B. The last sentence of § 303.16(b)(1) is amended by adding ''and , with special instructions for its completion, by producers who wish to receive the total annual amount of the duty refund in installments on a biannual basis' at the end of the sentence.

§ 303.16 Definitions and forms.

(a) * * *

(9) * * * Excluded, however, are wages paid for outside consultants or other professional personnel, such as lawyers and accountants, or those persons not involved in the day-to-day assembly operations or servicing and maintenance of equipment and fixtures necessary for the assembly or manufacturing operations or the administrative work and security activities directly related to the operations of the company, such as gardeners or construction workers, plus any wages paid for the assembly of dutiable jewelry or for the repair of dutiable jewelry to the extent that such wages exceed the percentage set forth above. No more than two insular producers may have their wages credited for their portion of the wages paid for work on a single piece of jewelry which entered the U.S. free of duty under the program. Wages paid by the two producers will be credited proportionally provided both producers demonstrate to the satisfaction of the Secretaries that they worked on the same piece of jewelry, the jewelry received duty-free treatment into the U.S., and the producers maintained production and payroll records sufficient for the Departments' verification of the creditable wage portion (see § 303.17(b)).* * *

* * * * *

§ 303.17 [Amended]

5. Section 303.17(b)(4) is amended by adding '', or the certificate of origin for the shipment, or, if a company did not receive such documents from Customs, a certification from the consignee that the jewelry shipment received duty-free treatment, or a certification from the producer, if the producer can attest that the jewelry shipment received duty-free treatment'' at the end of the paragraph.

6. Section 303.19(a)(1) is revised to read as follows:

§ 303.19 Issuance and use of production incentive certificates.

(a) *Issuance of certificates.* (1) The total annual amount of the Certificate of Entitlement, Form ITA–360, may be divided and issued on a biannual basis. The first portion of the total annual certificate amount will be based on reported duty-free shipments and creditable wages paid during the first six month of the calendar year, using the formula in § 303.20(b). The Departments require the receipt of the data by July 31 for each producer who wishes to receive an interim duty refund certificate. The interim duty refund certificate will be issued on or before August 31 of the same year in which the wages were earned unless the Departments have unresolved questions. The process of determining the total annual amount of the duty refund will remain the same. The completed annual application (Form ITA–334P) shall be received by the Departments on or before January 31 and the annual verification of data and calculation of each producer's total annual duty refund, based on the verified data, will continue to take place in February. Once the calculations for each producer's duty refund has been completed, the portion of the duty refund that has already been issued to each producer will be deducted from the total amount of each producer's annual duty refund amount. The duty refund certificate will continue to be issued by March 1 unless the Departments have unresolved questions.

* * * * *

Richard W. Moreland,

Acting Assistant Secretary for Import Administration, Department of Commerce.

Nikolao Pula,

Acting Director, Office of Insular Affairs, Department of the Interior.

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

[T.D. 01–46]

RIN 1515–AC64

Time Limitation for Requesting Refunds of Harbor Maintenance Fees

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to establish a one year time limit within which a refund request must be filed for overpayments of Harbor Maintenance Fees that were paid on a quarterly basis. The time limit will provide an efficient and reasonable final resolution of claims against Customs, including claims for refunds of export harbor maintenance fees that were held unconstitutional by the United States Supreme Court in 1998. Refund requests for harbor maintenance fee payments that are more than a year old must be filed by the effective date of this document.

EFFECTIVE DATE: December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Deborah Thompson, Revenue Branch, National Finance Center (317) 298–1200 (ext. 4003).

SUPPLEMENTARY INFORMATION:

Background

The Harbor Maintenance Fee was created by the Water Resources Development Act of 1986 (Pub. L. 99–622; codified at 26 U.S.C. 4461 *et seq.*) (the Act) and is implemented by § 24.24 of the Customs Regulations (19 CFR 24.24). Pursuant to the Act, the harbor maintenance fee became effective on April 1, 1987.

Imposition of the fee is intended to require those who benefit from the maintenance of U.S. ports and harbors to share in the cost of that maintenance. The fee has been assessed on port use associated with imports, exports, imported merchandise admitted into a foreign trade zone, passengers, and movements of cargo between domestic ports. Since April of 1998, based on the U.S. Supreme Court's decision that harbor maintenance fees applied to exports of merchandise are unconstitutional (*United States Shoe Corporation* v. *United States,* 118 S. Ct. 1290, No. 97–372 (March 31, 1998)), Customs has not collected export harbor maintenance fees. Currently, except for export shipments, the fee is assessed based on 0.125 percent of the value of commercial cargo loaded or unloaded at certain identified ports or, in the case of passengers, on the value of the actual charge paid for the transportation.

