

The Month So Far: September 12 through 18, 2015

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

RULES

Importation of Citrus From Peru: Expansion of Citrus-Growing Area

[\[TEXT\]](#) [\[PDF\]](#)

Importation of Kiwi from Chile into the United States

[\[TEXT\]](#) [\[PDF\]](#)

Importation of Fresh Peppers From Peru Into the Continental United States & the Territories

[\[TEXT\]](#) [\[PDF\]](#)

NEWS

[Import / Export](#)

[APHIS FAQs](#)

[PPO FORMS - USDA APHIS / Home](#)

[Lookup plant genus and species](#)

[Complete List of Electronic Manuals](#)

CONSUMER PRODUCT SAFETY COMMISSION

Quick Links: [CPSIA Basics](#)

[View Safety Guides](#)

[Voluntary Standards](#)

Certification Resources for Non-Children's Products:

[Model General Conformity Certificate \(GCC\)](#) [Testing or Reasonable Testing Program FAQ](#)

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[Rules Requiring a General Certificate of Conformity](#)

[General Certificate of Conformity](#) [Sample General Certificate of Conformity \(GCC\)](#)

[Third Party Testing FAQ](#)

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- Search the [CPSC Recalls and Safety News Page](#)

CPSC RECALLS & UPDATES

- [Zak Designs Recalls Water Bottles Due to Choking Hazard; Sold Exclusively at Target Stores](#)
- [The Land of Nod Recalls Mobiles Due to Entanglement and Strangulation Hazards](#)
- [Bed Handles Inc. Reannounces Recall of Adult Portable Bed Handles Due to Serious Entrapment and Strangulation Hazards; Less Than 1% Response Rate to Recall](#)
- [Bradshaw International Recalls Jumbo Roasters Due to Laceration Hazard](#)

- Search the [CPSC Recalls and Safety News Page](#)

CUSTOMS AND BORDER PROTECTION

RULES

Disclosure of Information for Certain Intellectual Property Rights Enforced at the Border [\[TEXT\]](#) [\[PDF\]](#)

[QB 15-132 2016 Amended Refined Sugar Tariff Rate Quota](#)



[C-TPAT Portal 2.0 Phase II Training Manual](#)

[Adding a new C-TPAT Point of Contact](#) [Deleting a C-TPAT Point of Contact](#)

[Exporter Minimum Security Criteria](#) [C-TPAT Exporter Factsheet](#) [C-TPAT Exporter Entity FAQ](#)

[Draft Guide Of Seal Procedure Best Practices](#)

[Adding New Contacts](#)

[Adding New Addresses](#)

[Status Verification \(SVI\)](#)

[Completing an Annual Review](#)

[C-TPAT Portal Resources](#)

[e-Allegations Frequently Asked Questions](#)

[CBP INFO CENTER WHAT'S NEW IN TRADE](#)

FOIA ELECTRONIC READING ROOM
INFORMED COMPLIANCE PUBLICATIONS
CBP BULLETIN NOTICES

WEEKLY EXCHANGE RATE MULTIPLIERS
Commodity Status Report for Tariff Rate Quotas

General Notices

September 16, 2015

Page

Modification of a Ruling Letter and Revocation of Treatment Relating to the Tariff Classification of a Plastic McQueen Car and Cup 1

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 16, 2015.

In HQ H040737, CBP determined that the plastic McQueen car was classified in subheading 3924.10.40, HTSUS, which provides for: “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Tableware and kitchenware: Other.” CBP also determined that the cup was classified in subheading 3924.90.56, HTSUS, which provides for: “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Other.” It is now CBP’s position that the McQueen car is classified in subheading 3924.90.56, HTSUS, and the cup is classified in subheading 3924.10.40, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying HQ H040737 and any other ruling not specifically identified, to reflect the proper classification of a plastic McQueen cup and car according to the analysis contained in Headquarters Ruling Letter (“HQ”) H239752 [portions reprinted below]

...

CBP has reviewed HQ H040737 and found a clerical error in the holding. We found that the subheadings for the classification of the McQueen car and cup were reversed contrary to the proper classification determination. We hereby modify HQ H040737 to reflect that the McQueen car is classified in subheading 3924.90.65, HTSUS, and the cup is classified in 00subheading 3924.10.40, HTSUS.

HOLDING: *Pursuant to GRI 1, we find the McQueen car and cup are classified in heading 3924, HTSUS. The McQueen cup is classified in subheading 3924.10.40, HTSUS, which provides for: “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Tableware and kitchenware: Other.” The column one, general rate of duty is 3.4 percent ad valorem. The McQueen car is properly classified in subheading 3924.90.56, HTSUS, which provides for: “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Other.” The column one, general rate of duty is 3.4 percent ad valorem.*

Proposed Modification of Ruling Letter and Proposed Revocation of Treatment Relating to the Origin Marking of Certain Boxes of Tissues 7

DATES: Comments must be received on or before October 16, 2015.

NY N261615 held that the country of origin of the tissues in each of the three cases would be the country where the jumbo rolls are cut into facial tissues. It has come to our attention that several errors were made in NY N261615’s analysis.

FACTS: *As described in NY N261615, you asked us to confirm the country of origin of boxes of facial tissues under three scenarios:*

- 1. U.S. origin jumbo rolls of tissue paper are sent to Canada or Mexico and are converted into boxes of tissues. These finished products are then re-imported to the United States.*
- 2. U.S. origin jumbo rolls of tissue paper are sent to Korea and are converted into finished boxes of tissues. These finished products are then re-imported to the United States.*
- 3. U.S. origin jumbo rolls of tissue paper are sent to China and are converted into finished boxes of tissues. These finished products are then re-imported to the United States.*

...

