

## PARTS 1-3 [RESERVED]

### PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

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- AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.
- Section 4.1 also issued under 19 U.S.C. 1581(a), 46 U.S.C. App. 163;
- Section 4.2 also issued under 19 U.S.C. 1441, 1486;
- Section 4.3 also issued under 19 U.S.C. 288, 1441; 46 U.S.C. App. 111;
- Section 4.3a also issued under 19 U.S.C. 1433, 1436;
- Section 4.5 also issued under 19 U.S.C. 1441;
- Section 4.7 also issued under 19 U.S.C. 1581(a); 46 U.S.C. App. 883a, 883b;
- Section 4.7a also issued under 19 U.S.C. 1498, 1584;
- Section 4.8 also issued under 19 U.S.C. 1448, 1486;
- Section 4.9 also issued under 42 U.S.C. 269;
- Section 4.10 also issued under 19 U.S.C. 1448, 1451;
- Section 4.12 also issued under 19 U.S.C. 1584;
- Section 4.14 also issued under 19 U.S.C. 1466, 1498;
- Section 4.20 also issued under 46 U.S.C. 2107(b), 8103, 14306, 14502, 14511, 14512, 14513, 14701, 14702, 46 U.S.C. App. 121, 128;
- Section 4.21 also issued under 19 U.S.C. 1441, 46 U.S.C. App. 121-125, 128, 129, 132, 135;
- Section 4.22 also issued under 46 U.S.C. App. 121, 128, 141;
- Section 4.24 also issued under 46 U.S.C. 2108;
- Section 4.30 also issued under 19 U.S.C. 288, 1446, 1448, 1450-1454, 1490;
- Section 4.31 also issued under 19 U.S.C. 1453, 1586;
- Section 4.32 also issued under 19 U.S.C. 1449;

- Section 4.35 also issued under 19 U.S.C. 1447;
- Section 4.36 also issued under 19 U.S.C. 1431, 1457, 1458, 46 U.S.C. App. 100;
- Section 4.37 also issued under 19 U.S.C. 1448, 1457, 1490;
- Section 4.38 also issued under 19 U.S.C. 1448, 1505;
- Section 4.39 also issued under 19 U.S.C. 1446;
- Section 4.40 also issued under 19 U.S.C. 1446;
- Section 4.50 also issued under 19 U.S.C. 1431; 46 U.S.C. 3502;
- Section 4.51 also issued under 19 U.S.C. 1433;
- Section 4.52 also issued under 19 U.S.C. 1433;
- Section 4.61 also issued under 46 U.S.C. App. 883;
- Section 4.65a also issued under 46 U.S.C. 5101-5102, 5106-5109, 5112-5114, 5116;
- Section 4.66 also issued under 46 U.S.C. App. 91;
- Section 4.66a also issued under 33 U.S.C. 1321, 46 U.S.C. App. 91;
- Section 4.66b also issued under 33 U.S.C. 407, 1321;
- Section 4.68 also issued under 46 U.S.C. App. 817d, 817e;
- Section 4.69 also issued under 46 U.S.C. 10301, 10302, 10314, and 10315.
- Section 4.74 also issued under 46 U.S.C. App. 91;
- Section 4.75 also issued under 46 U.S.C. App. 91;
- Section 4.80 also issued under 46 U.S.C. 12106, 46 U.S.C. App. 251, 289, 319, 802, 808, 883, 883-1;
- Section 4.81 also issued under 19 U.S.C. 1442, 1486; 46 U.S.C. 251, 883;
- Section 4.81a also issued under 46 U.S.C. App. 883;
- Section 4.82 also issued under 19 U.S.C. 293, 294, 46 U.S.C. App. 123;
- Section 4.83 also issued under 46 U.S.C. App. 91, 111, 123;
- Section 4.84 also issued under 46 U.S.C. App. 883-1;
- Section 4.85 also issued under 19 U.S.C. 1442, 1623;
- Section 4.86 also issued under 19 U.S.C. 1442;
- Section 4.88 also issued under 19 U.S.C. 1442, 1622, 1623;
- Section 4.92 also issued under 46 U.S.C. App. 316(a);
- Section 4.93 also issued under 19 U.S.C. 1322(a), 46 U.S.C. App. 883;
- Section 4.94 also issued under 19 U.S.C. 1441; 46 U.S.C. App. 104;
- Section 4.96 also issued under 46 U.S.C. 12101(a)(1), 12108, 46 U.S.C. App. 251;
- Section 4.98 also issued under 31 U.S.C. 9701;
- Section 4.100 also issued under 19 U.S.C. 1706.

## United States Customs Service, Treasury

## § 4.1

SOURCE: 28 FR 14596, Dec. 31, 1963, unless otherwise noted.

### ARRIVAL AND ENTRY OF VESSELS

#### § 4.0 General definitions.

For the purposes of this part:

(a) *Vessel*. The word *vessel* includes every description of water craft or other contrivance used or capable of being used as a means of transportation on water, but does not include aircraft. (19 U.S.C. 1401.)

(b) *Vessel of the United States*. The term *vessel of the United States* means any vessel documented under the laws of the United States.

(c) *Documented*. The term *documented vessel* means a vessel for which a valid Certificate of Documentation, form CG 1270, issued by the U.S. Coast Guard is outstanding. Upon qualification and proper application to the appropriate Coast Guard office, the Certificate of Documentation may be endorsed with a: (1) Registry endorsement (generally, available to a vessel to be employed in foreign trade, trade with Guam, American Samoa, Wake, Midway, or Kingman Reef, and other employments for which another endorsement is not required), (2) coastwise endorsement (generally, entitles a vessel to employment in the coastwise trade, and other employments for which another endorsement is not required), (3) Great Lakes endorsement (generally, entitles a vessel to engage in the coastwise trade on the Great Lakes and their tributary and connecting waters, in trade with Canada, and in other employments for which another endorsement is not required), (4) fishery endorsement (generally, subject to federal and state laws regulating the fisheries, entitles a vessel to fish within the Exclusive Economic Zone (16 U.S.C. 1811) and landward of that zone and to land its catch) or (5) recreational endorsement (entitles a vessel to recreational use only). Any other terminology used elsewhere in this part to describe the particular documentation of a vessel shall be read as synonymous with the applicable terminology contained in this paragraph. Generally, any vessel of at least 5 net tons and wholly owned by a United States citizen or citizens is eligible for documentation except that for a coastwise,

Great Lakes, or fisheries endorsement a vessel must also be built in the United States. Detailed Coast Guard regulations on documentation are set forth in Title 46, Code of Federal Regulations, § 67.01-67.45.

(d) *Noncontiguous territory of the United States*. The term *noncontiguous territory of the United States* includes all the island territories and possessions of the United States, but does not include the Canal Zone.

(e) *Citizen*. The word *citizen* is as defined by the U.S. Coast Guard for purposes of vessel documentation (see subpart 67.03 of title 46, Code of Federal Regulations.)

(f) *Arrival of a vessel*. The phrase "arrival of a vessel" means that time when the vessel first comes to rest, whether at anchor or at a dock, in any harbor within the Customs territory of the U.S.

(g) *Departure of a vessel*. The phrase "departure of a vessel" means that time when the vessel gets under way on its outward voyage and proceeds on the voyage without thereafter coming to rest in the harbor from which it is going.

[T.D. 69-266, 34 FR 20422, Dec. 31, 1969, as amended by T.D. 83-214, 48 FR 46511, Oct. 13, 1983; T.D. 93-78, 58 FR 50256, Sept. 27, 1993; T.D. 93-96, 58 FR 67315, Dec. 21, 1993]

#### § 4.1 Boarding of vessels; cutter and dock passes.

(a) Every vessel arriving at a Customs port will be subject to such supervision while in port as the port director considers necessary. The port director may detail Customs officers to remain on board a vessel to secure enforcement of the requirements set forth in this part. Customs may determine to board as many vessels as considered necessary to ensure compliance with the laws it enforces.

(b)(1) No person, with or without the consent of the master, except a pilot in connection with the navigation of the vessel, personnel from another vessel in connection with the navigation of an unmanned barge, an officer of Customs or the Coast Guard, an immigration or

1-27 [Reserved]

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health officer, an inspector of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, or an agent of the vessel or consular officer exclusively for purposes relating to Customs formalities, shall go on board any vessel arriving from outside the Customs territory of the United States without permission of the port director or the Customs officer in charge until the vessel has been taken in charge by a Customs officer.

(2) A person may leave the vessel for the purpose of reporting its arrival as required by law (see §4.2), but no other person, except those designated in paragraph (b)(1) of this section, shall leave any vessel arriving from outside the Customs territory of the United States, with or without the consent of the master, without the permission of the port director or the Customs officer in charge until the vessel has been properly inspected by Customs and brought into the dock or anchorage at which cargo is to be unladen and until all passengers have been landed from the vessel (19 U.S.C. 1433).

(3) Every person permitted to go on board or to leave without the consent of a Customs officer under the provisions of this paragraph shall be subject to Customs and quarantine regulations.

(4) The master of any vessel shall not authorize the boarding or leaving of his vessel by any person in violation of this paragraph.

(c) A port director, in his discretion may issue a cutter pass on Customs Form 3093 to permit the holder to board an incoming vessel after it has been inspected by the quarantine authorities and taken in charge by an officer of the Customs, as follows: (1) To persons on official business; (2) to news reporters, newspaper photographers, photographers of established motionpicture companies, and broadcasters of established radio broadcasting companies; and (3) in cases of special exigency in which the port director is satisfied as to the urgent need for the boarding and that its allowance will not result in undue interference with the performance of official business.

(d) No person in charge of a tugboat, rowboat, or other vessel shall bring

such conveyance alongside an incoming vessel heretofore described and put on board thereof any person, except as authorized by law or regulations.