Notice of Proposed Rulemaking Published on December 15, 2000

On December 15, 2000, Customs published a notice of proposed rulemaking (NPRM) in the **Federal Register** (65 FR 78430) proposing to amend § 24.24(e)(4) of the Customs Regulations (19 CFR 24.24(e)) to require the filing of a refund request for harbor maintenance fees paid on a quarterly basis within one year of the date of payment of the fee, except for fees paid relative to imported merchandise admitted into a foreign trade zone and subsequently withdrawn from the zone under 19 U.S.C. 1309, for which the refund request would have to be filed within one year of the date of withdrawal. The NPRM also proposed to amend § 24.73 of the Customs

Regulations (19 CFR 24.73) to require the filing of general claims against Customs—those not otherwise provided for under the Customs laws—within one year of the act giving rise to the claim.

The NPRM sets forth the bases for proposing these time limits, including the Court of Appeals for the Federal Circuit's (CAFC) acknowledgement of Customs authority to impose a time limit on the filing of harbor maintenance fee refund requests (*Swisher International, Inc.* v. *United States,* 205 F. 3d 1358 (No. 99–1277 C.A.F.C. February 28, 2000), cert. denied). (In *Swisher,* the court held Customs denial of a request for a refund of export harbor maintenance fee payments to be a protestable decision under 19 U.S.C. 1514.)

The notice pointed out that for harbor maintenance fee payments that are more than a year old, a refund request would be required to be received by Customs prior to the effective date of the final rule adopting the proposal.

Interim Regulation Published on March 28, 2001

On March 28, 2001, Customs published an interim regulation in the **Federal Register** (66 FR 16854) (hereafter, Interim Regulation) amending § 24.24(e)(4) of the Customs Regulations, the same section of the regulations amended in this final rule document. The Interim Regulation, effective on the date of publication, amended the regulations to provide a new procedure for requesting refunds of export harbor maintenance fees. (On April 27, 2001, a correction to the Interim Regulation was published in the **Federal Register** (66 FR 21086).)

The main features of the new procedure are that: (1) Most refund requests (those covering payments made on and after July 1, 1990) can be filed and processed without supporting documentation; and (2) exporters filing refund requests that require supporting documentation (covering payments made prior to July 1, 1990) will have an additional 120 days to submit documents or additional documents from the date Customs initially denies a request for lack of or insufficient documentation.

This final rule document incorporates the procedure set forth in the Interim Regulation. It is noted that pursuant to Customs consideration of the comments received in response to the NPRM (see discussion below), the effective date of the one year time limitation is 180 days from its date of publication in the **Federal Register**. This differs from the Interim Regulation's background discussion where it is stated that the effective date of the time limitation would be 30 days from date of publication.

Discussion of Comments

Customs received 21 comments in response to the NPRM. The comments can be divided into five subject categories: (1) The proposed one-year filing requirement as applied to requests for refunds of export harbor maintenance fee payments made more than one year ago; (2) the applicability of the Regulatory Flexibility Act (5 U.S.C. 603 and 604) to the proposed amendment's one-year filing requirement as applied to export fee refund requests; (3) the documentary requirements; (4) the applicability of interest to refunds of export fees; and (5) requests for a public hearing/meeting.

Most of the comments were provided on behalf of exporters concerned about filing requests for refunds of export harbor maintenance fees that were held unconstitutional in 1998 and are no longer required under the Customs Regulations. These exporters have a keen interest in Customs procedure for issuing refunds of these fees. The Interim Regulation's procedure for obtaining refunds of these fees addresses and, Customs believes, resolves satisfactorily the issues raised by the comments, as discussed below.

Comments concerning the proposed amendment of § 24.73 to impose a one year filing requirement relative to general claims against Customs are not discussed in this document, as Customs has decided to delay proceeding with that proposed amendment.

The One-Year Filing Requirement as Applied to Requests for Refunds of Export Fee Payments

Comment: Eighteen of the 21 commenters objected to the proposed amendment's one-year filing requirement for refund requests of quarterly-paid harbor maintenance fees. Some commenters objected to imposition of any time limit, while most others objected to how Customs would apply the time limit to refund requests covering payments made more than one year ago.