ISSUE:

I. Whether the boxes of facial tissues are eligible for preferential tariff treatment under NAFTA and UKFTA.

II. What are the country-of-origin marking requirements of the boxes of facial tissue?

LAW AND ANALYSIS:**I. Eligibility for NAFTA Preference and Country of Origin Marking Requirements of Boxes of Tissues Cut in Mexico or Canada****A. Eligibility for NAFTA Preference**

The NAFTA is implemented in General Note (GN) 12, HTSUS. GN 12(a) states that goods are eligible for the NAFTA rate of duty if they originate in the territory of a NAFTA party and qualify to be marked as goods of Mexico (or Canada). GN 12(b) sets forth the methods for determining whether a good originates in the territory of a NAFTA party and provides, in relevant part:

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if—

(i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

(ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the nonoriginating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or (iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials.

*Here, counsel states that the jumbo rolls are made from U.S. originating materials. **Provided that records and a certificate of origin are available to show that the rolls are made from originating materials, the finished boxes of tissues will be eligible for NAFTA preferential treatment under GN 12(b)(iii) as “goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials.”** If the rolls are not produced from U.S.-originating materials, the finished boxes of tissues may still qualify for NAFTA preference because they will meet the tariff-shift requirement per GN 12(t)48.6, which requires “[a] change to headings 4817 through 4822 from any heading outside that group, except from heading 4823.” A qualifying shift occurs here because the jumbo rolls are classified under heading 4803, while the finished product is classified under heading 4818.*

B. Marking Requirements

*We next have to determine whether the boxes of facial tissue qualify to be marked as a product of Mexico or Canada. The hierarchy set forth in 19 C.F.R. § 102.11 is applicable to determine the country of origin marking of goods produced in countries that are a party to the NAFTA. NY N261615’s analysis of the country of origin of the tissues imported from Canada or Mexico was incorrect because it did not apply the rules in 19 C.F.R. § 102. While counsel cites the **GN 12 rules, those rules apply only when** an importer is requesting preferential treatment under NAFTA. **Goods still must qualify to be marked, and the rules contained in 19 C.F.R. § 102 must be applied.***

Under 19 C.F.R. § 102.11, the country of origin for non-textile goods is determined to be the country in which:

(1) The good is wholly obtained or produced;

(2) The good is produced exclusively from domestic materials; or

(3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in [section] 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

Section 102.1(g), CBP Regulations (19 C.F.R. 102.1(g)), defines a good wholly obtained or produced as “[a] good produced in that country exclusively from goods referred to in paragraphs (g)(1) through (g)(10) of this section or from their derivatives, at any stage of production.” Here, because the tissues are

cut from jumbo rolls from the United States, they cannot qualify as “a good wholly obtained or produced” in either Canada or Mexico. The country of origin of the tissues thus cannot be determined under 19 C.F.R. § 102.11(a)(1).

The next step in the hierarchy is to consider whether the country of origin may be determined under section 102.11(a)(2). Under this section, the origin of the good may be based on the origin of the materials used to produce the good, provided that the good is produced exclusively from domestic materials. Section 102.1(d), CBP Regulations (19 C.F.R. § 102.1(d)), defines domestic material as “a material whose country of origin as determined under these rules is the same country as the country in which the good is produced.” Because the tissues are produced from raw materials from the United States, the country of origin cannot be determined under section 102.11(a)(2). The analysis must continue to 19 C.F.R. 102.11(a)(3).

Under 19 C.F.R. § 102.11(a)(3), the country of origin of a good is the country in which “each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in § 102.20 and satisfies any other applicable requirements of that section.” Section 102.1(e), CBP Regulations (19 C.F.R. § 102.1(e)) defines “Foreign material” as “a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced.” Here, the foreign materials are the jumbo rolls of tissue paper from the United States, which are classified under subheading 4803.00, HTSUS. The final product, made in either Mexico or Canada, is classified under subheading 4818.20.00, HTSUS.

For goods classified under HTSUS subheading 4818.20, 19 C.F.R. § 102.20 requires a shift “from any other heading, including another heading within that group, except for a change to heading 4818 from sanitary towels and tampons, napkin and napkin liners for babies, and similar sanitary articles, of paper pulp, paper, cellulose wadding, or webs of cellulose fibers, of heading 9619.” A qualifying shift occurs here because the jumbo rolls are classified under heading 4803. Because the foreign material in the tissue boxes undergoes the required tariff shift, we continue to hold, as in NY N261615, that the country of origin of the finished product will be the country where the conversion from jumbo rolls to tissue occurs (either Canada or Mexico).

II. Eligibility for UKFTA Preference and Marking Requirements of Boxes of Tissues Cut in Korea

A. Eligibility for UKFTA Preference

The requirements for eligibility for preferential tariff treatment under the UKFTA are set forth in Note 33 to the General Notes to the Harmonized Tariff System (“HTSUS”) (19 U.S.C. § 1202). This note provides in pertinent part:

(b) For the purposes of this note subject to the provisions of subdivisions (c), (d), (n) and (o) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good of a UKFTA country under the terms of this note if-

(i) The good is wholly obtained or produced entirely in the territory of Korea or of the United States, or both.

(ii) The good is produced entirely in the territory of Korea or of the United States, or both, and-

A. Each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (o) of this note; or

B. The good otherwise satisfies any applicable regional value-content or other requirements set forth in such subdivision (o); and satisfies all other applicable requirements of this note and of applicable regulations;

or

(iii) The good is produced entirely in the territory of Korea or of the United States, or both, exclusively from materials described in subdivisions (i) or (ii), above.

Here, counsel states that the jumbo rolls are made from U.S. originating materials. **Provided that supporting documents are available to show that the rolls are made from originating materials, the finished tissue boxes will be eligible for UKFTA preferential treatment under GN 33(b)(iii) as “goods**

produced entirely in the territory of Korea or of the United States or both.” If the rolls are not produced from U.S.-originating materials, the finished boxes of tissues may still qualify for UKFTA preference because they will meet the tariff shift requirement in GN 33(o)48.2, which requires “change to headings 4808 through 4823 from any other heading.” A qualifying shift occurs because the jumbo rolls are classified under heading 4803, while the finished product is classified under heading 4818.

