

DEPARTMENT OF HOMELAND SECURITY**Bureau of Customs and Border Protection****DEPARTMENT OF THE TREASURY****19 CFR Chapters I and IV**

[CBP Dec. 03–24]

RIN 1515 AD 39

Delegations of Authority: Signature of Customs and Border Protection Regulations Published in the Federal Register

AGENCY: Bureau of Customs and Border Protection; Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document revises the title and structure of title 19 of the Code of Federal Regulations (CFR) to reflect changes caused by the creation of the Department of Homeland Security and the consequent governmental reorganization. The document also specifies the signatures that indicate the exercise of authority for documents that appear in 19 CFR chapter I. In addition, this document adds and reserves for future use a chapter under which the bureau of Immigration and Customs Enforcement (ICE) may issue regulations.

EFFECTIVE DATE: August 28, 2003.

FOR FURTHER INFORMATION CONTACT: Harold Singer, Chief, Regulations Branch, Customs and Border Protection (202) 572–8767.

SUPPLEMENTARY INFORMATION:**Background**

Prior to March 1, 2003, the United States Customs Service was a component of the Department of the Treasury (Treasury). In accordance with Treasury Department Order No. 165, Revised (Treasury Decision 53654), issued on November 2, 1954, the Commissioner of Customs prescribed the regulations contained in Title 19 of the Code of Federal Regulations, Chapter I (19 CFR Chapter I) (the Customs Regulations), and with certain limited exceptions, the Customs Regulations required the approval of the Secretary of the Treasury (or his or her delegate). On November 25, 2002, the President signed the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*, Pub. L. 107–296, (the Act), establishing the Department of Homeland Security (DHS). Under section 403(1) of the Act (6 U.S.C. 203(1)), the United States Customs Service, including functions of

the Secretary of the Treasury relating thereto, transferred to the Secretary of Homeland Security.

Notwithstanding the transfer of the Customs Service to DHS, section 412 of the Act (6 U.S.C. 212) provides that the legal authority vested in the Secretary of the Treasury over customs revenue functions is to be retained by the Secretary of the Treasury. Section 412 of the Act also authorizes the Secretary of the Treasury to delegate any of the retained legal authority over the customs revenue functions to the Secretary of Homeland Security.

By Treasury Department Order No. 100–16, dated May 15, 2003 and published in the **Federal Register** on May 23, 2003 (68 FR 28322), the Secretary of the Treasury delegated to the Secretary of Homeland Security authority to prescribe regulations pertaining to the customs revenue functions. This Order further provided that the Secretary of the Treasury retained the sole authority to approve any Customs Regulations concerning import quotas or trade bans, user fees, marking, labeling, copyright and trademark enforcement, and the completion of entry or substance of entry summary including duty assessment and collection, classification, valuation, application of the U.S. Harmonized Schedules, eligibility or requirements for preferential trade programs, and the establishment of recordkeeping requirements relating thereto.

The Code of Federal Regulations (CFR) is divided into 50 titles based on subject matter. Within each CFR title, departments and agencies are assigned individual chapters.

Because title 19 chapter I of the Code of Federal Regulations is currently named for the “United States Customs Service, Department of the Treasury,” and that agency is now known as the bureau of “Customs and Border Protection” (CBP) and is a component of DHS, the title of 19 CFR chapter I is revised in this document to reflect the new name of the agency and to add DHS. The Department of the Treasury remains in the title of chapter I because of the retained authority of the Secretary of the Treasury with respect to regulations concerning the customs revenue functions.

This document also amends the Customs Regulations by adding a new part 0 that prescribes the signatures that indicate the exercise of authority to amend, revise, or revoke regulations in 19 CFR chapter 1. The document specifies that signatures of the Secretary of the Treasury and of the Secretary of Homeland Security include the

signatures of his or her Treasury or DHS delegate (respectively). Thus, the signature of the Commissioner of Customs and Border Protection indicates exercise of the Secretary of Homeland Security’s authority as his or her DHS delegate.

Lastly, section 442 of the Homeland Security Act of 2002 (6 U.S.C. 252) established the Bureau of Border Security. Pursuant to section 1502 of the Act, the President transmitted to the House of Representatives the “Reorganization Plan Modification for the Department of Homeland Security” which, effective March 1, 2003, renamed the Bureau of Border Security as the bureau of “Immigration and Customs Enforcement” (ICE). ICE brings together the investigation arms of the former Customs Service, the investigative functions of the former Immigration and Naturalization Service, and the former Federal Protective Service. Under the savings provisions of the Homeland Security Act and general principles of federal law, the “Customs Regulations” in Title 19 CFR chapter I apply as relevant to both components of the legacy “United States Customs Service”—*i.e.* to ICE and CBP. Nonetheless, in the future it is anticipated that ICE may issue regulations unique to ICE. Thus, this document creates a new chapter IV in 19 CFR for any regulations that ICE may promulgate in the future. However, absent such express regulatory action, the creation of this new chapter does not in itself supersede any Customs Regulations that currently apply for ICE in Chapter I.