The various formulations of this objection can be summarized as a complaint that the time limit as applied to payments that are more than one year old—which includes all export harbor maintenance fee payments—does not provide exporters enough time to file claims, and to the extent that lack of time results in exporters being unable to file refund requests, it is unreasonable and unfair. At least one commenter pointed out how some exporters might have to review up to ten or eleven years of payments to Customs dating back to 1987, a formidible task, especially when records that old are often stored off-site. Many companies routinely and reasonably destroy records that old. One commenter contended that many companies have not been dilatory, but genuinely lack the resources necessary to stay on top of this matter. Some companies have been waiting for litigation to be resolved and then for Customs to issue instructions for a refund filing procedure. These companies, say the commenters, will need more time to prepare their requests for refund than the proposed time limit allows.

Some commenters characterized this provision as a time limit that retroactively cuts off rightful claims contrary to the spirit and language of the Swisher decision. For this reason, some raised due process objections. Some raised equal protection objections on the grounds that equally situated exporters will be treated differently where some are able to file their claims timely (and are issued refunds) while others are not (and are not issued refunds). All of these commenters feel strongly that the fact that the export fees at issue were unconstitutional and thus wrongly collected weighs in favor of Customs exercise of leniency regarding a time limit. Some stated that for this reason (unconstitutionality/wrongful collection), Customs should be assisting exporters to obtain refunds, not impeding them.

Many commenters believe that requiring refund requests for payments made more than a year ago by the effective date of the final rule would not be workable and would not be fair. (These comments indicate that most commenters contemplated a short period of delay between the publication date and the effective date. The usual delay period is 30 days. At least two commenters contemplated that the effective date would be the date of publication.) Some commenters suggested that this short deadline will result in a flood of claims that will be an inconvenience and distraction for Customs, will require much time to process, and will result in a ''hurry up and wait'' situation.

At least one commenter suggested that the effective date of the final rule should be delayed 60 days. Some commenters stated that there should not be a deadline for payments ruled unconstitutional. At least seven commenters recommended that, as applied to payments older than one year, filers should have one full year from the date of publication of the final

rule to file refund requests. Another commenter recommended that exporters should have eighteen months from the date of publication to file refund requests.

Customs response: Customs believes that a one year filing requirement is reasonable. Customs statutory and regulatory provisions that impose time limits generally do not provide more than a year to take whatever action is required under the provision. In fact, similar or shorter time limits exist in other contexts, such as the requirement to file a protest under 19 U.S.C. 1514 within 90 days of a Customs decision regarding the amount of duties chargeable, the amount of a charge or exaction, or the liquidation of an entry. The protest procedure is the basic procedure for challenging a variety of Customs decisions and obtaining a refund of overpaid duties or charges. It is noteworthy that the applicable Customs law grants no more than 90 days to take this important action. The requirement to file a petition for reliquidation to correct a clerical error under 19 U.S.C. 1520(c)(1) within one year of the date of liquidation is another example. A third example is the one year filing requirement of 19 U.S.C. 1520(d) imposed on requests for reliquidation of an entry involving goods qualifying under NAFTA rules of origin. The matter of requesting a refund of overpaid harbor maintenance fees is no more important than the matters these provisions address.

Generally, the process of obtaining refunds of harbor maintenance fees is well served by allowing up to one year to file the request/claim. It balances Customs legitimate need for efficient and final resolution of claims with the legitimate interest of exporters seeking to reclaim fees that should not have been paid or were paid in excess of what was due. Moreover, the CAFC in Swisher explicitly stated that Customs is ''free to alter the regulation to impose a time limit.'' Thus, in imposing this one year time limit, Customs is simply acting on the Court's suggestion, in addition to seeking to bring more order and reasonable finality to the refund procedure.

Regarding application of the time limit to export fee payments (or other quarterly harbor maintenance fee payments) that were made more than a year ago (as is the case with all export fee payments), Customs does not agree with the contention that it is unfair and unreasonable to require filing of the refund request by the effective date of the final rule.

The notion that exporters will be confined to only a short period between publication of the final rule and its effective date to file refund requests is simply inaccurate. Customs notes that the regulation authorizing a refund request was promulgated in 1991. Thus, exporters have had 10 years to file refund requests. As far back as 1995 when the fee as applied to exports was initially found to be unconstitutional by the U.S. Court of International Trade (CIT) in *U.S. Shoe Corp.* v. *United States*, 19 CIT 1284, 907 F. Supp. 408 (CIT 1995), exporters were on notice of their ability to recover these fees. That was six years ago. The regulation authorizing refund requests had been effective for four years by that time. While the *U.S. Shoe* case was appealed and was not affirmed by the Supreme Court until its 1998 decision, exporters who paid export fees were on notice during that three year period that they may be entitled to a refund. Nothing prevented exporters from filing refund requests under the existing regulations at any time during that period and many exporters did so. Neither were exporters precluded from filing refund requests during the period following the Supreme Court's conclusive ruling in 1998, and many did so.