(e) [Reserved]

(f) Term cutter and dock passes, for a period of not to exceed one year, may be issued in the discretion of the port director, to persons on official business and to duly accredited news reporters and newspaper photographers. Passes are not transferable and shall be forfeited upon presentation by others than those to whom issued.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 78-141, 43 FR 22174, May 24, 1978; T.D. 82-224, 47 FR 35475, Aug. 16, 1982; T.D. 92-74, 57 FR 35751, Aug. 11, 1992; T.D. 95-77, 60 FR 50010, Sept. 27, 1995; T.D. 00-4, 65 FR 2872, Jan. 19, 2000]

### § 4.2 Reports of arrival of vessels.

(a) Upon arrival in any port or place within the U.S., including, for purposes of this section, the U.S. Virgin Islands, of any vessel from a foreign port or place, any foreign vessel from a port or place within the U.S., or any vessel of the U.S. carrying bonded merchandise or foreign merchandise for which entry has not been made, the master of the vessel shall immediately report that arrival to the nearest Customs facility or other location designated by the port director. The report of arrival, except as supplemented in local instructions issued by the port director and made available to interested parties by posting in Customs offices, publication in a newspaper of general circulation, and other appropriate means, shall be made by any means of communication to the port director or to a Customs officer assigned to board the vessel. The Customs officer may require the production of any documents or papers deemed necessary for the proper inspection/examination of the vessel, cargo, passenger, or crew.

(b) For purposes of this part, "foreign port or place" includes a hovering vessel, as defined in 19 U.S.C. 1401(k), and any point in Customs waters beyond the territorial sea or on the high seas at which a vessel arriving in a port or place in the U.S. has received merchandise.

(c) In the case of certain vessels arriving either in distress or for the limited purpose of taking on certain supplies and departing within a 24-hour time period without having landed or taken on any passengers or other merchandise (see section 441(4), Tariff Act of 1930, as amended), the report may be filed by either the master, owner, or agent, and shall be in the form and give the information required by that statute, except that the report need not be under oath. A derelict vessel shall be considered one in distress and any person bringing it into port may report its arrival.

(d) The report of baggage and merchandise required to be made by certain passenger vessels making three or more trips a week between U.S. and foreign ports and vessels used exclusively as ferryboats carrying passengers, baggage, or merchandise (see section 441(2), Tariff Act of 1930, as amended), is in addition to the required report of arrival, and shall be made within 24 hours of arrival.

[T.D. 93-96, 58 FR 67315, Dec. 21, 1993, as amended by T.D. 94-44, 59 FR 23795, May 9, 1994]

#### § 4.3 Vessels required to enter; place of entry.

(a) *Formal entry required.* Unless specifically excepted by law, within 48 hours after the arrival at any port or place in the United States, the following vessels are required to make formal entry:

(1) Any vessel from a foreign port or place;

(2) Any foreign vessel from a domestic port;

(3) Any vessel of the United States having merchandise on board which is being transported in-bond (not including bonded ship's stores or supplies), or foreign merchandise for which entry has not been made; or

(4) Any vessel which has visited a hovering vessel as defined in 19 U.S.C. 1401(k), or has delivered or received merchandise or passengers while outside the territorial sea.

(b) *Completion of entry.* (1) When vessel entry is to be made at the customhouse, either the master, licensed deck officer, or purser may appear in person during regular working hours to com-

plete preliminary or formal vessel entry; or necessary documents properly executed by the master or other authorized officer may be delivered at the customhouse by the vessel agent or other personal representative of the master.

(2) The appropriate Customs port director may permit the entry of vessels to be accomplished at locations other than the customhouse, and services may be requested outside of normal business hours. Customs may take local resources into consideration in allowing formal entry to be transacted on board vessels or at other mutually convenient approved sites and times within or outside of port limits. When services are requested to be provided outside the limits of a Customs port, the appropriate port director to whom an application must be submitted is the director of the port located nearest to the point where the proposed services would be provided. That port director must be satisfied that the place designated for formal entry will be sufficiently under Customs control at the time of entry, and that the expenses incurred by Customs will be reimbursed as authorized. It may be required that advance notice of vessel arrival be given as a condition for granting requests for optional entry locations. A master, owner, or agent of a vessel who desires that entry be made at an optional location will file with the appropriate port director an application on Customs Form 3171 and a single entry or continuous bond on Customs Form 301 containing the bond conditions set forth in § 113.64 of this chapter, in such amount as that port director deems appropriate but not less than \$1,000. If the application is approved, the port director or a designated Customs officer will formally enter the vessel. Nothing in this paragraph relieves any person or vessel from any requirement as to how, when and where they are to report, be inspected or receive clearance from other Federal agencies upon arrival in the United States.

[T.D. 00-4, 65 FR 2872, Jan. 19, 2000]

#### § 4.3a Penalties for violation of vessel reporting and entry requirements.

Violation of the arrival or entry reporting requirements provided for in

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this part may result in the master being liable for certain civil and criminal penalties, as provided under 19 U.S.C. 1436, in addition to other penalties applicable under other provisions of law. The penalties include civil monetary penalties for failure to report arrival or make entry, and any conveyance used in connection with any such violation is subject to seizure and forfeiture. Further, if any merchandise (other than sea stores or the equivalent for conveyances other than a vessel) is involved in the failure to report arrival or entry, additional penalties equal to the value of merchandise may be imposed, and the merchandise may be seized and forfeited unless properly entered by the importer or consignee. The criminal penalties, applicable upon conviction, include fines and imprisonment if the master intentionally commits any violation of these reporting and entry requirements or if prohibited merchandise is involved in the failure to report arrival or make entry.

[T.D. 93-96, 58 FR 67316, Dec. 21, 1993]

#### § 4.4 Panama Canal; report of arrival required.

Vessels which merely transit the Panama Canal without transacting any business there shall be required to report their arrival because of such transit. The report of arrival shall be made in accordance with § 4.2(a).

[T.D. 79-276, 44 FR 61956, Oct. 29, 1979]

#### § 4.5 Government vessels.

(a) No report of arrival or entry shall be required of any vessel owned by, or under the complete control and management of the United States or any of its agencies, if such vessel (1) is manned wholly by members of the uniformed services of the United States, by personnel in the civil service of the United States, or by both, and (2) is transporting only property of the United States or passengers traveling on official business of the United States, or it is ballast. However, if any cargo is on board, the master or commander of each such vessel arriving from abroad shall file a Cargo Declaration, Customs Form 1302, or an equivalent form issued by the Department of Defense, in duplicate. The original of

each Cargo Declaration or equivalent form required under this paragraph shall be filed with the port director within 48 hours after the arrival of the vessel. The other copy shall be made available for use by the discharging inspector at the pier. See § 148.73 of this chapter with respect to baggage on carriers operated by the Department of Defense.

(b) The arrival of every vessel owned or controlled and manned as described in paragraph (a) of this section but transporting other property or passengers, and every vessel so owned or controlled but not so manned, whether in ballast or transporting cargo or passengers, shall be reported in accordance with § 4.2 and the vessel shall be entered in accordance with § 4.9.

(c) Every vessel owned by, or under the complete control and management of, any foreign nation shall be exempt from or subject to the laws relating to report of arrival and entry under the same conditions as a vessel owned or controlled by the United States.

[28 FR 14596, Dec. 31, 1963, as amended by 39 FR 10897, Mar. 22, 1974; T.D. 83-213, 48 FR 46978, Oct. 17, 1983]

#### § 4.6 Departure or unloading before report or entry.

(a) No vessel which has arrived within the limits of any Customs port from a foreign port or place shall depart or attempt to depart, except from stress of weather or other necessity, without reporting and making entry as required in this part. These requirements shall not apply to vessels merely passing through waters within the limits of a Customs port in the ordinary course of a voyage.

(b) The "limits of any Customs port" as used herein are those described in § 101.3(b) of this chapter, including the marginal waters to the 3-mile limit on the seaboard and the waters to the boundary line on the northern and southern boundaries.

(c) Violation of this provision may result in the master being liable for certain civil penalties and the vessel to arrest and forfeiture, as provided under

19 U.S.C. 1436, in addition to other penalties applicable under other provisions of law.

[T.D. 93-96, 58 FR 67316, Dec. 21, 1993, as amended by T.D. 98-74, 63 FR 51287, Sept. 25, 1998]

**§ 4.7 Inward foreign manifest; production on demand; contents and form.**

(a) The master of every vessel arriving in the United States and required to make entry shall have on board his vessel a manifest, as required by section 431, Tariff Act of 1930 (19 U.S.C. 1431), and by this section. The manifest shall be legible and complete. If it is in a foreign language, an English translation shall be furnished with the original and with any required copies. The manifest shall consist of a Vessel Entrance or Clearance Statement, Customs Form 1300, and the following documents: (1) Cargo Declaration, Customs Form 1302, (2) Ship's Stores Declaration, Customs Form 1303, (3) Crew's Effects Declaration, Customs Form 1304, or, optionally, a copy of the Crew List, Customs and Immigration Form I-418, to which are attached crew-member's declarations on Customs Form 5129, (4) Crew List, Customs and Immigration Form I-418, and (5) Passenger List, Customs and Immigration Form I-418. Any document which is not required may be omitted from the manifest provided the word "None" is inserted in items 16, 18, and/or 19 of the Vessel Entrance or Clearance Statement, as appropriate. If a vessel arrives in ballast and therefore the Cargo Declaration is omitted, the legend "No merchandise on board" shall be inserted in item 16 of the Vessel Entrance or Clearance Statement.

(b) The original and one copy of the manifest shall be ready for production on demand. The master shall deliver the original and one copy of the manifest to the Customs officer who shall first demand it. If the vessel is to proceed from the port of arrival to other United States ports with residue foreign cargo or passengers, an additional copy of the manifest shall be available for certification as a traveling manifest (see § 4.85). The port director may require an additional copy or additional copies of the manifest, but a reasonable time shall be allowed for the

preparation of any copy which may be required in addition to the original and one copy.

