non-substantive amendments included in this rulemaking are amendments to correct a spelling error, replace outdated references to “Customs” with “CBP”, and make a minor procedural change. The change in terminology from “Customs” to “CBP” 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 (CBP) by DHS on March 31, 2007. See 72 FR 20131, April 23, 2007. See also 75 FR 12445, March 16, 2010.

The procedural change involves the addition of a person (i.e., the Port Director) to whom an importer may submit proof of admissibility when contending that an article was not mined, produced, or manufactured in any part with the use of a prohibited class of

labor. The current regulation (19 CFR 12.43(b)) provides that the importer shall submit this information to the Commissioner. To provide more flexibility, and for consistency with 19 CFR 12.42(b), CBP is amending this provision to allow for the proof of admissibility to be submitted to the Commissioner of CBP or to the Port Director.

III. Inapplicability of Notice and Delayed Effective Date

The Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking in the **Federal Register** and provide interested persons the opportunity to submit comments. See 5 U.S.C. 553(b) and (c). However, certain exceptions are provided.

The APA provides an exception from notice and comment procedures when an agency finds for good cause that those procedures are “impracticable, unnecessary, or contrary to the public interest.” See 5 U.S.C. 553(b)(3)(B). In this case, CBP finds that good cause exists for dispensing with notice and public procedure as unnecessary because the conforming amendment and technical corrections set forth in this document are required to ensure that 19 CFR reflects both the recent amendments to the underlying statutory authority effected by section 910 of TFTEA and the most up-to-date terminology. 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.

The APA also provides an exception to the prior notice and comment requirement for “rules of agency organization, procedure, or practice.” See 5 U.S.C. 553(b)(A). The procedural change discussed above, i.e., including an additional person to whom an importer may submit proof of admissibility when contending that an article was not mined, produced, or manufactured in any part with the use of a prohibited class of labor,

is a minor change that has been promulgated for agency efficiency purposes, and is a rule of internal agency procedure.

IV. Statutory and Regulatory Requirements

A. Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. As these amendments are a conforming amendment and technical corrections to the regulations to reflect statutory changes and to make minor non-substantive edits, these amendments do not meet the criteria for a “significant regulatory action,” under section 3(f) of Executive Order 12866.

The 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.*).

B. Paperwork Reduction Act

There is no new collection of information required in this document; therefore, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

C. Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1), pertaining to the Secretary of the Treasury’s authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Reporting and recordkeeping requirements.

Amendments to the CBP Regulations

For the reasons stated above in the preamble, CBP amends 19 CFR part 12 as set forth below.

PART 12 – SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 continues and the specific authority for Sections 12.42 through 12.44 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.

* * * * *

Sections 12.42 through 12.44 also issued under 19 U.S.C. 1307, Pub. L. 105-61 (111 Stat. 1272), and Public L. 114-125 (130 Stat. 122);

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2. Amend § 12.42 as follows:

- a. Revise the section heading;
- b. In paragraph (a), remove the words “Commissioner of Customs” and add in their place “Commissioner of CBP”;
- c. Revise paragraph (b);

d. In paragraphs (c), (d), (e), and (f) remove the words “Commissioner of Customs” and add in their place “Commissioner of CBP”; and

e. In paragraph (g), remove the word “specified” and add in its place “specified” and remove the word “Customs” and add in its place “CBP”;

The revisions read as follows:

§ 12.42 Findings of Commissioner of CBP.

* * * * *

(b) Any person outside CBP who has reason to believe that merchandise produced in the circumstances mentioned in paragraph (a) of this section is being, or is likely to be, imported into the United States may communicate his belief to any port director or the Commissioner of CBP. Every such communication shall contain, or be accompanied by:

- (1) A full statement of the reasons for the belief;
- (2) A detailed description or sample of the merchandise; and
- (3) All pertinent facts obtainable as to the production of the merchandise abroad.

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§ 12.43 [Amended]

3. In § 12.43, in paragraphs (a) and (b), remove the words “Commissioner of Customs” and add in their place the words “port director or Commissioner of CBP”.

§ 12.44 [Amended]

5. Amend § 12.44 as follows:

a. In paragraphs (a) and (b) remove all instances of the words “Commissioner of Customs” and add in their place “Commissioner of CBP”; and

b. In paragraph (c) remove the word “Customs” and add in its place “CBP”.

DATE: June 05, 2017

Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

Approved:

Timothy E. Skud

Deputy Assistant Secretary of the Treasury

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