Since February of 2000, when the court in *Swisher* stated that it had jurisdiction to review a refund request denial if properly protested within 90 days of the denial, over 130 exporters followed these procedures, making it clear that they were available to all exporters. In December of 2000, the NPRM gave exporters notice regarding the proposed change to the Customs regulations to impose a one year time limit within which to file a refund request. This was the fourth in a series of public actions (by the courts and Customs) over a five year period that served as notice to exporters that refunds of export harbor maintenance fees were obtainable. By the time the NPRM's proposed amendment is published as a final rule, exporters will have had another four to five months since publication of the NPRM to file timely refund requests.

Nevertheless, while Customs believes that requiring the filing of export fee refund requests by the effective date of the final rule is not unfair or unreasonable, Customs acknowledges the validity of sentiments expressed by those commenters who believe that more time to file refund requests furthers the interest held by those who have not yet requested refunds on fees paid more than a year ago. Customs intent at the time it issued the NPRM and, indeed, at the time it issued the Interim Regulation (regarding the amended procedure for filing refund requests) was to make the one year time limitation effective on the usual effective date of a final rule, 30 days from the date of its publication in the **Federal Register**. Based on the commenters' concerns, Customs is delaying the effective date of this final rule document to the date that is 180 days after publication. This extends by 150 days the time within which refund requests for export fees (and other quarterly harbor maintenance fees) paid over a year ago can be filed, as compared to the 30 day effective period contemplated by Customs at the time the NPRM was published and as set forth in the background discussion of the Interim Regulation.

With a delayed effective date of 180 days, exporters will have had approximately 12 months from the date of publication of the NPRM to file refund requests. As of the date of publication of this final rule document, over 2000 exporters have already filed refund requests since publication of the NPRM.

Given all of the above considerations, including the extended delayed effective date, Customs believes that exporters have had, and still have, ample time to file a refund request.

In regard to comments that the proposed amendment's time limit is retroactive, particularly with respect to payments made more than a year ago, Customs notes that an NPRM, by its very nature, is prospective, not retroactive. The amendments it proposes will become effective only upon later publication of a final rule which itself will become efffective prospectively (usually not until at least 30 days after its publication but, as above, 180 days for this final rule document). Customs therefore disagrees that the time limit at issue is retroactive. The fact that it does not retroactively cut off claims is evidenced by the more than 2000 exporters who have filed refund requests since the NPRM was published and by the additional numbers of exporters who surely will file timely refund requests after publication of this final rule document.

As for the comment that some exporters were waiting to see events transpire before filing a refund request, Customs again notes that the procedure for filing refund requests has been provided for under the Customs Regulations for a decade. Any of these exporters could have filed refund requests at any time. Exporters who waited may have done so at their own peril, but they still will have time to file a timely refund request. Again, this final rule is not effective until 180 days after publication, and the procedure set forth

in the Interim Regulation is less burdensome than the procedure it replaced. The procedure set forth in the Interim Regulation provides a simpler process and more time to perfect a refund request than was made apparent in the NPRM. It provides that exporters filing for refunds of payments made on or after July 1, 1990, need only file a letter of request containing certain information, and those who are required to submit supporting documentation (proof of payment) with their requests for refund (relative to payments made prior to July 1, 1990) will have an additional 120-day period to file additional documentation if a timely filed request is denied for lack of or insufficient documentation.

Based on the foregoing, Customs believes that the time limit as applied to payments made more than a year ago, as set forth in this final rule document, is fair, reasonable, and eminently capable of being complied with under the amended refund request procedure. Customs believes that the time limit makes the refund regulation more consistent with other Customs laws and regulations governing refunds, while still affording quarterly payors ample opportunity to file refund requests. In imposing this time limit that brings more order, efficiency, and measured finality to the process, Customs believes it is acting reasonably and responsibly in furtherance of its mission to administer the law.

Comments Regarding Applicability of the Regulatory Flexibility Act

Comment: Three commenters asserted that the one-year filing requirement as proposed in the NPRM will have a significant impact on small business entities whose rightful claims may be cut off by the short deadline (relative to payments made more than a year ago). These commenters thus contended that Customs must perform an analysis under the Regulatory Flexibility Act (RFA).