(c) No Passenger List or Crew List shall be required in the case of a vessel arriving from Canada, otherwise than by sea, at a port on the Great Lakes or their connecting or tributary waters.

(d)(1) The master or owner of—

(i) A vessel documented under the laws of the United States with a registry, coastwise license, or Great Lakes license endorsement, or a vessel not so documented but intended to be employed in the foreign, coastwise, or Great Lakes trade, or

(ii) A documented vessel with a fishery license endorsement which has a permit to touch and trade (see § 4.15) or a vessel with a fishery license endorsement lacking a permit to touch and trade but intended to engage in trade— at the port of first arrival from a foreign country shall declare on Customs Form 226 any equipment, repair parts, or materials purchased for the vessel, or any expense for repairs incurred, outside the United States, within the purview of section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466). If no equipment, repair parts, or materials have been purchased, or repairs made, a declaration to that effect shall be made on Customs Form 226.

(2) If the vessel is at least 500 gross tons, the declaration shall include a statement that no work in the nature of a rebuilding or alteration which might give rise to a reasonable belief that the vessel may have been rebuilt within the meaning of the second proviso to section 27, Merchant Marine Act, 1920, as amended (46 U.S.C. 883), has been effected which has not been either previously reported or separately reported simultaneously with the filing of such declaration. The port director shall notify the U.S. Coast Guard vessel documentation officer at the home port of the vessel of any work in the nature of a rebuilding or alteration, including the construction of any major component of the hull or superstructure of the vessel, which comes to his attention unless the port director is satisfied that the owner of the vessel has filed an application for rebuilt determination as required by 46 CFR 67.27-3.

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(3) The declaration shall be ready for production on demand for inspection and shall be presented as part of the original manifest when formal entry of the vessel is made.

[T.D. 71-169, 36 FR 12602, July 2, 1971, as amended by T.D. 74-284, 39 FR 39718, Nov. 11, 1974; T.D. 77-255, 42 FR 56319, Oct. 25, 1977; T.D. 80-237, 45 FR 64565, Sept. 30, 1980; T.D. 83-214, 48 FR 46511, Oct. 13, 1983; T.D. 92-74, 57 FR 35751, Aug. 11, 1992; T.D. 00-22, 65 FR 16515, Mar. 29, 2000]

### §4.7a Inward manifest; information required; alternative forms.

The forms designated by §4.7(a) as comprising the inward manifest shall be completed as follows:

(a) *Ship's Stores Declaration.* Articles to be retained aboard as sea or ship's stores shall be listed on the Ship's Stores Declaration, Customs Form 1303. Less than whole packages of sea or ship's stores may be described as "sundry small and broken stores."

(b) *Crew's Effects Declaration. (Customs Form 1304).* (1) The declaration number of the Crew Member's Declaration, Customs Form 5129, prepared and signed by any officer or crewmember who intends to land articles in the United States, or the word "None," shall be shown in item No. 7 on the Crew's Effects Declaration, Customs Form 1304 opposite the respective crewmember's name.

(2) In lieu of describing the articles on Customs Form 1304, the master may furnish a Crew List, Customs and Immigration Form I-418, endorsed as follows:

I certify that this list, with its supporting crewmembers' declarations, is a true and complete manifest of all articles on board the vessel acquired abroad by myself and the officers and crewmembers of this vessel, other than articles exclusively for use on the voyage or which have been duly cleared through Customs in the United States.

(Master.)

The Crew List on Form I-418 shall show, opposite the crewmember's name, his shipping article number and, in column 5, the declaration number. If the crewmember has nothing to declare, the word "None" shall be placed opposite his name instead of a declaration number.

(3) For requirements concerning the preparation of Customs Form 5129, see subpart G of part 148 of this chapter.

(4) Any articles which are required to be manifested and are not manifested shall be subject to forfeiture and the master shall be subjected to a penalty equal to the value thereof, as provided in section 584, Tariff Act of 1930, as amended.

(c) *Cargo Declaration.* (1) The Cargo Declaration, Customs Form 1302, shall list all the inward foreign cargo on board regardless of the port of discharge. The block designated "Arrival" at the top of the form shall be checked. The name of the shipper shall be set forth in the column calling for such information and on the same line where the bill of lading is listed for that shipper's merchandise. When more than one bill of lading is listed for merchandise from the same shipper, ditto marks or the word "ditto" may be used to indicate the same shipper. The cargo described in column Nos. 6 and 7, and either column No. 8 or 9, shall refer to the respective bills of lading. Either column No. 8 or column No. 9 shall be used, as appropriate. The gross weight in column No. 8 shall be expressed in either pounds or kilograms. The measurement in column No. 9 shall be expressed according to the unit of measure specified in the Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202).

(2)(i) When inward foreign cargo is being shipped by container, each bill of lading shall be listed in the column headed "B/L Nr." in numerical sequence according to the bill of lading number. The number of the container which contains the cargo covered by that bill of lading and the number of the container seal shall be listed in column No. 6 opposite the bill of lading number. The number of any other bill of lading for cargo in that container also shall be listed in column No. 6 immediately under the container and seal numbers. A description of the cargo shall be set forth in column No. 7 only if the covering bill of lading is listed in the column headed "B/L Nr."

(ii) As an alternative to the procedure described in paragraph (i), a separate list of the bills of lading covering each container on the vessel may be

submitted on Customs Form 1302 or on a separate sheet. If this procedure is used:

(A) Each container number shall be listed in alphanumeric sequence by port of discharge in column No. 6 of Customs Form 1302, or on the separate sheet; and

(B) The number of each bill of lading covering cargo in a particular container, identifying the port of lading, shall be listed opposite the number of the container with that cargo in the column headed "B/L Nr." if Customs Form 1302 is used, or either opposite or under the number of the container if a separate sheet is used.

(iii) All bills of lading, whether issued by a carrier, freight forwarder, or other issuer, shall contain a unique identifier consisting of up to 16 characters in length. The unique bill of lading number will be composed of two elements. The first element will be the first four characters consisting of the carrier or issuer's four digit Standard Carrier Alpha Code (SCAC) assigned to the carrier in the National Motor Freight Traffic Association, Inc., Directory of Standard Multi-Modal Carrier and Tariff Agent Codes, applicable supplements thereto and reissues thereof. The second element may be up to 12 characters in length and may be either alpha and/or numeric. The unique identifier shall not be used by the carrier, freight forwarder or issuer for another bill of lading for a period of 3 years after issuance. Customs processing of the unique identifier will be limited to checking the validity of the Standard Carrier Alpha Codes (SCAC) and ensuring that the identifier has not been duplicated within a 3-year period. Carriers and broker/importers will be responsible for reconciliation of discrepancies between manifests and entries. Customs will not perform any reconciliation except in a post-audit process.

(3) For shipment of containerized or palletized cargo, Customs officers shall accept a Cargo Declaration which indicates that it has been prepared on the basis of information furnished by the shipper. The use of words of qualification shall not limit the responsibility of a master to submit accurate Cargo Declarations or qualify the oath taken

by the master as to the accuracy of his declaration.

(i) If Cargo Declaration covers only containerized or palletized cargo, the following statement may be placed on the declaration:

The information appearing on the declaration relating to the quantity and description of the cargo is in each instance based on the shipper's load and count. I have no knowledge or information which would lead me to believe or to suspect that the information furnished by the shipper is incomplete, inaccurate, or false in any way.

(ii) If the Cargo Declaration covers conventional cargo and containerized or palletized cargo, or both, the use of the abbreviation "SLAC" for "shipper's load and count," or an appropriate abbreviation if similar words are used, is approved: *Provided*, That abbreviation is placed next to each containerized or palletized shipment on the declaration and the following statement is placed on the declaration:

The information appearing on this declaration relating to the quantity and description of cargo preceded by the abbreviation "SLAC" is in each instance based on the shipper's load and count. I have no information which would lead me to believe or to suspect that the information furnished by the shipper is incomplete, inaccurate, or false in any way.

(iii) The statements specified in paragraphs (c)(3) (i) and (ii) of this section shall be placed on the last page of the Cargo Declaration. Words similar to "the shipper's load and count" may be substituted for those words in the statements. Vague expressions such as "said to contain" or "accepted as containing" are not acceptable. The use of an asterisk or other character instead of appropriate abbreviations, such as "SLAC", is not acceptable.

(d) *Crew List*. The Crew List shall be completed in accordance with the requirements of the Immigration and Naturalization Service, United States Department of Justice (8 CFR part 251).

(e) *Passenger List*. (1) The Passenger List shall be completed in accordance with § 4.50 and with the requirements of the Immigration and Naturalization Service, U.S. Department of Justice (8 CFR part 231), and the following certification shall be placed on its last page:

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I certify that Customs baggage declaration requirements have been made known to incoming passengers; that any required Customs baggage declarations have been or will simultaneously herewith be filed as required by law and regulation with the proper Customs officer; and that the responsibilities devolving upon this vessel in connection therewith, if any, have been or will be discharged as required by law or regulation before the proper Customs officer. I further certify that there are no steerage passengers on board this vessel (46 U.S.C. 151-163).

\_\_\_\_\_  
Master

(2) If the vessel is carrying steerage passengers, the reference to steerage passengers shall be deleted from the certification, and the master shall comply with the requirements of §4.50.

(3) If there are no steerage passengers aboard upon arrival, the listing of the passengers may be in the form of a vessel "souvenir passenger list," or similar list, in which the names of the passengers are listed alphabetically and to which the certificate referred to in paragraph (e)(1) of this section is attached.

(4) All baggage on board a vessel not accompanying a passenger and the marks or addresses thereof shall be listed on the last sheet of the passenger list under the caption "Unaccompanied baggage."