Inapplicability of Prior Public Notice and Delayed Effective Date Requirements

This regulation involves matters relating to agency management. It involves the relationship between cabinet Departments on issues of authority over Customs Regulations. For this reason, pursuant to 5 U.S.C. 553 (a)(2), prior notice and public procedure and a delayed effective date are not required.

The Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Further, this amendment does not meet the criteria for a “significant regulatory action” for purposes of Executive Order 12866.

List of Subjects in 19 CFR Part 0

Customs duties and inspection,
Delegations of authority.

Amendments to the Regulations

■ For the reasons set forth in the preamble and under the Homeland Security Act of 2002, Pub. L. 107–296, Title 19 chapter I is amended and chapter IV is added as set forth below:

CHAPTER I—BUREAU OF CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF THE TREASURY

- 1. Revise the chapter I heading to read as set forth above.
- 2. Add part 0 to chapter I to read as follows:

PART 0—TRANSFERRED OR DELEGATED AUTHORITY

Sec.

- 0.1 Customs revenue function regulations issued under the authority of the Departments of the Treasury and Homeland Security.
- 0.2 All other Customs Regulations issued under the authority of the Department of Homeland Security.

Appendix to 19 CFR Part 0—Treasury Department Order No. 100–16

Authority: 5 U.S.C. 301, 6 U.S.C. 101 *et seq.*, 19 U.S.C. 66, 19 U.S.C. 1624, 31 U.S.C. 321.

§ 0.1 Customs revenue function regulations issued under the authority of the Departments of the Treasury and Homeland Security.

(a) *Regulations requiring signatures of Treasury and Homeland Security.* (1) By Treasury Department Order No. 100–16, set forth in the appendix to this part, the Secretary of the Treasury has delegated to the Secretary of Homeland Security the authority to prescribe all Customs regulations relating to customs revenue functions, except that the Secretary of the Treasury retains the sole authority to approve such Customs regulations concerning subject matters listed in paragraph 1(a)(i) of the order. Regulations for which the Secretary of the Treasury retains the sole authority to approve will be signed by the Secretary of Homeland Security (or his or her DHS delegate), and by the Secretary of the Treasury (or his or her Treasury delegate) to indicate approval.

(2) When a regulation described in paragraph (a)(1) of this section is published in the **Federal Register**, the preamble of the document accompanying the regulation will clearly indicate that it is being issued in accordance with paragraph (a)(1) of this section.

(b) *Regulations with respect to which the Department of Homeland Security is*

authorized to sign for the Department of the Treasury. (1) By Treasury Department Order No. 100–16, set forth in the appendix to this part, the Secretary of the Treasury delegated to the Secretary of Homeland Security the authority to prescribe and approve regulations relating to customs revenue functions on behalf of the Secretary of the Treasury when the subject matter of the regulations is not listed in paragraph 1(a)(i) of the order. Such regulations are the official regulations of both Departments notwithstanding that they are not signed by an official of the Department of the Treasury. These regulations will be signed by the Secretary of Homeland Security (or his or her DHS delegate).

(2) When a regulation described in paragraph (b)(1) of this section is published in the **Federal Register**, the preamble of the document accompanying the regulation will clearly indicate that it is being issued in accordance with paragraph (b)(1) of this section.

(c) *Sole signature by Secretary of the Treasury.* (1) Pursuant to Treasury Department Order No. 100–16, set forth in the appendix to this part, the Secretary of the Treasury reserves the right to promulgate regulations related to the customs revenue functions. Such regulations are signed by the Secretary of the Treasury (or his or her delegate) after consultation with the Secretary of Homeland Security (or his or her delegate), and are the official regulations of both Departments.

(2) When a regulation described in paragraph (c)(1) of this section is published in the **Federal Register**, the preamble of the document accompanying the regulation will clearly indicate that the regulation is being issued in accordance with paragraph (c)(1) of this section.

§ 0.2 All other Customs regulations issued under the authority of the Department of Homeland Security.

(a) The authority of the Secretary of the Treasury with respect to Customs regulations that are not related to customs revenue functions was transferred to the Secretary of Homeland Security pursuant to section 403(1) of the Homeland Security Act of 2002. Such regulations are signed by the Secretary of Homeland Security (or his or her delegate) and are the official regulations of the Department of Homeland Security.

(b) When a regulation described in paragraph (a) of this section is published in the **Federal Register**, the preamble accompanying the regulation shall clearly indicate that it is being

issued in accordance with paragraph (a) of this section.

Appendix to 19 CFR Part 0—Treasury Department Order No. 100–16

Delegation from the Secretary of the Treasury to the Secretary of Homeland Security of general authority over Customs revenue functions vested in the Secretary of the Treasury as set forth in the Homeland Security Act of 2002.

Treasury Department, Washington, DC,
May 15, 2003.