Customs response: The RFA (or Act) requires that an agency perform an analysis when that agency's regulatory action will have a significant economic impact on a substantial number of small entities. Customs does not believe that its action (in amending the regulations to impose a one year filing requirement and require, for payments that are more than one year old, the filing of requests by the effective date of this final rule document) will produce an impact that falls within the purview of the Act. More specifically, Customs believes that the potential impact complained of (failure to file a timely refund request by the effective date of this final rule) will not result from its action but from the inaction of exporters or others eligible to file for refunds.

The potential impact complained of is capable of being avoided without significant inconvenience or difficulty. There is no reason why an exporter should be unable to file a refund request by what Customs believes is a reasonable deadline. Numerous refund requests have been filed already since publication of the NPRM on December 15, 2000, and many were filed even before the NPRM's publication. By the effective date of this final rule, exporters will have had at least twelve months to file a request for a refund since publication of the NPRM. This period is in addition to the one year exporters have had to file refund requests since the CAFC's decision in *Swisher* in February of 2000, the three years exporters have had to file requests since the Supreme Court's 1998 decision in *U.S. Shoe*, and the six years they have had to file requests since the initial holding of unconstitutionality by the CIT in its 1995 *U.S. Shoe* decision.

Moreover, an exporter wishing to secure its claim under the instant time limit and the Interim Regulation's procedure need only file a letter of request prior to the effective date of this final rule, as prescribed under the Interim Regulation. Supporting documentation will not be required in most cases, and where it is required (for payments made prior to July 1, 1990), exporters will have an additional 120 days to produce that documentation after an initial claim is denied for lack of or insufficient documentation. For these reasons, Customs believes that an impact of the kind that triggers an analysis under the RFA will not result from its action in imposing the regulatory filing requirement at issue.

Comments Concerning Documentary Requirements

Comment: Many commenters objected to the requirement in the NPRM that a CF 349 be filed with requests for refunds. These commenters pointed out that Customs accepted other documents with fee payments before the regulations required use of the CF 349 sometime in 1991. Some stated that Customs accepted payments and issued refunds without CF 349s even after 1991. According to these commenters, these other documents include the Vessel Export Summary Sheet (with payment), cancelled checks (as proof of payment), and other documents (for both purposes) from time to time. These commenters urge Customs to amend the regulation to permit alternative documentation that reasonably establishes payment of the fee.

One commenter recommended that Customs allow submission of reconstructed CF 349s. Many commenters stated that Customs should not make a determination on any refund request where the exporter has a FOIA request pending. Some suggested that the amended regulation should provide that an exporter can file a refund request within 60 days (or some other period of time) after its receipt of a FOIA response. Other commenters recommended that Customs delay a refund determination on a timely filed refund request until the exporter receives a response to the FOIA request and is given time to supplement the refund request with the documentation received.

Customs response: These comments were received before the Interim Regulation was published simplifying the procedure for filing refund requests. The Interim Regulation was published because Customs agrees with the general tenor of these comments that there should exist a more expeditious and streamlined procedure for requesting an export harbor maintenance fee refund and because Customs understands the difficulty some exporters face in providing supporting documentation with the refund request. Under the Interim Regulation, an exporter requesting a refund of export fees need not provide supporting documentation, such as the CF 349 or the Export Vessel Movement Summary Sheet, for any quarter from July 1990 forward (through April of 1998 when collection of export fees ceased). Customs has relieved these exporters from this burden because Customs has retained documentation relative to payments made during this period. Since Customs possesses this documentation, exporters need not file it.

In doing this (relieving exporters from the documentary requirement), Customs removed the 10-year-old regulatory requirement that refund requests include supporting documentation. Under the Interim Regulation procedure, if there is a dispute as to any quarter from July 1990 forward, the exporter must then submit supporting documentation for Customs review and consideration. This new procedure effectively addresses the concerns exporters raised about FOIA requests, as it eliminates any need to obtain supporting documentation through a FOIA request for payments made after July of 1990. Documents that might be obtained through a FOIA request are not necessary to obtain a refund. Customs will apply the new procedure to all

previously filed refund requests regardless of whether they included supporting documentation.

With regard to the quarters preceding July of 1990, the Interim Regulation did not amend the 10-year-old refund request procedure because Customs has not retained copies of supporting documentation for payments made during this period. Thus, exporters must submit supporting documentation with refund requests for any quarter preceding July of 1990. The fact that Customs does not possess pre-July 1990 documentation effectively eliminates any legitimate reason to link a FOIA request with a refund request; that is, since Customs does not possess and cannot provide copies of the supporting documentation requested, a FOIA request would be fruitless.