B. Marking Requirements

As noted above, the tissues cut in Korea qualify for preferential treatment under UKFTA. Unlike NAFTA, however, UKFTA does not have special marking rules. NY N261615 therefore erred in applying General Note 33, which applies only in the context of determining eligibility for preference under UKFTA. The standard marking rules apply, and the finished product will be considered a product of Korea only if the jumbo rolls undergo a “substantial transformation” when they are converted into facial tissue.

19 C.F.R. § 134.1 implements the country-of-origin marking requirements and the exceptions set forth in 19 U.S.C. § 1304. Section 134.1(b), Customs Regulations (19 CFR § 134.1(b)), defines “country of origin” as the country of manufacture, production or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of the marking laws and regulations.

CBP has previously found that cutting rolls of tissue to size does not constitute “substantial transformation” under 19 C.F.R. § 134.1. In Headquarters Ruling HQ 563306, dated Sept. 20, 2005, for example, we held that jumbo tissue rolls that are cut to size, folded, and packaged into gift tissue paper did not undergo a substantial transformation. Instead, that processing was considered “mere finishing operations.” See also HQ W967977, dated Oct. 5, 2006; HQ 557462, dated Sept. 13, 1994.

Here, as in the cases cited above, cutting rolls of tissues to size constitutes “mere finishing operations,” not substantial transformation. We therefore find that the country of origin of the finished tissues remains the United States, the country where the jumbo tissue rolls were produced.

III. Country of Origin of Boxes of Tissues Cut in China

NY N261615 applied the substantial-transformation test and concluded that “the jumbo rolls from the United States were substantially transformed as a result of the processing in China” and that “China is considered to be the country of origin of the boxes of tissues. Based on the substantial-transformation analysis above, we disagree. Like the tissues cut in Korea, the tissues cut in China will remain a product of the United States because they will not be substantially transformed.

We note that marking the finished boxes of tissues as products of the United States is a matter under the jurisdiction of the Federal Trade Commission. If Kimberly Clark wants to mark the finished boxes of tissues with the phrase “Made in the USA” or a similar phrase, we recommend that you contact the agency at the following address: Federal Trade Commission, Division of Enforcement, 600 Pennsylvania Ave. NW, Washington DC 20580.

HOLDING: *We hold that the finished tissues imported from Canada (or Mexico) are eligible for preferential treatment under NAFTA, and should be marked as a product of Canada (or Mexico). The finished tissues imported from Korea are eligible for preferential treatment under UKFTA, but will remain a product of the United States for country of origin marking purposes as the jumbo rolls will not be substantially transformed in Korea. Similarly, the tissues imported from China will remain a product of the United States as the jumbo rolls will not be substantially transformed in China.*

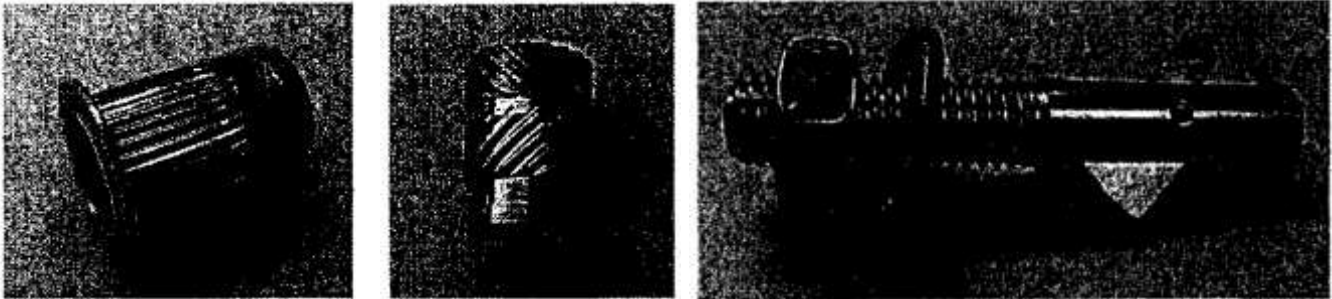
Modification of Two Ruling Letter and Revocation of Treatment Relating to the Tariff Classification of Certain Blind Rivet Nuts 17

EFFECTIVE DATE: *This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 16, 2015.*

In NY H88897, CBP classified a steel blind rivet nut under subheading 7318.19.00, HTSUS, which provides for “Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: threaded articles: other.” Similarly, in NY

M82161, CBP also classified a steel blind rivet nut (CAL series), in subheading 7318.19.00, HTSUS, as “other” than a nut. It is now CBP’s position that steel blind rivet nuts are “nuts” for classification purposes, and are properly classified under subheading 7318.16.00, HTSUS, as “Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: threaded articles: nuts.” The remainder of both rulings, specifically regarding blind rivet studs and threaded brass inserts, respectively, remains intact.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY H88897, and NY M82161, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling (HQ) H195840 [portions reprinted below].



...

In NY M82161, dated April 19, 2006, CBP stated the following:

The merchandise pictured here is described as follows:

1. [b]lind rivet nuts (CAL series)

- steel and stainless steel
- sizes range from 6/31” to 3/8”-16 and M4 to M10
- internally threaded
- installs from one side
- screw or bolt installs into blind rivet nut

...

ISSUE: Whether a threaded article which is used to fasten a bolt, is used as a nut, but is riveted into place is considered a “nut” for tariff classification purposes, under subheading 7318.16.00, HTSUS, or whether it is classified as “other” than a nut, under subheading 7318.19.00, HTSUS.

...