[T.D. 71-169, 36 FR 12602, July 2, 1971, as amended by T.D. 73-27, 38 FR 2448, Jan. 26, 1973; T.D. 77-255, 42 FR 56320, Oct. 25, 1977; T.D. 79-31, 44 FR 5649, Jan. 29, 1979; T.D. 85-123, 50 FR 29952, July 23, 1985; T.D. 89-58, 54 FR 20381, May 11, 1989; T.D. 93-66, 58 FR 44130, Aug. 19, 1993; T.D. 95-77, 60 FR 50010, Sept. 27, 1995; T.D. 98-74, 63 FR 51287, Sept. 25, 1998]

### §4.8 Preliminary entry.

(a) *Generally.* Preliminary entry allows a U.S. or foreign vessel arriving under circumstances that require it to formally enter, to commence lading and unlading operations prior to making formal entry. Preliminary entry may be accomplished electronically pursuant to an authorized electronic data interchange system, or by any other means of communication approved by the Customs Service.

(b) *Requirements and conditions.* Preliminary entry must be made in compliance with §4.30, and may be granted prior to, at, or subsequent to arrival of the vessel. The granting of preliminary

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vessel entry by Customs at or subsequent to arrival of the vessel, is conditioned upon the presentation to and acceptance by Customs of all forms, electronically or otherwise, comprising a complete manifest as provided in §4.7. Vessels seeking preliminary entry in advance of arrival may do so by presenting to Customs a complete Customs Form 1302 (Cargo Declaration) showing all cargo on board the vessel and Customs Form 3171, electronically or otherwise, no less than 48 hours prior to vessel arrival. The CF 3171 will also serve as notice of intended date of arrival. The port director may allow for the presentation of the CF 1302 and CF 3171 less than 48 hours prior to arrival in order to grant advanced preliminary entry if a vessel voyage takes less than 48 hours to complete from the last foreign port to the first U.S. port, or if other reasonable circumstances warrant. Preliminary entry granted in advance of arrival will become effective upon arrival at the port granting preliminary entry. Additionally, Customs must receive confirmation of a vessel's estimated time of arrival in a manner acceptable to the port director.

[T.D. 00-4, 65 FR 2872, Jan. 19, 2000]

### §4.9 Formal entry.

(a) *General.* Section 4.3 provides which vessels are subject to formal entry and where and when entry must be made. The formal entry of an American vessel is governed by section 434, Tariff Act of 1930 (19 U.S.C. 1434). The term "American vessel" means a vessel of the United States (see §4.0(b)) as well as, when arriving by sea, a vessel entitled to be documented except for its size (see §4.0(c)). The formal entry of a foreign vessel arriving within the limits of any Customs port is also governed by section 434, Tariff Act of 1930 (19 U.S.C. 1434). Alternatively, information necessary for formal entry may be transmitted electronically pursuant to a system authorized by Customs.

(b) *Procedures for American vessels.* Under certain circumstances, American vessels arriving in ports of the United States directly from other United States ports must make entry. Entry of such vessels is required when they have merchandise aboard which is

being transported in-bond, or when they have unentered foreign merchandise aboard. For the purposes of the vessel entry requirements, merchandise transported in-bond does not include bonded ship's stores or supplies. While American vessels transporting unentered foreign merchandise must fully comply with the usual formal entry procedures, American vessels carrying no unentered foreign merchandise but which have in-bond merchandise aboard may satisfy vessel entry requirements by making a required report of arrival, and presenting a completed Customs Form 1300 (Vessel Entrance or Clearance Statement). Report of arrival as provided in § 4.2 of this part, together with presenting a completed Customs Form 1300 (Vessel Entrance or Clearance Statement), satisfies all entry requirements for the subject vessels.

(c) *Delivery of foreign vessel document.* The master of any foreign vessel will exhibit the vessel's document to the port director on or before the entry of the vessel. After the net tonnage has been noted, the document may be delivered to the consul of the nation to which such vessel belongs, in which event the vessel master will certify to the port director the fact of such delivery (see section 434, Tariff Act of 1930, as amended (19 U.S.C. 1434), as applied through section 438, Tariff Act of 1930, as amended (19 U.S.C. 1438)). If not delivered to the consul, the document will be deposited in the customhouse. Whether delivered to the foreign consul or deposited at the customhouse, the document will not be delivered to the master of the foreign vessel until clearance is granted under § 4.61. It will not be lawful for any foreign consul to deliver to the master of any foreign vessel the register, or document in lieu thereof, deposited with him in accordance with the provisions of 19 U.S.C. 1434 until such master will produce to him a clearance in due form from the director of the port where such vessel has been entered. Any consul violating the provisions of this section is liable to a fine of not more than \$5,000 (section 438, Tariff Act of 1930, as amended; 19 U.S.C. 1438).

(d) *Failure to make required entry; penalties.* Any master who fails to make

entry as required by this section or who presents or transmits electronically any document required by this section that is forged, altered, or false, may be liable for certain civil penalties as provided under 19 U.S.C. 1436, in addition to penalties applicable under other provisions of law. Further, any vessel used in connection with any such violation is subject to seizure and forfeiture.

[T.D. 00-4, 65 FR 2873, Jan. 19, 2000; T.D. 00-22, 65 FR 16515, Mar. 29, 2000]

#### § 4.10 Request for overtime services.

Request for overtime services in connection with entry or clearance of a vessel, including the boarding of a vessel in accordance with § 4.1 shall be made on Customs Form 3171. (See § 24.16 of this chapter regarding pleasure vessels.) Such request for overtime services must specify the nature of the services desired and the exact times when they will be needed, unless a term special license (unlimited or limited to the service requested) has been issued (see § 4.30(g)) and arrangements are made locally so that the proper Customs officer will be notified during official hours in advance of the rendering of the services as to the nature of the services desired and the exact times they will be needed. Such request shall not be approved (previously issued term special licenses shall be revoked) unless the carrier complies with the provisions of paragraphs (l) and (m) of § 4.30 regarding terminal facilities and employee lists, respectively, and the required cash deposit or bond, on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter, has been received. Separate bonds shall be required if overtime services are requested by different principals.

[T.D. 72-189, 37 FR 13975, July 15, 1972, as amended by T.D. 84-213, 49 FR 41163, Oct. 19, 1984; T.D. 92-74, 57 FR 35751, Aug. 11, 1992]

#### § 4.11 Sealing of stores.

Upon the arrival of a vessel from a foreign port, or a vessel engaged in the foreign trade from a domestic port, sea stores and ship's stores not required for immediate use or consumption on

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board while the vessel is in port and articles acquired abroad by officers and members of the crew, for which no permit to land has been issued, shall be placed under seal, unless the Customs officer is of the opinion that the circumstances do not require such action. Customs inspectors in charge of the vessel, from time to time, as in their judgment the necessity of the case requires, may issue stores from under seal for consumption on board the vessel by its passengers and crew. (See §4.39.)

### §4.12 Explanation of manifest discrepancy.

(a)(1) Vessel masters or agents shall notify the port director on Customs Form 5931 of shortages (merchandise manifested, but not found) or overages (merchandise found, but not manifested) of merchandise.

(2) Shortages shall be reported to the port director by the master or agent of the vessel by endorsement on the importer's claim for shortage on Customs Form 5931 as provided for in §158.3 of this chapter, or within 60 days after the date of entry of the vessel, whichever is later. Satisfactory evidence to support the claim of nonimportation or of proper disposition or other corrective action (see §4.34) shall be obtained by the master or agent and shall be retained in the carrier's file for one year.

(3) Overages shall be reported to the port director within 60 days after the date of entry of the vessel by completion of a post entry or suitable explanation of corrective action (see §4.34) on the Customs Form 5931.

(4) The port director shall immediately advise the master or agent of those discrepancies which are not reported by the master or agent. Notification may be in any appropriate manner, including the furnishing of a copy of Customs Form 5931 to the master or agent. The master or agent shall satisfactorily resolve the matter within 30 days after the date of such notification, or within 60 days after entry of the vessel, whichever is later.

(5)(a) Unless the required notification and explanation is made timely and the port director is satisfied that the discrepancies resulted from clerical error or other mistake and that there has

been no loss of revenue (and in the case of a discrepancy not initially reported by the master or agent that there was a valid reason for failing to so report), applicable penalties under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be assessed (see §162.31 of this chapter). For purposes of this section, the term "clerical error" is defined as a non-negligent, inadvertent, or typographical mistake in the preparation, assembly, or submission (electronically or otherwise) of the manifest. However, repeated similar manifest discrepancies by the same parties may be deemed the result of negligence and not clerical error or other mistake. For the purpose of assessing applicable penalties, the value of the merchandise shall be determined as prescribed in §162.43 of this chapter. The fact that the master or owner had no knowledge of a discrepancy shall not relieve him from the penalty.

(b) Except as provided in paragraph (c) of this section, a correction in the manifest shall not be required in the case of bulk merchandise if the port director is satisfied that the difference between the manifested quantity and the quantity unladen, whether the difference constitutes an overage or a shortage, is an ordinary and usual difference properly attributable to absorption of moisture, temperature, faulty weighing at the port of lading, or other similar reason. A correction in the manifest shall not be required because of discrepancies between marks or numbers on packages of merchandise and the marks or numbers for the same packages as shown on the manifest of the importing vessel when the quantity and description of the merchandise in such packages are correctly given.

(c) Manifest discrepancies (shortages and overages) of petroleum and petroleum products imported in bulk shall be reported on Customs Form 5931, if the discrepancy exceeds one percent.