By virtue of the authority vested in me as the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b) and section 412 of the Homeland Security Act of 2002 (Pub. L. 107–296) (Act), it is hereby ordered:

1. Consistent with the transfer of the functions, personnel, assets, and liabilities of the United States Customs Service to the Department of Homeland Security as set forth in section 403(1) of the Act, there is hereby delegated to the Secretary of Homeland Security the authority related to the Customs revenue functions vested in the Secretary of the Treasury as set forth in sections 412 and 415 of the Act, subject to the following exceptions and to paragraph 6 of this Delegation of Authority:

(a)(i) The Secretary of the Treasury retains the sole authority to approve any regulations concerning import quotas or trade bans, user fees, marking, labeling, copyright and trademark enforcement, and the completion of entry or substance of entry summary including duty assessment and collection, classification, valuation, application of the U.S. Harmonized Tariff Schedules, eligibility or requirements for preferential trade programs, and the establishment of recordkeeping requirements relating thereto. The Secretary of Homeland Security shall provide a copy of all regulations so approved to the Chairman and Ranking Member of the Committee on Ways and Means and the Chairman and Ranking Member of the Committee on Finance every six months.

(ii) The Secretary of the Treasury shall retain the authority to review, modify, or revoke any determination or ruling that falls within the criteria set forth in paragraph 1(a)(i), and that is under consideration pursuant to the procedures set forth in sections 516 and 625(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1516 and 1625(c)). The Secretary of Homeland Security periodically shall identify and describe for the Secretary of the Treasury such determinations and rulings that are under consideration under sections 516 and 625(c) of the Tariff Act of 1930, as amended, in an appropriate and timely manner, with consultation as necessary, prior to the Secretary of Homeland Security's exercise of such authority. The Secretary of Homeland Security shall provide a copy of these identifications and descriptions so made to the Chairman and Ranking Member of the Committee on Ways and Means and the Chairman and Ranking Member of the Committee on Finance every six months. The Secretary of the Treasury shall list any case where Treasury modified or revoked such a determination or ruling.

(b) Paragraph 1(a) notwithstanding, if the Secretary of Homeland Security finds an overriding, immediate, and extraordinary security threat to public health and safety, the Secretary of Homeland Security may take action described in paragraph 1(a) without the prior approval of the Secretary of the Treasury. However, immediately after taking any such action, the Secretary of Homeland Security shall certify in writing to the Secretary of the Treasury and to the Chairman and Ranking Member of the Committee on Ways and Means and the Chairman and Ranking Member of the Committee on Finance the specific reasons therefor. The action shall terminate within 14 days or as long as the overriding, immediate, and extraordinary security threat exists, whichever is shorter, unless the Secretary of the Treasury approves the continued action and provides notice of such approval to the Secretary of Homeland Security.

(c) The Advisory Committee on Commercial Operations of the Customs Service (COAC) shall be jointly appointed by the Secretary of the Treasury and the Secretary of Homeland Security. Meetings of COAC shall be presided over jointly by the Secretary of the Treasury and the Secretary of Homeland Security. The COAC shall advise the Secretary of the Treasury and the Secretary of Homeland Security jointly.

2. Any references in this Delegation of Authority to the Secretary of the Treasury or the Secretary of Homeland Security are deemed to include their respective delegates, if any.

3. This Delegation of Authority is not intended to create or confer any right, privilege, or benefit on any private person, including any person in litigation with the United States.

4. Treasury Order No. 165-09, "Maintenance of delegation in respect to general authority over Customs Revenue functions vested in the Secretary of the Treasury, as set forth and defined in the Homeland Security Act of 2002," dated February 28, 2003, is rescinded. To the extent this Delegation of Authority requires any revocation of any other prior Order or Directive of the Secretary of the Treasury, such prior Order or Directive is hereby revoked.

5. This Delegation of Authority is effective May 15, 2003. This Delegation is subject to review on May 14, 2004. By March 15, 2004, the Secretary of the Treasury and the Secretary of Homeland Security shall consult with the Chairman and Ranking Member of the Committee on Ways and Means and the Chairman and Ranking Member of the Committee on Finance to discuss the upcoming review of this Delegation.

6. The Secretary of the Treasury reserves the right to rescind or modify this Delegation of Authority, promulgate regulations, or exercise authority at any time based upon the statutory authority reserved to the Secretary by the Act.

John W. Snow, *Secretary of the Treasury*.

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■ 3. Add Chapter IV to Title 19 to read as follows:

**CHAPTER IV—BUREAU OF
IMMIGRATION AND CUSTOMS
ENFORCEMENT; DEPARTMENT OF
HOMELAND SECURITY**

PARTS 400 to 599—[RESERVED]

Dated: August 5, 2003.

Asa Hutchinson,

*Under Secretary for Border and
Transportation Security, Department of
Homeland Security.*

Dated: August 6, 2003.

Timothy E. Skud,

*Deputy Assistant Secretary, Department of
the Treasury.*

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