Subheading 7318.16.00, HTSUS, which provides for “nuts” is an eo nomine provision. “An eo nomine designation with no terms of limitation, will ordinarily include all forms of the named article.” [Citation omitted] That said, “[w]hen an object “is in character or function something other than as described by a specific statutory provision—either more limited or more diversified—and the difference is significant, it cannot find classification within such [eo nomine] provision.” .” [Citation omitted] Therefore, CBP must first define what a “nut” is for tariff classification purposes. Then, CBP will determine whether the subject rivet nut’s characteristics render it more diverse than the intended scope for “nuts” of subheading 7318.16.00, HTSUS.

The term “nut” is not defined by the tariff. The courts have held that in determining the proper meaning of a tariff provision, “the correct meaning of the term is its common commercial meaning.” .” [Citation omitted]. To determine the common commercial meaning Customs may rely upon “its own understanding of terms used, and may consult standard lexicographic and scientific authorities.” .” [Citation omitted]

The Explanatory Notes of the Harmonized Commodity Description and Coding System (ENs) provide commentary on the scope of each heading of the Harmonized System¹ . Classification at the heading level is not in dispute here, however, the ENs are germane as regards what a “nut” is, since it is listed at the heading and subheading level. The EN to 73.18 states, in relevant part:

For details or additional information please contact: bywierbicki@tdllp.com

(A) SCREWS, BOLTS AND NUTS

Nuts are metal pieces designed to hold the corresponding bolts in place.

They are usually tapped throughout but are sometimes blind. The heading includes wing nuts, butterfly nuts, etc. Lock nuts (usually thinner and castellated) are sometimes used with bolts.

The scope of the subheadings under heading 7318, HTSUS, has been the subject of many rulings issued by this office, as well as an “Informed Compliance Publication” entitled, “What Every Member of the Trade Community Should Know About: Fasteners of Heading 7318”, which was published in April 2012. Therein, “nuts” are defined as “internally threaded fasteners designed to hold the corresponding bolt in place.” Id at page 12.

Myriad commercial standards exist regarding what constitutes a nut. The American National Standards Institute (ANSI) is a private, non-profit organization that oversees the development of voluntary consensus standards. It also accredits standards developed by other standards organizations. Relevant here is the standard created by the American Society of Mechanical Engineers (ASME), endorsed by ANSI. ANSI/ASME’s GLOSSARY OF TERMS FOR MECHANICAL FASTENERS (ASME 818.12–2012), subsection 3.2.1.1. defines a nut as: “a perforated block having an internal or female screw thread, designed to assemble with an external or male screw thread, such as those on a bolt or other threaded part. Its intended function is fastening, adjusting transmitting motion, or transmitting power with a large mechanical advantage and nonreversible motion.” Section 3.2.1 which regards Nuts as a whole, then goes on to list more than 40 types of nuts of widely varying sizes, dimensions, and features, which make the nut suitable for different usages.

Thus, in reading the above collectively, a nut is defined broadly as a type of fastener which is internally threaded and often but not always used opposite a mating bolt which fastens the materials together. This describes the subject rivet nuts as they are internally threaded fasteners, installed into a parent material for the attachment of a mating part with a screw. Specifically, the subject rivet nuts are riveted within sheet metals or plastic material as assembly components to provide an internal thread length and prevent the rotation of that thread while a bolt or screw is rotated into the thread. In other words, it clamps multiple assembly components together when tapped threads are not possible due to small wall thickness or hollow components.

As mentioned, the subject rivet nuts have characteristics uncommon in nuts. They differ from the common hexagon nut, in that common hex nuts are generally torqued to turn it onto a stationary bolt, screw, or other threaded fastener. Here, the subject rivet nuts are installed onto a tool mandrel, placed in the hole, and the user pulls the tool trigger and the tool mandrel retracts causing the unthreaded exterior shank of the rivet nut to expand behind the parent material, riveting it into place. That said, the article will still be given its claimed eo nomine classification notwithstanding the existence of this additional feature, because it does not transform the character of the article as a “nut.” This is consistent with previous CBP rulings regarding nuts with some additional characteristics still being classified as “nuts” under the tariff.

HOLDING: By application of GRI 1, the subject rivet nuts are specifically provided for in subheading 7318.16.00, HTSUS, which provides for, “screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: threaded articles: nuts.” The column one, general rate of duty is free.

Revocation of a Ruling Letter and Revocation of Treatment Relating to the Tariff Classification of Footwear From China 24

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 16, 2015.

In NY N219385, CBP determined that the submitted half-pair sample identified as style “Patent” did not have a “foxing-like band” and classified the merchandise in subheading 6402.99.3165, HTSUSA, which provides for, “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Having

uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Other: Other: For women: Other.” The submitted half-pair samples identified as styles “Crushed Velvet” and “Dead Tiedye” were also determined to not have a “foxing-like band” and classified the merchandise in subheading 6404.19.3960, HTSUSA, which provides for, “Footwear with outer soles of rubber, plastics, leather, or composition leather and uppers of textile materials: Footwear with outer soles of rubber or plastics: Other: Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6404.19.20 and except footwear having a foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper: Other: Other: Other: For women.”

Pursuant to 19 U.S.C. 1625(c)(1), **CBP is revoking NY N219385 and any other ruling not specifically identified, in order to reflect the proper classification of the style “Patent” in subheading 6402.99.80, HTSUS, and the styles “Crushed Velvet” and “Dead Tiedye” in subheading 6404.19.89, HTSUS, based on the analysis in the proposed HQ H237647, set forth as Attachment B to this document.**

...

In NY N219385, U.S. Customs and Border Protection (CBP) determined that style “Patent” was classified in subheading 6402.99.3165, HTSUSA, which provides for, Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Other: Other: For women: Other.”

In NY N219385, CBP also determined that styles “Crushed Velvet” and “Dead Tiedye” were classified in subheading 6404.19.3960, HTSUSA, which provides for, “Footwear with outer soles of rubber, plastics, leather, or composition leather and uppers of textile materials: Footwear with outer soles of rubber or plastics: Other: Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6404.19.20 and except footwear having a foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper: Other: Other: Other: For women.”
CBP has reviewed NY N219385 and has determined that it is incorrect.