Regarding the points made by some commenters concerning the documents, Customs acknowledges that the CF 349 was not required until 1991. Prior to use of the CF 349, Customs required a certified Export Vessel Movement Summary Sheet or, if the exporter filed automated summary monthly Shippers Export Declarations, a letter containing the following information: The exporter's identification, its EIN, the appropriate Census Bureau reporting symbol, and the quarter involved. Since the Interim Regulation continues to provide that copies of supporting documentation must accompany refund requests for quarters preceding July of 1990, failure to submit this documentation will result in the denial of the refund request. However, under the Interim Regulation's procedure, an exporter, whose refund request (covering pre-July 1, 1990, payments) is denied for lack of or insufficient documentation, will have an additional 120 days from the date of denial to submit documentation or additional documentation to support its claim. Again, Customs believes that the procedure provided for in the Interim Regulation addresses and resolves the commenters concerns regarding documentation requirements and FOIA requests.

Comments Regarding Payment of Interest on Export Harbor Maintenance Fee Refunds

Comment: Three commenters urged Customs to apply interest to export harbor maintenance fee refunds. One commenter stated that the court in Swisher ordered that Customs pay interest on refunds issued under the court-imposed procedure (applicable to only those who filed complaints with the court). This commenter contended that Customs administrative procedure should be consistent with the court's intentions and provide for the payment of interest.

Customs response: Customs disagrees with the commenters who called for the payment of interest on administrative refunds of export harbor maintenance fee payments. The CAFC ruled in *International Business Machines Corp.* v. *United States*, 205 F. 3d 1367 (Fed. Cir. 2000) (hereafter, *IBM*), a test case designated to resolve all export fee interest issues, that exporters are not entitled to interest on the refund of these fees. The court opined that there is no statutory waiver of sovereign immunity which would allow the United States to pay interest on adminstrative refunds. IBM attempted to appeal this ruling to the United States Supreme Court, but the Supreme Court refused to hear the case (*IBM* v. *United States*, cert. denied, 69 U.S.L.W. 3259 (Feb. 20, 2001)).

In the meantime, several exporters have filed lawsuits in the CIT arguing that interest should be paid on adminstrative refunds of export fees on grounds they claim were not considered by the CAFC in *IBM*. Unless there is a final ruling awarding interest in these lawsuits, or in any test case designated by the CIT to resolve this issue, Customs will abide by the ruling in *IBM* that bars the payment of interest on adminstrative refunds of export fees.

In addition, it should be noted that, as in *Swisher*, post-judgment interest is paid in lawsuits where a request for export fee refunds was denied by Customs, a protest was filed and denied, and a lawsuit was commenced under 28 U.S.C. 1581(a). However, this payment of post-judgment interest, which is statutorily mandated, does not apply to adminstrative refunds of export fees.

Comment: Six commenters stated that Customs should hold a public hearing or meeting on the proposed amendment. These commenters alleged that the short deadline for filing refund requests for payments that are more than a year old will have a significant and harmful impact on small business entities. Thus, a public meeting or hearing would be appropriate to consider applicability of the provisions of the RFA and to discuss the time limit proposed and its effect on the capability of exporters to meet the deadline and submit required documentation.

Customs response: Customs believes that a public hearing or meeting is not necessary because the issues raised in the comments as reasons for the meeting have been addressed and resolved by Customs since publication of the NPRM. More specifically, Customs believes that the following provisions, which were not included in the NPRM, will satisfactorily resolve the commenters' concerns: (1) This final rule document's delayed effective date, which will extend the date by which refund requests for payments made more than a year ago must be filed to 180 days from the date of publication in the **Federal Register** (as opposed to 30 days after publication, as indicated in the Interim Regulation); (2) the Interim Regulation's provision that exporters need not file supporting documentation with refund requests for payments made on and after July 1, 1990; and (3) the Interim Regulation's provision of an additional 120 days for filing supporting documentation where supporting documentation is required.

As these provisions change the circumstances contemplated by the commenters who suggested a public meeting, and since Customs believes they put to rest the commenters' concerns, Customs believes that a public meeting is not necessary.

Conclusion

After analysis of the comments and further review and consideration of the matter, Customs has determined to adopt as final the amendment proposed in the NPRM published in the **Federal Register** (65 FR 78430) on December 15, 2000, setting forth in § 24.24(e)(4) the one year time limitation on requesting refunds of quarterly-paid harbor maintenance fees. It is noted that because Customs has issued the Interim Regulation that amended § 24.24(e)(4) to simplify the procedures for requesting refunds of export harbor maintenance fees, after publication of the NPRM, the structure of § 24.24(e)(4) is revised from how it is set forth in the NPRM to reflect the substance of the Interim Regulation.