[T.D. 80-142, 45 FR 36383, May 30, 1980, as amended by T.D. 99-64, 64 FR 43265, Aug. 10, 1999]

### §4.13 Alcoholic liquors on vessels of not over 500 net tons.

(a) When a vessel of not over 500 net tons which arrives from a foreign port

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or a hovering vessel has on board any alcoholic liquors, a certificate respecting the importation of any spirits, wines, or other alcoholic liquors on board, other than sea stores, shall be delivered to the appropriate Customs officer with the inward foreign manifest. Each such certificate shall consist of a declaration of the master of the vessel, together with the certificate of a consular officer of the United States or other authorized person, and shall cover only one shipment from one consignee to one consignee or firm of consignees. The document shall be in substantially the following form:

DECLARATION OF MASTER AND CERTIFICATE COVERING SHIPMENT OF SPIRITS, WINES, OR OTHER ALCOHOLIC LIQUORS ON A VESSEL OF 500 NET TONS OR LESS (19 U.S.C. 1707)

Declaration of Master. I declare that the following merchandise is being shipped in accordance with the facts here stated as true and correct to the best of my information and belief:

Date of shipment:
Marks, numbers, and quantities:
Port of arrival:
Consignor:
Full description of goods:
Consignee:

Master of the (Signature)
(Name of vessel)

(Port of shipment)
19
(Date)

(Use whichever alternative applies:)

Certificate of Consular Officer. I certify that the above declaration was this day produced and signed before me by the individual whose signature appears, that I am satisfied he is the person he represents himself to be, that I have delivered one copy hereof to him, and that I have retained a copy in my files. Service number not required.

Tariff item No. 58(a) (no fee). (Post)
(Date)

[CONSULAR IMPRESSION SEAL]
(Signature)
(Title)

Certificate of Other Authorized Person. I certify that I have been designated by letter of

\_\_\_\_\_, 19\_\_\_, from (insert name of Officer), American (title) at (place), to provide certifications upon declarations made by masters under §7 of the Anti-Smuggling Act of 1935 (19 U.S.C. 1707), that the above declaration was this day produced and signed before me by the individual whose signature appears, that I am satisfied he is the person he represents himself to be, that I have no interest in the shipment described, that I have delivered one copy hereof to the person making the declaration, and that I have forwarded one copy to the American (Embassy, Consulate General, Consulate) at (place).

(Port of shipment)
19 (Date)

[SEAL NOT REQUIRED]

(Signature)

(Title)

The provisions of this paragraph, read together with those of §91.4, title 22, Code of Federal Regulations, constitute the joint regulations contemplated for issuance by the Secretary of State and the Secretary of the Treasury under section 1707, title 19, United States Code.

(b) When any shipment of spirits, wines, or other alcoholic liquors found on board a vessel not exceeding 500 net tons is not accompanied by a certified declaration as described in paragraph (a) of this section but is shown to have a bona fide destination outside the United States, the master shall furnish a landing bond on Customs Form 301, containing the bond conditions relating to international carriers set forth in §113.64 of this chapter in an amount equal to twice the potential duty liability with an authorized corporate surety.

(c) The condition of the landing bond shall be satisfied by the delivery to the port director within 6 months from the date of the bond of a landing certificate or certificates of a revenue officer of the country of destination showing that all the alcoholic liquors have been landed at their foreign destination.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 67-201, 32 FR 12557, Aug. 30, 1967; 32 FR 12750, Sept. 6, 1967; T.D. 84-213, 49 FR 41163, Oct. 19, 1984; T.D. 92-74, 57 FR 35751, Aug. 11, 1992]

**§4.14 Foreign equipment purchases by, and repairs to, American vessels.**

(a) *Dutiability of foreign repairs and equipment purchases*—(1) *Items subject to duty.* The equipment, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses for repairs made, including the cost of labor incurred, outside the United States, upon any vessel documented under the laws of the United States with a registry, coastwise trade license, or Great Lakes license endorsement, or intended to be employed in such trade, are dutiable at the rate of 50 percent ad valorem on the actual cost in the country where the items are purchased or the repairs are made. Liability for declaration, entry, and payment of duties accrues at the time of the first arrival of the vessel in a port of the United States. For the purposes of this section, equipment, repair parts or materials purchased, or repairs made, in American Samoa, the Guantanamo Bay Naval Station, Guam, Puerto Rico, or the U.S. Virgin Islands are not considered to have been purchased or made outside the United States.

(2) *Dutiability costs on specific types of vessels*—(i) *Fishing vessels.* Documented vessels of the United States with a fishery license endorsement having a permit to touch and trade (see §4.15) and documented vessels with a fishery license endorsement which lack a permit to touch and trade are subject to this section.

(ii) *Government-owned or chartered vessels.* Vessels owned or chartered by the United States Government, if documented with a registry, coastwise trade, or Great Lakes trade endorsement, or if undocumented, intended to engage in foreign, coastwise or Great Lakes trade, are subject to this section. See paragraph (b)(2)(i) of this section with respect to entry procedures for Government vessels.

(iii) *Vessels outside U.S. for two years or more*—(A) *Requirements for declaration and entry of dutiable items.* If a vessel which is documented with a registry, coastwise trade, or Great Lakes trade endorsement is operated in international or foreign waters two years or more after its last departure from the

U.S., the only dutiable items are fish nets and nettings whenever purchased and any other items purchased or repairs made during the first six months after the vessel's last departure from the U.S. Under these circumstances, only those items (with the exception of fish nets and nettings) purchased and repairs made outside the U.S. during the first six months after the vessel's last departure from the U.S. shall be declared and entered. Fish nets and netting purchased or repaired outside the U.S. shall be declared and entered whether or not purchased or repaired during the first six months after departure.

(B) *Exception.* The provisions of §4.14(a)(2)(iii)(A) do not apply to a vessel designed and used primarily for transporting passengers and property if such vessel departed the U.S. for the sole purpose of obtaining equipment, parts, materials, or repairs.

(iv) *LASH Barges.* Lighter-boardship (LASH) barges (see §§4.81 and 4.81a) and similar vessels documented with a registry, coastwise trade, or Great Lakes trade endorsement or, if undocumented, intended to engage in such trade, are subject to this section.

(b) *Declaration and repair entry*—(1) *Declaration.* Upon first arrival of the vessel in the United States, the owner or master shall declare on Customs Form 226 all equipment, parts, or materials purchased, and all repairs made, outside the United States. Except as provided in §4.14(a)(2)(iii)(B), the declaration is required regardless of the dutiable status of such items or expenses. The declaration shall be ready for production on demand and for inspection by the boarding officer and shall be presented as part of the original manifest when formal entry of the vessel is made. Estimated duties shall be deposited or a bond on Customs Form 301, containing the bond conditions set forth in §113.64 of this chapter shall be filed before the departure of the vessel, except as provided in paragraph (b)(2)(i) of this section. The amount of the bond shall be determined by the port director as provided in §113.13 of this chapter. See paragraph (g) of this section for applicable penalties.

(2) *Entry.* All equipment, parts, or materials purchased for, and all repairs made outside the United States to, any vessel subject to the provisions of this section shall be entered on Customs Form 226 by the master or owner of the vessel. The entry shall be filed with the appropriate Customs officer at the port of first arrival within five working days after arrival. The Customs officer with whom the entry is filed shall forward it to the appropriate vessel repair liquidation unit. The party filing the entry shall mark it to indicate whether it is a full and complete account or an incomplete account. See paragraph (g) of this section for applicable penalties.

(i) *Entry procedures for vessels owned or chartered by the United States.* Whenever the appropriate Customs officer determines that a Government-owned or chartered vessel subject to the provisions of this section (see paragraph (a)(2)(ii)) is being operated by an agency of the United States, or that a Government-owned or chartered vessel is being operated by a private party for an agency of the United States under an agreement that obligates the Government agency to pay any duty on the costs of repairs or purchases, the vessel shall be allowed to depart the port of first arrival without depositing estimated duties or furnishing a bond to cover estimated duties. In all other cases, the vessel shall be treated as though privately owned.

(ii) *Time period for submitting evidence of cost.* Whenever a repair entry is submitted as a full and complete account, the entry papers shall include evidence showing the cost of each item listed on the entry. If a repair entry is submitted as an incomplete account, the evidence must be submitted within 90 days from the date of the vessel's arrival, except that evidence of estimated foreign shipyard cost in the possession of or known to the vessel operator must be submitted at the time entry is made. If before the end of the 90-day period, the party that is required to furnish the evidence of cost submits a written request for an extension of time beyond the 90-day period, together with a satisfactory explanation of the delay, to the appropriate vessel repair liquidation unit, that unit may grant an additional 30-day exten-

sion of time to submit cost evidence. Any request for a further extension of time to furnish evidence of cost shall be submitted to the appropriate vessel repair liquidation unit, which shall transmit the request to Headquarters, U.S. Customs Service, Attention: Entry Procedures and Carriers Branch, for approval. If the costs shown on the complete account differ from the costs declared on the entry, the appropriate Customs officer may permit amendment of the entry.

(A) *Investigation to obtain evidence.* If the required evidence is not furnished timely, or is of doubtful authenticity, the appropriate vessel repair liquidation unit shall use all available means to obtain the necessary information and may refer the matter to the Office of Investigations. If an investigation is conducted, the Office of Investigations shall obtain all available evidence on the cost of the repairs and any evidence with respect to the reason for the party's failure to submit the evidence in a timely fashion.

(B) *Concurrent time period for submission of costs and filing application for relief.* The 90-day time period to submit evidence of cost on the entry is concurrent with the 90-day time period to submit an application for relief under paragraph (d)(1)(ii) of this section and will not operate to provide additional time to submit an application for relief. A request for additional time to submit evidence of cost may include a request for additional time to submit an application for relief.

(c) *Remission or refund of duty—(1) Vessel repair liquidation units.* Vessel Repair Liquidation Units (VRLUs) are located in New York, New York; New Orleans, Louisiana; and San Francisco, California. The New York unit processes and liquidates vessel repair entries filed at ports on the Great Lakes and on the Atlantic Coast of the U.S. north of, but not including Norfolk, Virginia. The New Orleans unit processes and liquidates vessel repair entries filed at ports on the Atlantic Coast of the U.S. from Norfolk, Virginia, southward, and all U.S. ports on the Gulf of Mexico, including ports in Puerto Rico. The San Francisco unit processes and liquidates vessel repair entries filed at all ports on the Pacific

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Coast of the U.S., including those in Alaska and Hawaii. After entries are processed and liquidated, bulletin notices of liquidation are returned to original ports of entry for posting.