For the reasons set forth below, we hereby revoke NY N219385.

...

Counsel argues that NY N219385, dated June 20, 2012, is inconsistent with an Informed Compliance Notice issued by a CBP port, which described the footwear as having foxing-like bands. It has submitted samples for our examination.

Subheadings 6402.99.3165 and 6404.19.3960, HTSUSA, provide for footwear without foxing or foxing-like bands. The issue we must address is whether the footwear in question is constructed with foxing-like bands. The term “foxing-like” is not defined in the HTSUS or the Explanatory Notes. On November 17, 1993, CBP published Treasury Decision (T.D.) 93–88, dated October 25, 1993, in the Customs Bulletin, Volume 27, Number 46. In T.D. 93–88, CBP stated that the typical “foxing band” was “a rubber tape, about 1 inch high 1/16 inch thick, which covers the lower part of the upper and the edge of the rubber outer sole....” **CBP stated that the term “foxing-like band” was defined as “a band around a substantial portion of the lower part of the upper which either has been attached (cemented, sewn, etc.) to the sole or is part of the same molded piece of rubber or plastics which forms the sole.”**

In T.D. 83–116, dated June 22, 1983, CBP set forth guidelines relating to the characteristics of foxing and foxing-like bands. CBP noted that unit molded footwear is considered to have a foxing-like band if a vertical overlap of 1/4 inch or more exists from where the upper and the outer sole initially meet (measured on a vertical plane), and that if the overlap is less than 1/4 inch, the footwear is presumed not to have a foxing-like band.

In T.D. 92–108, dated 25, 1992, Custom Bulletin Volume 26, Number 48, CBP set forth its position regarding the interpretation of the term “substantially encircle” as it relates to “foxing and foxing-like bands.” In so doing, CBP formally adopted the “40–60 rule,” which is the measurement used by CBP to assist in making a determination regarding encirclement. Generally, under this rule, an encirclement of less than 40 percent of the perimeter of the footwear by the band does not constitute foxing or a foxing-like band. An encirclement, of between 40 percent to 60 percent of the perimeter of the footwear by the band, may or may not constitute a foxing or foxing-like band depending on whether the band functions or looks like a foxing. An encirclement of over 60 percent of the perimeter of the footwear by the band is always considered substantial encirclement.

An examination of the samples submitted by counsel reveals that the styles of footwear at issue have molded rubber/plastics outer soles that overlap the uppers by 1/4 inch, or more, measured on a vertical plane. Additionally, and for each style, the overlap substantially encircles the perimeter of the shoe. Accordingly, the instant footwear is constructed with foxing-like bands.

HOLDING: Pursuant to GRIs 1 and 6, style “Patent” is classified in heading 6402, HTSUS, specifically, in subheading 6402.99.80, HTSUS, which provides for, “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Other: Other: Valued over \$6.50 but not over \$12/pair.” The column one, general rate of duty is \$.90/pr + 20% percent ad valorem.

Styles “Crushed Velvet” and “Dead Tiedye” are classified in heading 6404, HTSUS, specifically, in subheading 6404.19.89, HTSUS, which provides for “Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of rubber or plastics: Other: Other: Valued over \$6.50 but not over \$12/pair: Other.” The column one, general rate of duty is \$.90/pr + 20% percent ad valorem.

Proposed Revocation of Ruling Letters and Treatment Relating to the Tariff Classification of Emergency Roadside Kits 32

DATES: Comments must be received on or before October 16, 2015.

... CBP found that emergency roadside kits containing a range of articles packaged together to enable motorists to address roadside emergencies did not constitute a retail set for purposes of GRI 3(b), and classified the items separately pursuant to GRI 1.

We have reviewed these rulings and determined that the classification decisions set forth therein is incorrect. It is now our position that the emergency roadside kits in each ruling are properly classified pursuant to GRI 3(b) as “retail sets.”

Pursuant to 19 U.S.C. § 1625(c)(1), **CBP is proposing to revoke HQ 964937 dated March 19, 2002 (Attachment A), HQ 084074, dated July 3, 1989 (Attachment B), HQ 965021, dated March 19, 2002 (Attachment C), HQ 950678, dated December 30, 1991 (Attachment D), HQ 951092, dated February 11, 1992 (Attachment E), HQ 951943, dated June 26, 1992 (Attachment F), New York Ruling Letter (NY) D87008, dated February 3, 1999 (Attachment G), NY E80250, dated April 19, 1999 (Attachment H), NY E81728, dated May 17, 1999 (Attachment I), NY I81218, dated May 17, 2002 (Attachment J), NY J86419, dated July 1, 2003 (Attachment K), NY N008721, dated April 9, 2007 (Attachment L), and NY N080536, dated November 13, 2009 (Attachment M), and any other ruling not specifically identified, to reflect the proper classification of this merchandise according to the analysis contained in the proposed HQ H031458 (Attachment N).**

...
The products at issue were described as follows in HQ 964937:
 The “99 piece Emergency Roadside Kit” (Stock # SDA178) consists of a 10’ battery booster cable, accident information guide, emergency thermal blanket, radiator water bag, 2 light sticks, 2 hose

clamps, gas siphon, vinyl glove, a paper flag that reads “Emergency Help Call Police,” red shop towel, multi-function knife, flashlight, 2 D-size batteries, poncho, roll of radiator repair tape, 6 blade fuses, 27 cable nylon ties, flammable tire sealer and first aid kit, all packed inside a soft-sided plastic, reinforced, zippered bag with straps. The bagged is monogrammed with the words “Emergency Roadside Kit” and the triangular yellow symbol for emergencies. The kit is intended to be stored in a vehicle.