Customs notes that the text of the amended regulation does not explicitly set forth that refund requests for export fee payments that were made more than a year ago must be filed by the effective date of this final rule document. It only sets forth the one-year-from-payment filing requirement (with the aforementioned exception for foreign trade zone withdrawals). Customs therefore emphasizes that export fee refund requests for payments made more than a year ago that are not filed on or before the effective date of this final rule will be rejected as untimely. After a reasonable time, the regulation will be amended to delete the provision concerning refunds of export harbor maintenance fees, as these fees are no longer collected by Customs (and haven't been since April of 1998).

Regarding the other proposed changes in the NPRM, the technical change

proposed to § 24.24(e)(2)(ii) is adopted as proposed. As mentioned in the comment discussion, Customs has determined not to proceed at this time with the proposed amendment to § 24.73 imposing a one year filing requirement on general claims.

Paperwork Reduction Act

The collection of information contained in this regulation has previously been reviewed and approved by the Office of Management and Budget (OMB) under OMB control number 1515–0158. This rule does not include any changes to the existing approved information collection.

Regulatory Flexibility Act

Insofar as this amendment to the regulations merely adds a reasonable time limit within which to file for an already provided for Customs procedure under an existing regulation, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that this amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Drafting Information

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices contributed in its development.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Fees, Financial and accounting procedures, Harbors, Imports, Reporting and recordkeeping requirements, Taxes, User fees.

Amendments to the Regulations

For the reasons stated in the preamble, Part 24 of the Customs Regulations (19 CFR Part 24) is amended as follows:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

* * * * *

2. Section 24.24 is amended by revising the heading of paragraph (e), removing in paragraph (e)(2)(ii) the reference to ''(e)(3)(iii)'' and adding in its place ''(e)(2)(iii)'', and revising paragraph (e)(4) to read as follows:

§ 24.24 Harbor maintenance fee.

* * * * *

(e) *Collections, supplemental payments, and refunds*— * * *

(4) *Refunds and supplemental payments*—(i) *General.* To make supplemental payments or seek refunds of harbor maintenance fees paid relative to the unloading of imported cargo, the procedures applicable to supplemental payments or refunds of ordinary duties must be followed. To seek refunds of quarterly-paid harbor maintenance fees pertaining to export movements, the procedures set forth in paragraph (e)(4)(iv) of this section must be followed. To make supplemental payments on any quarterly-paid harbor maintenance fee or seek refunds of quarterly-paid harbor maintenance fees pertaining to other than export movements, the procedures set forth in paragraph (e)(4)(iii) must be followed. The address to mail supplemental payments of quarterly-paid harbor maintenance fees is: U.S. Customs Service, P.O. Box 70915, Chicago, Illinois 60673–0915. The address to mail requests for refunds of quarterly-paid harbor maintenance fees is: U.S. Customs Service, HMT Refunds, 6026 Lakeside Blvd., Indianapolis, IN, 46278.

(ii) *Time limit for refund requests.* A refund request must be received by Customs within one year of the date the fee for which the refund is sought was paid to Customs or, in the case of fees paid relative to imported merchandise admitted into a foreign trade zone and subsequently withdrawn from the zone under 19 U.S.C. 1309, within one year of the date of withdrawal from the zone.

(iii) *For fees paid on other than export movements.* If a supplemental payment is made for any quarterly-paid harbor maintenance fee or a refund is requested relative to quarterly fee payments previously made regarding the loading or unloading of domestic cargo, the unloading of cargo destined for admission into a foreign trade zone, or the boarding or disembarking of passengers, the refund request or supplemental payment must be accompanied by a Harbor Maintenance Fee Amended Quarterly Summary Report, Customs Form 350, along with a copy of the Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349, for the quarter(s) covering the payment to which the refund request or supplemental payment relates. A request for a refund must specify the grounds for the refund.

(iv) *For fees paid on export movements.* Customs will process refund requests relative to fee payments previously made regarding the loading of cargo for export as follows:

(A) For export fee payments made prior to July 1, 1990, the exporter (the name that appears on the SED or equivalent documentation authorized under 15 CFR 30.39(b)) or its agent must submit a letter of request for a refund specifying the grounds for the refund and identifying the specific payments made. The letter must be accompanied by proof of payment then required under the regulations relative to each payment claimed. Proof of payment can be either a copy of the Export Vessel Movement Summary Sheet or, where an Automated Summary Monthly Shipper's Export Declaration was filed, a letter containing the exporter's identification, its employer identification number (EIN), the Census Bureau reporting symbol, and the quarter for which the payment was made. Upon receiving a letter of request for a refund, Customs will evaluate the supporting documentation submitted and issue the refund to the exporter or its agent if warranted. If the request lacks documentation or the documentation submitted is insufficient, the exporter's refund request will be denied, in which case the exporter will have an additional 120 days from the date of denial to submit documentation or additional documentation. If the documentation submitted during the 120 day period is insufficient, Customs will deny the request.