(2) *Authority.* In cases in which both clearly applicable Headquarters precedent exists, and the resulting refund or remission of duty will be less than \$50,000, the proper VRLU may approve or deny Applications for Relief. In cases in which clearly applicable precedent does not exist, or the resulting refund or remission will be \$50,000 or greater, the Application for Relief will be referred for action to the Entry and Carrier Rulings Branch, Customs Headquarters.

(3) *Basis for remission or refund.* Remission or refund of duty is authorized if good and sufficient evidence is furnished which shows any of the following circumstances exist:

(i) *Stress of weather or other casualty.* The vessel, while in the regular course of its voyage, was compelled, by stress of weather or other casualty, while outside the United States, to purchase such equipment or make such repairs, to secure the safety and seaworthiness of the vessel to enable it to reach its port of destination in the United States. However, only the duty on the cost of the minimal repairs needed for the safety and seaworthiness of the vessel is subject to remission or refund. For the purposes of this section, the term "casualty" does not include any purchases or repairs necessitated by ordinary wear and tear, but does include a part's failure to function if satisfactory evidence shows that the specific part was repaired or serviced immediately before starting the voyage from the United States port and that the part failed to function within six months of such repair or servicing.

(ii) *United States parts and equipment installed with American labor.* The equipment, equipment parts, repair parts or materials used on the vessel were manufactured or produced in the United States and purchased by the owner of the vessel in the United States, and the labor necessary to install such equipment or to make such repairs was performed by residents of the United States or by members of the regular crew of the vessel.

(iii) *Dunnage.* The equipment, equipment parts, materials or labor were used as dunnage for cargo, or for the packing or shoring thereof, or in the erection of temporary bulkheads or other similar devices for the control of bulk cargo, or in the preparation (without permanent repair or alteration) of tanks for the carriage of liquid cargo.

(d) *Procedure for remission or refund of duties—(1) Application for relief—(i) Form and contents.* The application for relief need not be in any particular form. The application for relief should allege that an item or a repair expense covered by the entry is not subject to duty under paragraph (a) of this section, or that the articles purchased or the repair expenses are within the provisions of paragraph (c) of this section, or that both conditions are present. The application for relief also shall certify that all foreign equipment, parts, or materials purchased for, and all foreign repairs made to, the vessel within one year immediately preceding the application have been declared as required by this section, or the application shall be deemed incomplete. The application for relief shall be signed by the master, owner, or operator of the vessel, or their authorized agent. If the application for relief is filed by a corporation, it shall be signed by an authorized corporate officer.

(ii) *Place and time of filing.* The application for relief shall be filed with the appropriate Customs officer at the port where the vessel repair entry was made or with the appropriate vessel repair liquidation unit (see paragraph (c)(1) of this section). If filed at the port where the entry was made, the Customs officer who receives the application shall promptly forward it, together with his comments, if any, to the appropriate vessel repair liquidation unit. The application for relief, with supporting evidence, shall be filed within 90 days from the date of first arrival of the vessel. However, if good cause is shown, the appropriate vessel repair liquidation unit may authorize one 30-day extension of time to file beyond the 90-day filing period.

(iii) *Supporting evidence.* Unless such evidence is already filed with Customs, each application for relief shall include

duplicate copies of the following evidence, in addition to any other documents the applicant wishes to submit in support of the application:

(A) All itemized bills, receipts, and invoices covering items specified in paragraph (a)(1) of this section, segregating the cost of those items for which relief is sought from all other items listed in the vessel repair entry.

(B) Full and complete photocopies of the relevant parts of the vessel's logs.

(C) Photocopies of any American Bureau of Shipping or other classification society report of the cause and type of damage and the nature of the remedial action taken, together with photocopies of any certifications of seaworthiness.

(D) A certification by the master or other responsible vessel officer with personal knowledge of the facts relating to the relief sought, including, but not limited to, details of the claimed stress of weather or other casualty, when and where it occurred, the damages due to such stress of weather or other casualty, and the place and date where the vessel was repaired or the equipment for the vessel was purchased.

(E) A certification by the master as to whether the repairs or equipment purchases were necessary for the safety and seaworthiness of the vessel to enable it to reach its port of destination in the United States.

(F) A written description of the circumstances involved by the master or other responsible vessel officer having knowledge of the facts when remission or refund is sought under the provisions of paragraph (c)(3)(ii) (relating to the use of American equipment and labor) or (c)(3)(iii) (relating to dunnage) of this section.

(G) In the case of LASH barges and similar unmanned vessels, the evidence required in paragraphs (d)(1)(iii) (B), (D), (E), and (F) of this section may be omitted, and in lieu thereof, the owner or operator of each vessel shall submit evidence showing that: (1) The vessel was inspected immediately prior to its lading aboard the vessel which transported it to a foreign port on the voyage in which the damage occurred, (2) the vessel was then found to be in seaworthy condition, (3) the damage was

discovered during the course of the foreign voyage, and (4) the repairs were necessary for the safety and seaworthiness of the vessel to enable it to reach its port of destination in the United States.

(iv) *Documentary evidence.* All documents submitted in support of an application must be certified by the master or owner of the vessel to be originals or copies of originals. If a vessel is owned or operated by a corporation, the master or an authorized corporate officer shall certify the documents. Documents in a foreign language shall be accompanied by an English translation that is certified for accuracy by the translator.

(v) *Action.* Within 60 days after receipt of an application for relief by a vessel repair liquidation unit, the appropriate vessel repair liquidation unit shall either approve or deny the application for relief or forward it to Headquarters, U.S. Customs Service, Attention: Entry Procedures and Carriers Branch, for advice, as provided in paragraph (c)(2) of this section. The appropriate vessel repair liquidation unit shall give prompt written notice of any final decision to the party who submitted the application. The notice shall advise the party of its right to petition for review of the decision under paragraph (d)(2) of this section. If the entry has been liquidated, reliquidation is required.

(vi) *Suspension of liquidation.* If an application for relief has been filed within the time period provided in paragraph (d)(1)(ii) of this section, liquidation of the vessel repair entry shall be suspended until 30 days after the date of the written notice provided for in paragraph (d)(1)(v) of this section.

(2) *Petition for review on a denial of an application for relief—(i) Form.* If an applicant is dissatisfied with the decision on its application for relief, the applicant may file a petition for review of that decision. The petition for review need not be in any particular form. The petition for review must identify the decision on the application for relief and must detail the exceptions taken to that decision. The petition shall be signed by the master, owner, or operator of the vessel, or their authorized agent. If the petition for review is filed

by a corporation, it must be signed by a duly authorized corporate officer.

(ii) *Place and time of filing.* The petition for review shall be addressed to the Commissioner of Customs and shall be filed with the appropriate vessel repair liquidation unit within 30 days after the date of the written notice to the party of the decision on the application for relief, as provided in paragraph (d)(1)(v) of this section. However, if good cause is shown, the appropriate vessel repair liquidation unit may authorize one additional 30-day extension of time.

(iii) *Action.* The appropriate vessel repair liquidation unit promptly shall transmit a copy of the petition for review, any comments and recommendations he may have on the petition for review, and the entire file on the application for relief to Headquarters, U.S. Customs Service, Attention: Entry Procedures and Carriers Branch, for decision. After notification of the decision by Headquarters, the appropriate vessel repair liquidation unit shall give written notification of that decision to the party who filed the petition for review. The notice will inform the party that no further suspension of liquidation will be permitted.

(iv) *Suspension of liquidation.* If an original petition for review is filed within the time provided for in paragraph (d)(2)(ii) of this section, liquidation of the vessel repair entry shall be suspended further until the vessel repair liquidation unit notifies the party who filed the petition of the decision on the petition. Following notification of the Headquarters decision to the party who filed the petition, the vessel repair liquidation unit shall promptly initiate liquidation of the entry in accordance with that decision.

(e) *Liquidation of vessel repair entries, time limits.* If evidence of cost is available and the appropriate vessel repair liquidation unit receives written notification from the master, owner, or operator of the vessel, or their authorized agent, that an application for relief will not be filed, the vessel repair liquidation unit promptly shall initiate liquidation of the entry. In all other cases in which the evidence of cost is available, the entry may be liquidated 60 days after arrival of the vessel, or at

the expiration of any extension of time granted under paragraph (b)(2)(ii) of this section to furnish evidence of cost, unless an application for relief is filed timely as provided in paragraph (d)(1)(ii) of this section. If an application for relief is filed timely, the vessel repair entry may be liquidated 30 days after the date of the written notice to the party who filed the application for relief, as provided in paragraph (d)(1)(v), unless a petition for review is filed timely under paragraph (d)(2)(ii) of this section. If a petition for review is filed timely, the vessel repair entry may be liquidated after the date of the notification of the decision on the petition to the party who filed the petition.

(f) *Protests.* Following liquidation of an entry, a protest under part 174 of this chapter may be filed against the decision to treat an item or a repair as dutiable under paragraph (a) of this section, or against the decision denying the remission or refund of vessel repair duties under paragraph (c) of this section.

(g) *Penalties—(1) Failure to report, enter, or pay duty.* If the owner or master of a vessel subject to the provisions of paragraph (a) of this section willfully or knowingly neglects or fails to report, make entry, and pay duties as required, or if he makes any false statement in respect of the purchases or repairs described in this section without reasonable cause to believe the truth of the statements, or aids or procures the making of any false statement as to any material matter without reasonable cause to believe the truth of the statement, the vessel, with its tackle, apparel, and furniture, or a monetary amount up to the value thereof as determined by the Secretary of the Treasury, to be recovered from the owner, shall be subject to seizure and forfeiture.

(2) *False declaration.* If any person required to file a declaration on Customs Form 226, by paragraph (b)(1) of this section, or to file an entry on Customs Form 226, by paragraph (b)(2) of this section, willfully and knowingly provides any false information, or willfully and knowingly omits any required information, that person shall

be subject to the criminal penalties provided for in 18 U.S.C. 1001.