...
We note that we are presented with an assortment of items that are packaged and sold in a carrying case. The goods are potentially classifiable under more than one heading because they consist of separate components and no one heading in the tariff provides for the goods as entered. The kit consists of 99 items and includes a 10’ battery booster cable, accident information guide, emergency thermal blanket, radiator water bag, 2 light sticks, 2 hose clamps, gas siphon, vinyl glove, a paper flag that reads “Emergency Help Call Police,” flag and the remaining items of the set. Since no heading of the HTSUS completely the goods, and they are prima facie classifiable in two or more headings, the kits may not be classified solely on the basis of GRI 1. Thus, classification must fall to GRI 3.

...
GRI 3 provides, in pertinent part, as follows:

When, by application of rule 2(b) [not applicable in this case] or any other reason, goods are, prima facie, classifiable under two or more heading, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description [...] (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

...
GRI 3(b) provides for the classification of goods put up in retail sets. Applying the definition of the phrase “goods put up as sets for retail sale” provided in EN (X) to GRI 3(b), the subject merchandise meets the first requirement because the product consists of two or more goods, which are prima facie classifiable in two or more headings of the HTSUS. In addition, the subject merchandise meets the second requirement because the items are put up together to assist the particular needs of motorists who experience a roadside emergency. The goods are put up in a manner suitable for sale because the goods are packaged in a carrying bag suitable for retail sale. Therefore, the subject 99 Piece Emergency Roadside Kit qualifies as a set for purposes of GRI 3(b). CBP has addressed the particular need or specific activity requirement of EN(X)(b) to GRI 3 as requiring a relationship between the articles contained in a group, and such relationship must establish that the articles are clearly intended for use together for a single purpose or activity to comprise a set under GRI 3(b). See, e.g., Headquarters Ruling Letter (HQ) 953472, dated March 21, 1994. Consistent with CBP’s analysis of GRI 3(b), the United States Court of International Trade (CIT) agreed that “for goods put up together to meet the ‘particular need’ or ‘specific activity’ requirement and thereby be deemed a set, they must be so related as to be clearly intended for use together or in conjunction with one another for a single purpose or activity.” The bag facilitates the storage and transportation of the items and is directly related to the activity of managing roadside emergencies. [citations omitted] In Estee Lauder, the CIT considered the classification of cosmetic items put up together for the activity of applying makeup, and concluded that because each item by itself was specifically related to makeup and had an identifiable, individual use that was intended for use together or in conjunction with one another for the single activity of putting on makeup, the cosmetic items met a particular need and were therefore “retail sets” pursuant to GRI 3(b). Estee Lauder, 815 F. Supp. 2d at 1295–1296. See also HQ H190656, dated July 21, 2014, in which we classified certain medical supplies as retail sets.

The Explanatory Notes (ENs) to GRI 3(b)1 provide that, if this rule applies, goods shall be classified as if they consisted of the material or component which gives them their essential character. EN Rule 3(b)(VIII) lists as factors to help determine the essential character of such goods: the nature of the materials or components, their bulk, quantity, weight or value, and the role of a constituent material in relation to the use of the goods.

*As stated by the Court of International Trade in *Structural industries v. United States*, 360 F. Supp. 2d 1330, 1336 (citations omitted) (2005), “the essential character of an article is that which is indispensable to the structure, core or condition of the article, i.e., what it is. “See also *Conair Corporation v. United States*, 29 Ct. Int’l Trade, 888, 895 (citations omitted) (2005), (discussing “the concept of ‘essential character’ found in GRI 3(b)”).*

The emergency kits are being imported to provide motorists with the supplies necessary to address roadside emergencies. Each kit in the aforementioned rulings varies in its contents and thus, the essential character will vary according to each kit’s contents. Without such information, we therefore conclude that the emergency kits are classified as “retail sets” pursuant to GRI 3(b) in the heading that provides the kits with its essential character.

HOLDING: *By application of GRI 3(b), the emergency kits are classified in the heading in which the emergency kit’s item provides the essential character. Accordingly, HQ 964937 is revoked.*

Agency Information Collection Activities:

Customs-Trade Partnership Against Terrorism (C-TPAT) and the Trusted Trader Program 78

MESSAGING SERVICE

CSMS [15000697](#) Updated ATF Supplemental Guidance for ACE V1.8, September 10, 2015

CSMS [15000696](#) [same as above, 15000696]

CSMS [15000695](#) Updated USDA APHIS Lacey Act CATAIR MS Instr. V2.9.1 & Lacey Act Dec. ACE Samples V2.9.1

CSMS [15000694](#) ACE PRODUCTION OUTAGE Today September 16, 2015 1930PM ET

CSMS [15000693](#) ACE CERTIFICATION OUTAGE today, September 16,2015 at 1600 ET

CSMS [15000692](#) Request for Participants: Drug Enforcement Administration (DEA) Trade Working Group

CSMS [15000691](#) CBP Seeking Entry Filers for NHTSA Pilot

CSMS [15000690](#) ACE Cargo Release Chapter Updated

CSMS [15000689](#) Air Manifest Deployment Tuesday, September 15, 2015 at 6:30PM ET

CSMS [15000688](#) CORRECTION to CSMS 15-000676 FDA Guidance for Products from Tianjin, CN

CSMS [15000687](#) ACE ABI CATAIR Document Posted to CBP.Gov - Daily Statement

CSMS [15000686](#) Air Manifest In-bond create issue

CSMS [15000685](#) Updates to PE/PX CATAIR document

CSMS [15000684](#) ACE Certification Outage Today September 14, 2015

CSMS [15000683](#) Update to Appendix PGA document

CSMS [15000682](#) RESOLVED - Network issue impacting ACE has been resolved

CSMS [15000681](#) FDA Addition of New and End-Dated Product Codes for Center for Tobacco Products

CSMS [15000680](#) Weekly ACE Production Outage beginning September 12, 2015

CSMS [15000679](#) ACE Air Manifest reverting to AMS selectivity for conditional release of Cargo

CSMS [15000678](#) Scheduled ACE Certification Outage Today September 11, 2015 at 17:00PM ET

CSMS [15000677](#) Continued Network Issues Affecting ACE

FEDERAL TRADE COMMISSION [Home](#)

FISH & WILDLIFE [F&W Importing / Exporting Website](#)

FOOD & DRUG ADMINISTRATION

RULES

Administrative Destruction of Certain Drugs Refused Admission to the U.S.