(B) For export fee payments made on or after July 1, 1990, the exporter or its agent must submit a letter of request for a refund specifying the grounds for the refund, identifying the quarters for which a refund is sought, and containing the following additional information: The exporter's name, address, and employer identification number (EIN); the name and EIN of any freight forwarder or other agent that made export fee payments on the exporter's behalf; and a name, telephone number, and facsimile number of a contact person. If a refund request is filed by a freight forwarder or other agent on the exporter's behalf, the request must include a properly executed power of attorney and/or a letter signed by the exporter authorizing the representation. Refund requests for payments made on or after July 1, 1990, need not be accompanied by supporting documentation. Upon receipt of the letter of request, Customs will search its

records for export fee payments made by or on behalf of the requesting exporter during the quarters identified in the letter of request. Customs will then mail to the exporter or its agent a ''Harbor Maintenance Fee Refund Report and Certification'' (Report/Certification) containing the results of the search and a statement of the amount of refunds owed to the exporter, if any. If the exporter agrees with the information in the Report/Certification, the exporter must sign the Report/Certification and submit it to Customs with a letter containing an address for mailing the refund. The Report/Certification must be signed by an officer of the company duly authorized to bind the company, or an agent (such as a broker or freight forwarder) authorized to sign the document under a properly executed power of attorney or a letter signed by an authorized officer of the company. Upon receipt of the signed Report/Certification, Customs will issue the refund. If the exporter disagrees with the information in the Report/Certification, the exporter must submit a letter explaining its claim along with proof of payment, either a copy of a Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349, for the quarter(s) covering the refund requested or, if applicable, a copy of an Export Vessel Movement Summary Sheet or, where an Automated Summary Monthly Shipper's Export Declaration was filed, a letter containing the exporter's identification, its employer identification number (EIN), the Census Bureau reporting symbol, and the quarter for which the payment was made. Upon receiving the letter and documentation, Customs will conduct a second review and will either confirm the exporter's claim and mail a revised Report/Certification to the exporter or its agent, or notify the exporter or its agent that confirmation cannot be made. In the latter instance, the Report/Certification will not be revised. Upon receipt of a properly signed Report/Certification (initial or revised), Customs will issue the refund. The signed Report/Certification received by Customs constitutes the exporter's agreement that Customs payment of the refund amount determined to be owed in the Report/Certification is in full accord and satisfaction of all export fee refund claims. The signed Report/Certification also represents the exporter's release, waiver, and abandonment of all claims against the Government, its officers, agents, and assigns for costs, attorney fees, expenses, compensatory damages, and exemplary damages. Upon receipt of the signed Report/Certification, Customs releases, waives, and abandons all claims other than fraud against the exporter, its officers, agents, or employees arising out of all export fee payments.

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Charles W. Winwood,

Acting Commissioner of Customs.

Approved: May 18, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 01–16479 Filed 6–29–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–01–031]

RIN 2115–AE46

Special Local Regulations for Marine Events; Maryland Swim for Life, Chester River, Chestertown, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting temporary special local regulations for the Maryland Swim for Life, a marine event to be held on the waters of the Chester River, Chestertown, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the Chester River during the event.

DATES: This rule is effective from 6 a.m. to 2 p.m. eastern time on July 14, 2001.

ADDRESSES: You may mail comments and related material to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or deliver them to the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–01–031 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, telephone number (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The need for special local regulations for this event was determined on May 21, 2001. The Coast Guard became aware of the need for special local regulations with insufficient time to publish an NPRM, allow for comments, and publish a final rule 30 days prior to the event on July 14, 2001.

Background and Purpose

On July 14, 2001, the Maryland Swim for Life Association will sponsor the Maryland Swim for Life on the waters of the Chester River. Approximately 100 swimmers will start from Rolph's Wharf and swim upriver 2 miles then swim down river returning back to Rolph's Wharf. A large fleet of support vessels will be accompanying the swimmers. To provide for the safety of participants and support vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the swim.

Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the Chester River, Chestertown, Maryland. The temporary special local regulations will be in effect from 6 a.m. to 2 p.m. eastern time on July 14, 2001. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).