[T.D. 80-237, 45 FR 64565, Sept. 30, 1980, as amended by T.D. 82-227, 47 FR 54065, Dec. 1, 1982; T.D. 83-214, 48 FR 46511, Oct. 13, 1983; T.D. 84-149, 49 FR 28698, July 16, 1984; T.D. 84-213, 49 FR 41163, Oct. 19, 1984; T.D. 85-123, 50 FR 29952, July 23, 1985; T.D. 91-77, 56 FR 46114, Sept. 10, 1991; T.D. 93-57, 58 FR 39655, July 26, 1993; T.D. 93-65, 58 FR 44128, Aug. 19, 1993; T.D. 93-66, 58 FR 44130, Aug. 19, 1993; T.D. 94-41, 59 FR 18481, Apr. 19, 1994; T.D. 95-77, 60 FR 50010, Sept. 27, 1995; T.D. 99-27, 64 FR 13675, Mar. 22, 1999]

EFFECTIVE DATE NOTE: By T.D. 01-24, 66 FR 16397, Mar. 26, 2001, § 4.14 was revised, effective Apr. 25, 2001. For the convenience of the user, the revised text is set forth as follows:

**§ 4.14 Equipment purchases by, and repairs to, American vessels.**

(a) *General provisions and applicability.* Under section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), purchases for or repairs made to certain vessels while they are outside the United States, including repairs made while those vessels are on the high seas, are subject to declaration, entry and payment of ad valorem duty. This does not apply to reimbursement paid to members of the regular crew of a vessel for labor expended in making repairs to the vessel. These requirements are effective upon the first arrival of affected vessels in the United States or Puerto Rico. The vessels subject to these requirements include those documented under U.S. law for the foreign or coastwise trades, as well as those which were previously documented under the laws of some foreign nation or are undocumented at the time that foreign shipyard repairs are performed, but which exhibit an intent to engage in those trades under Customs interpretations. Duty is based on actual foreign cost. This includes the original foreign purchase price of articles which have been imported into the United States and are later sent abroad for use. For the purposes of this section, expenditures made in American Samoa, the Guantanamo Bay Naval Station, Guam, Puerto Rico, or the U.S. Virgin Islands are considered to have been made in the United States, and are not subject to declaration, entry or duty. Under separate provisions of law, the cost of labor performed, and of parts and materials produced and purchased in Israel are not subject to duty under the vessel repair statute. Additionally, expenditures made in Canada or in Mexico are not subject to any vessel repair duties. Even in the absence of any liability for duty, it is still required that all repairs and purchases, including those made in Canada, Mexico, and Israel, be declared and entered.

(b) *Applicability to specific types of vessels.*

(1) *Fishing vessels.* As provided in § 4.15, vessels documented under U.S. law with a fishery endorsement are subject to vessel repair duties for covered foreign expenditures. Undocumented American fishing vessels which are repaired, or for which parts, nets or equipment are purchased outside the U.S. are also liable for duty.

(2) *Government-owned or chartered vessels.* Vessels normally subject to the vessel repair statute because of documentation or intended use are not excused from duty liability merely because they are either owned or chartered by the U.S. Government.

(3) *Vessels continuously away for two years or longer.*

(i) *Liability for expenditures throughout entire absence from U.S.* Vessels that continuously remain outside the United States for two years or longer are liable for duty on any fish nets and netting purchased at any time during the entire absence. Vessels designed and used primarily for transporting passengers or merchandise, which depart the United States for the sole purpose of obtaining equipment, parts, materials or repairs remain fully liable for duty regardless of the duration of their absence from the United States.

(ii) *Liability for expenditures made during first six months of absence.* Except as provided in paragraph (b)(3)(i) of this section, vessels that continuously remain outside the United States for two years or longer are liable for duty only on those expenditures which are made during the first six months of their absence. See paragraph (h)(3) of this section. However, even though some costs might not be dutiable because of the six-month rule, all repairs, materials, parts and equipment-related expenditures must be declared and entered.

(c) *Estimated duty deposit and bond requirements.* Generally, the person authorized to submit a vessel repair declaration and entry must either deposit or transmit estimated duties or produce evidence of a bond on Customs Form 301 at the first United States port of arrival before the vessel will be permitted to depart from that port. A continuous or single entry bond of sufficient value to cover all potential duty on the foreign repairs and purchases must be identified by surety, number and amount on the vessel repair declaration which is submitted at the port of first arrival. At the time the vessel repair entry is submitted by the vessel operator to the appropriate VRU port of entry as defined in paragraph (g) of this section, that same identifying information must be identified on the entry form. Sufficiency of the amount of the bond is within the discretion of Customs at the arrival port with claims for reduction in duty liability necessarily being subject to full consideration of evidence by Customs. Customs officials at the port of arrival may consult the appropriate Vessel Repair Unit

(VRU) port of entry as identified in paragraph (g) of this section or the staff of the Entry Procedures and Carriers Branch in Customs Headquarters in setting sufficient bond amounts. These duty, deposit, and bond requirements do not apply to vessels which are owned or chartered by the United States Government and are actually being operated by employees of an agency of the Government. If operated by a private party for a Federal agency under terms whereby that private party is liable under the contract for payment of the duty, there must be a deposit or a bond filed in an amount adequate to cover the estimated duty.

(d) *Declaration required.* When a vessel subject to this section first arrives in the United States following a foreign voyage, the owner, master, or authorized agent must submit a vessel repair declaration on Customs Form 226, a dual-use form used both for declaration and entry purposes, or must transmit its electronic equivalent. The declaration must be ready for presentation in the event that a Customs officer boards the vessel. If no foreign repair-related expenses were incurred, that fact must be reported either on the declaration form or by approved electronic means. The Customs port of arrival receiving either a positive or negative vessel repair declaration or electronic equivalent will immediately forward it to the appropriate VRU port of entry as identified in paragraph (g) of this section.

(e) *Entry required.* The owner, master, or authorized representative of the owner of any vessel subject to this section for which a positive declaration has been filed must submit a vessel repair entry on Customs Form 226 or transmit its electronic equivalent. The entry must show all foreign voyage expenditures for equipment, parts of equipment, repair parts, materials and labor. The entry submission must indicate whether it provides a complete or incomplete account of covered expenditures. The entry must be presented or electronically transmitted by the vessel operator to the appropriate VRU port of entry as identified in paragraph (g) of this section, so that it is received within ten calendar days after arrival of the vessel. Claims for relief from duty should be made generally as part of the initial submission, and evidence must later be provided to support those claims. Failure to submit full supporting evidence of cost within stated time limits, including any extensions granted under this section, is considered to be a failure to enter.

(f) *Time limit for submitting evidence of cost.* A complete vessel repair entry must be supported by evidence showing the cost of each item entered. If the entry is incomplete when submitted, evidence to make it complete must be received by the appropriate VRU port of entry as identified in paragraph (g) of this section within 90 calendar days

from the date of vessel arrival. That evidence must include either the final cost of repairs or, if the operator submits acceptable evidence that final cost information is not yet available, initial or interim cost estimates given prior to or after the work was authorized by the operator. The proper VRU port of entry may grant one 30-day extension of time to submit final cost evidence if a satisfactory written explanation of the need for an extension is received before the expiration of the original 90-day submission period. All extensions will be issued in writing. Inadequate, vague, or open-ended requests will not be granted. Questions as to whether an extension should be granted may be referred to the Entry Procedures and Carriers Branch in Customs Headquarters by the VRU ports of entry. Any request for an extension beyond a 30-day grant issued by a VRU must be submitted through that unit to the Entry Procedures and Carriers Branch, Customs Headquarters. In the event that all cost evidence is not furnished within the specified time limit, or is of doubtful authenticity, the VRU may refer the matter to the Customs Office of Investigations to begin procedures to obtain the needed evidence. That office may also investigate the reason for a failure to file or for an untimely submission. Unexplained or unjustified delays in providing Customs with sufficient information to properly determine duty may result in penalty action as specified in paragraph (j) of this section. Extensions granted for the filing of necessary evidence may also extend the time for filing Applications for Relief (see paragraph (i)(1) of this section).

(g) *Location and jurisdiction of vessel repair unit ports of entry.* Vessel Repair Units (VRUs) are responsible for processing vessel repair entries. VRUs are located in New York, New York; New Orleans, Louisiana; and San Francisco, California. The New York unit processes vessel repair entries received from ports of arrival on the Great Lakes and the Atlantic Coast of the United States north of, but not including, those located in the State of Virginia. The New Orleans unit processes vessel repair entries received from ports of arrival on the Atlantic Coast from and including those in the State of Virginia, southward, and from all United States ports of arrival on the Gulf of Mexico including ports in Puerto Rico. The San Francisco unit processes vessel repair entries received from all ports of entry on the Pacific Coast including those in Alaska and Hawaii.

(h) *Justifications for relief from duty.* Claims for relief from the assessment of vessel repair duties may be submitted to Customs. Relief may be sought under paragraphs (a), (d), (e), or (h) of the vessel repair statute (19 U.S.C. 1466(a), (d), (e), or (h)), each paragraph of which relates to a different type of claim as further specified in paragraphs (h)(1)–(h)(4) of this section.

(1) *Relief under 19 U.S.C. 1466(a)*. Requests for relief from duty under 19 U.S.C. 1466(a) consist of claims that a foreign shipyard operation or expenditure is not considered to be a repair or purchase within the terms of the vessel repair statute or as determined under judicial or administrative interpretations. Example: a claim that the shipyard operation is a vessel modification.