[\[TEXT\]](#) [\[PDF\]](#)

Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive

[\[TEXT\]](#) [\[PDF\]](#)

Controls for Food for Animals

Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive [\[TEXT\]](#) [\[PDF\]](#)

Controls for Human Food

Qualitative Risk Assessment of Risk of Activity/Animal Food Combinations for Activities [\[TEXT\]](#) [\[PDF\]](#)

(Outside the Farm Definition) Conducted in a Facility Co-Located on a Farm; Availability

Qualitative Risk Assessment of Risk of Activity/Food Combinations for Activities [\[TEXT\]](#) [\[PDF\]](#)

(Outside the Farm Definition) Conducted in a Facility Co-Located on a Farm; Availability

PROPOSED RULES

Food Labeling: Guide for Restaurants and Retail Establishments Selling Away-From-Home [\[TEXT\]](#) [\[PDF\]](#)
Foods—Part II (Menu Labeling Requirements in Accordance with the Patient Protection Affordable Care Act)

User Fee Program to Provide for Accreditation of Third-Party Auditors/Certification Bodies [\[TEXT\]](#) [\[PDF\]](#)
to Conduct Food Safety Audits and to Issue Certifications; Correction

NOTICES

Authorization of Emergency Use of an In Vitro Diagnostic Device for Detection of Ebola [\[TEXT\]](#) [\[PDF\]](#)
Zaire Virus

Public Posting and Availability of Comments Submitted to Food and Drug Administration [\[TEXT\]](#) [\[PDF\]](#)
Dockets

Debarment Orders:

Syed Huda [\[TEXT\]](#) [\[PDF\]](#)

Fee for Using a Tropical Disease Priority Review Voucher in Fiscal Year 2016 [\[TEXT\]](#) [\[PDF\]](#)

Guidance:

Enforcement Policy for Certain (Provisional) Tobacco Products that the Food and Drug [\[TEXT\]](#) [\[PDF\]](#)
Administration Finds Not Substantially Equivalent

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Guidance for Industry on Drug Supply Chain Security Act Implementation: Identification [\[TEXT\]](#) [\[PDF\]](#)
of Suspect Product and Notification

Guidance on Meetings with Industry and Investigators on the Research and Development [\[TEXT\]](#) [\[PDF\]](#)
of Tobacco Products

Medical Device User Fee Small Business Qualification and Certification [\[TEXT\]](#) [\[PDF\]](#)

Substances Generally Recognized as Safe, Notification Procedure [\[TEXT\]](#) [\[PDF\]](#)

Meetings:

Anesthetic and Analgesic Drug Products Advisory Committee [\[TEXT\]](#) [\[PDF\]](#)

Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee [\[TEXT\]](#) [\[PDF\]](#)

FDA Recalls Market Withdrawals, & Safety Alerts

- [Raw Produce: Selecting and Serving It Safely](#)
- [Safe Food Handling: What You Need to Know](#)
- [Debunking Myths about Safe Food Refrigeration](#)
- [Thoratec Issues Voluntary Device Correction](#)
- [Butala Emporium, Inc. Recalls Eleven Ayurvedic Dietary Supplements Because of Elevated Levels of Lead and Mercury](#)
- [Karoun Dairies, Inc. Issues Nationwide Voluntary Recall of Various Cheeses Because of Possible Health Risk](#)
- [Potential Health Hazard: Recalled Snack Fresh Brand Red Apple Slices May Have Been Distributed To Florida's Palm Beach County School District](#)
- [Iowa Select Herbs, LLC Issues a Nationwide Recall of Its Products Pursuant to Consent Decree Issued by the Federal Court for the Northern District of Iowa](#)
- [Custom Produce Sales Voluntarily Recalls Fat Boy Brand® and Unlabeled Cucumbers Because of Possible Health Risk](#)

[Import Alerts](#) View by ● [Country](#) ● [Import Alerts by Number](#) ● [Industry](#) ● [Last Published Date](#)

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FOREIGN ASSETS CONTROL OFFICE**NOTICES****Blocking or Unblocking of Persons and Properties**

Publication of the names of four individuals and one entity whose property and interests [\[TEXT\]](#) [\[PDF\]](#)
in property are blocked pursuant to Executive Order 13224 and whose names have been added to
OFAC's list of Specially Designated Nationals and Blocked Persons

[Specially Designated Nationals List](#)

[Resource Center](#)

[OFAC Recent Actions](#)

FOREIGN- TRADE ZONES BOARD**NOTICES****Production Activity Authorizations:**

Hitachi Automotive Systems Americas, Inc., Foreign-Trade Subzone 29F, Harrodsburg, KY [\[TEXT\]](#) [\[PDF\]](#)

Robertet, Inc., Foreign-Trade Zone 44, Mount Olive, NJ [\[TEXT\]](#) [\[PDF\]](#)

Proposed Production Activities:

Custom Quality Services, Foreign-Trade Zone 29, Louisville, KY [\[TEXT\]](#) [\[PDF\]](#)

Mitsubishi Caterpillar Forklift America Inc., Foreign-Trade Zone 84, Houston, TX [\[TEXT\]](#) [\[PDF\]](#)

INTERNATIONAL TRADE ADMINISTRATION**NOTICES****Amended Final Scope Ruling Pursuant to Court Decision:**

Aluminum Extrusions from the People's Republic of China [\[TEXT\]](#) [\[PDF\]](#)

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules,
from the People's Republic of China [\[TEXT\]](#) [\[PDF\]](#)

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam [\[TEXT\]](#) [\[PDF\]](#)

Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam [\[TEXT\]](#) [\[PDF\]](#)

Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea [\[TEXT\]](#) [\[PDF\]](#)

Diamond Sawblades and Parts Thereof from the People's Republic of China [\[TEXT\]](#) [\[PDF\]](#)

Large Residential Washers from Mexico [\[TEXT\]](#) [\[PDF\]](#)

Large Residential Washers from the Republic of Korea [\[TEXT\]](#) [\[PDF\]](#)

Large Residential Washers from the Republic of Korea [\[TEXT\]](#) [\[PDF\]](#)

Large Residential Washers from the Republic of Korea [\[TEXT\]](#) [\[PDF\]](#)

Low-Enriched Uranium from France [\[TEXT\]](#) [\[PDF\]](#)

Stainless Steel Bar from India [\[TEXT\]](#) [\[PDF\]](#)

Utility Scale Wind Towers from the Socialist Republic Vietnam [\[TEXT\]](#) [\[PDF\]](#)

INTERNATIONAL TRADE COMMISSION**NOTICES****Investigations; Determinations, Modifications, and Rulings, etc.:**

Cold-Rolled Steel Flat Products from Brazil, China, India, Japan, Korea, Netherlands, Russia [\[TEXT\]](#) [\[PDF\]](#)
and the United Kingdom

Marine Sonar Imaging Systems, Products Containing the Same, and Components Thereof [\[TEXT\]](#) [\[PDF\]](#)

[Certain Television Sets, Television Receivers, Television Tuners and Components Thereof](#)

[Cold-Rolled Steel Flat Products from Brazil, China, India, Japan, Korea, Netherlands, Russia, and the
United Kingdom](#)

[Certain Hot-Rolled Flat Products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the
United Kingdom](#)

PRESIDENTIAL DOCUMENTS**ADMINISTRATIVE ORDERS**

Trading With the Enemy Act; Continuation of Certain Authorities

[\[TEXT\]](#) [\[PDF\]](#)**CALIFORNIA**[Office of Environmental Health Hazard Assessment](#)**Chemical listed effective August 25, 2015 as known to the state of California to cause cancer: CMNP**[Listing Notice for CMNP \(pyrazachlor\)](#)[Proposition 65 List dated 08/25/15](#)**Latest 60 Day Notices**[AG Number 2015-00902\(View Details\)](#)

Chemical: Lead and lead compounds

Source: Vinylux Record Journal , Vinylux Coasters

[AG Number 2015-00901\(View Details\)](#)

Chemical: Lead and lead compounds

Source: PVC Light Window Sculpture

[AG Number 2015-00900\(View Details\)](#)

Chemical: Di(2-ethylhexyl)phthalate (DEHP)

Source: Bike Storage Hooks

[AG Number 2015-00899\(View Details\)](#)

Chemical: Di(2-ethylhexyl)phthalate (DEHP)

Source: PVC Rainwear

[AG Number 2015-00898\(View Details\)](#)

Chemical: Di(2-ethylhexyl)phthalate (DEHP), Lead

Source: Rainsuit, Rainsuit case

[AG Number 2015-00897\(View Details\)](#)

Chemical: Di(2-ethylhexyl)phthalate (DEHP)

Source: Vinyl/PVC Bags

[AG Number 2015-00896\(View Details\)](#)

Chemical: Di(2-ethylhexyl)phthalate (DEHP)

Source: Vinyl/PVC Portfolio Covers

[AG Number 2015-00895\(View Details\)](#)

Chemical: Di(2-ethylhexyl)phthalate (DEHP)

Source: Vinyl/PVC Audio Cables

[AG Number 2015-00894\(View Details\)](#)

Chemical: Di(2-ethylhexyl)phthalate (DEHP)

Source: Vinyl/PVC Toiletry Bags

[AG Number 2015-00893\(View Details\)](#)

Chemical: Di(2-ethylhexyl)phthalate (DEHP)

Source: Vinyl/PVC Cosmetic Bags

[AG Number 2015-00892\(View Details\)](#)

Chemical: Di(2-ethylhexyl)phthalate (DEHP)

Source: Vinyl/PVC Bicycle Handle Grips

[AG Number 2015-00891\(View Details\)](#)

Chemical: Di(2-ethylhexyl)phthalate (DEHP)

Source: Vinyl/PVC Extension Cords

[AG Number 2015-00890\(View Details\)](#)

Chemical: Di(2-ethylhexyl)phthalate (DEHP)

Source: Commercial Vehicle Seats with Vinyl/PVC Upholstery

For details or additional information please contact: bywierbicki@tdllp.com

[AG Number 2015-00889\(View Details\)](#)

Chemical: Di(2-ethylhexyl)phthalate (DEHP)

Source: Stethoscopes with Vinyl/PVC Tubing

[AG Number 2015-00888\(View Details\)](#)

Chemical: Di(2-ethylhexyl)phthalate (DEHP)

Source: Vinyl/PVC Cord Protectors

[AG Number 2015-00887\(View Details\)](#)

Chemical: Di(2-ethylhexyl)phthalate (DEHP), Diisononyl phthalate (DINP)

Source: Vinyl/PVC Exercise Mats, Vinyl/PVC Exercise Mats

[AG Number 2015-00886\(View Details\)](#)

Chemical: Di(2-ethylhexyl)phthalate (DEHP), Lead

Source: Hearing Protection with Vinyl/PVC Components, Choke Tube Wrenches

[AG Number 2015-00885\(View Details\)](#)

Chemical: Lead

Source: Replacement Faucet Hoses

[AG Number 2015-00884\(View Details\)](#)

Chemical: Lead

Source: Cap Nuts

[AG Number 2015-00883\(View Details\)](#)

Chemical: Diisononyl phthalate (DINP)

Source: BATMAN LANYARD

[AG Number 2015-00882\(View Details\)](#)

Chemical: Coconut oil diethanolamine condensate (cocamide diethanolamine)

Source: Liquid Soap

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