(2) *Relief from duty under 19 U.S.C. 1466(d)*. Requests for relief from duty under 19 U.S.C. 1466(d) consist of claims that a foreign shipyard operation or expenditure involves any of the following:

(i) *Stress of weather or other casualty*. Relief will be granted if good and sufficient evidence supports a finding that the vessel, while in the regular course of its voyage, was forced by stress of weather or other casualty, while outside the United States, to purchase such equipment or make those repairs as are necessary to secure the safety and seaworthiness of the vessel in order to enable it to reach its port of destination in the United States. For the purposes of this paragraph, a "casualty" does not include any purchase or repair made necessary by ordinary wear and tear, but does include the failure of a part to function if it is proven that the specific part was repaired, serviced, or replaced in the United States immediately before the start of the voyage in question, and then failed within six months of that date.

(ii) *U.S. parts installed by regular crew or residents*. Relief will be granted if equipment, parts of equipment, repair parts, or materials used on a vessel were manufactured or produced in the United States and were purchased in the United States by the owner of the vessel. It is required under the statute that residents of the United States or members of the regular crew of the vessel perform any necessary labor in connection with such installations.

(iii) *Dunnage*. Relief will be granted if any equipment, equipment parts, materials, or labor were used for the purpose of providing dunnage for the packing or shoring of cargo, for erecting temporary bulkheads or other similar devices for the control of bulk cargo, or for temporarily preparing tanks for carrying liquid cargoes.

(3) *Relief under 19 U.S.C. 1466(e)*. Requests for relief from duty under 19 U.S.C. 1466(e) relate in pertinent part to matters involving vessels normally subject to the vessel repair statute, but that continuously remain outside the United States for two years or longer. Vessels that continuously remain outside the United States for two years or longer may qualify for relief from duty on expenditures made later than the first six months of their absence. See paragraph (b)(3)(ii) of this section.

(4) *Relief under 19 U.S.C. 1466(h)*. Requests for relief from duty under 19 U.S.C. 1466(h) consist of claims that a foreign shipyard op-

eration or expenditure involves any of the following:

(i) *Expenditures on LASH barges*. Relief will be granted with respect to the cost of equipment, parts, materials, or repair labor for Lighter Aboard Ship (LASH) operations accomplished abroad.

(ii) *Certain spare repair parts or materials*. Relief will be granted with respect to the cost of spare repair parts or materials which are certified by the vessel owner or master to be for use on a cargo vessel, but only if duty was previously paid under the appropriate commodity classification(s) as found in the Harmonized Tariff Schedule of the United States when the article first entered the United States.

(iii) *Certain spare parts necessarily installed on a vessel prior to their first entry into the United States*. Relief will be granted with respect to the cost of spare parts only, which have been necessarily installed prior to their first entry into the United States with duty payment under the appropriate commodity classification(s) as found in the Harmonized Tariff Schedule of the United States.

(i) *General procedures for seeking relief*.

(1) *Applications for Relief*. Relief from the assessment of vessel repair duty will not be granted unless an Application for Relief is filed with Customs. Relief will not be granted based merely upon a claim for relief made at the time of entry under paragraph (e) of this section. The filing of an Application for Relief is not required, nor is one required to be presented in any particular format, but if filed it must clearly present the legal basis for granting relief, as specified in paragraph (h) of this section. An Application must also state that all repair operations performed aboard a vessel during the one-year period prior to the current submission have been declared and entered. A valid Application is required to be supported by complete evidence as detailed in paragraphs (i)(1)(i)-(vi) and (i)(2) of this section. Except as further provided in this paragraph, the deadline for receipt of an Application and supporting evidence is 90 calendar days from the date that the vessel first arrived in the United States following foreign operations. The provisions for extension of the period for filing required evidence in support of an entry, as set forth in paragraph (f) of this section, are applicable to extension of the time period for filing Applications for Relief as well. Applications must be addressed and submitted by the vessel operator to the appropriate VRU port of entry and will be decided in that unit. The VRUs may seek the advice of the Entry Procedures and Carriers Branch in Customs Headquarters with regard to any specific item or issue which has not been addressed by clear precedent. If no Application is filed or if a submission which does not meet the

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minimal standards of an Application for Relief is received, the duty amount will be determined without regard to any potential claims for relief from duty (see paragraph (h) of this section). Each Application for Relief must include copies of:

(i) Itemized bills, receipts, and invoices for items shown in paragraph (e) of this section. The cost of items for which a request for relief is made must be segregated from the cost of the other items listed in the vessel repair entry;

(ii) Photocopies of relevant parts of vessel logs, as well as of any classification society reports which detail damage and remedies;

(iii) A certification by the senior officer with personal knowledge of all relevant circumstances relating to casualty damage (time, place, cause, and nature of damage);

(iv) A certification by the senior officer with personal knowledge of all relevant circumstances relating to foreign repair expenditures (time, place, and nature of purchases and work performed);

(v) A certification by the master that casualty-related expenditures were necessary to ensure the safety and seaworthiness of the vessel in reaching its United States port of destination; and

(vi) Any permits or other documents filed with or issued by any United States Government agency other than Customs regarding the operation of the vessel that are relevant to the request for relief.

(2) *Additional evidence.* In addition, copies of any other evidence and documents the applicant may wish to provide as evidentiary support may be submitted. Elements of applications which are not supported by required evidentiary elements will be considered fully dutiable. All documents submitted must be certified by the master, owner, or authorized corporate officer to be originals or copies of originals, and if in a foreign language, they must be accompanied by an English translation, certified by the translator to be accurate. Upon receipt of an Application for Relief by the VRU within the prescribed time limits, a determination of duties owed will be made. After a decision is made on an Application for Relief by a VRU, the applicant will be notified of the right to protest any adverse decision.

(3) *Administrative protest.* Following the determination of duty owing on a vessel repair entry, a protest may be filed under 19 U.S.C. 1514(a)(2) as the only and final administrative appeal. The procedures and time limits applicable to protests filed in connection with vessel repair entries are the same as those provided in part 174 of this chapter. In particular, the applicable protest period will begin on the date of the issuance of the decision giving rise to the protest as reflected on the relevant correspondence from the appropriate VRU.

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(j) *Penalties.*—(1) *Failure to report, enter, or pay duty.* It is a violation of the vessel repair statute if the owner or master of a vessel subject to this section willfully or knowingly neglects or fails to report, make entry, and pay duties as required; makes any false statements regarding purchases or repairs described in this section without reasonable cause to believe the truth of the statements; or aids or procures any false statements regarding any material matter without reasonable cause to believe the truth of the statement. If a violation occurs, the vessel, its tackle, apparel, and furniture, or a monetary amount up to their value as determined by Customs, is subject to seizure and forfeiture and is recoverable from the owner (see §162.72 of this chapter).

(2) *False declaration.* If any person required to file a vessel repair declaration or entry under this section, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement, that person will be subject to the criminal penalties provided for in 18 U.S.C. 1001.

#### §4.15 Fishing vessels touching and trading at foreign places.

(a) Before any vessel documented with a fishery license endorsement shall touch and trade at a foreign port or place, the master shall obtain from the port director a permit on Customs Form 1379 to touch and trade.

When a fishing vessel departs from the United States and there is an intent to stop at a foreign port (1) to lade vessel equipment which was preordered, (2) to purchase and lade vessel equipment, or (3) to purchase and lade vessel equipment to replace existing vessel equipment, the master of the vessel must either clear for that foreign port or obtain a permit to touch and trade, whether or not the vessel will engage in fishing on that voyage.<sup>28</sup> Purchases of such equipment, whether intended at the time of departure or not, are subject to declaration, entry, and payment of duty pursuant to section 466 of the

<sup>28</sup>If such a vessel puts into a foreign port or place and only obtains bunkers, stores, or supplies suitable for a fishing voyage, it is not considered to have touched and traded there. Fish nets and netting are considered vessel equipment and not vessel supplies.

<sup>29–61</sup> [Reserved]

Tariff Act of 1930, as amended (19 U.S.C. 1466). The duty may be remitted if it is established that the purchases resulted from stress of weather or other casualty.

(b) Upon the arrival of a documented vessel with a fishery endorsement which has put into a foreign port or place, the master shall report its arrival, make entry, and conform in all respects to the regulations applicable in the case of a vessel arriving from a foreign port.

(c) If a vessel which has been granted a permit to touch and trade arrives at a port in the United States, whether or not the vessel has touched at a foreign port or place, such permit shall forthwith be surrendered to the port director.

(d) No permit to touch and trade shall be issued to a vessel which does not have a Certificate of Documentation with a fishery license endorsement.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 77-28, 42 FR 3161, Jan. 17, 1977; T.D. 83-214, 48 FR 46512, Oct. 13, 1983; T.D. 94-24, 59 FR 13200, Mar. 21, 1994; T.D. 95-77, 60 FR 50010, Sept. 27, 1995]

#### § 4.16 [Reserved]

#### § 4.17 Vessels from discriminating countries.

The prohibition against imports in, and the penalty of forfeiture of, certain vessels from countries which discriminate against American vessels provided for in subsections 2 and 3 of paragraph J, section IV, Tariff Act of 1913, as amended by the act of March 4, 1915 (19 U.S.C. 130, 131), shall be enforced only in pursuance of specific instructions issued and published from time to time by the Secretary of the Treasury or such other officer as the Secretary may designate. (See also §§ 4.20(c) and 159.42 of this chapter.)

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 73-175, 38 FR 17444, July 2, 1973]

### TONNAGE TAX AND LIGHT MONEY

#### § 4.20 Tonnage taxes.

(a) Except as specified in § 4.21, a regular tonnage tax or duty of 9 cents per net ton, not to exceed in the aggregate 45 cents per net ton in any 1 year, shall

be imposed at each entry on all vessels which shall be entered in any port of the United States from any foreign port or place in North America, Central America, the West Indies, the Bahama Islands, the Bermuda Islands, the coast of South America bordering on the Caribbean Sea (considered to include the mouth of the Orinoco River), or the high seas adjacent to the U.S. or the above listed foreign locations, and on all vessels (except vessels of the U.S., recreational vessels, and barges, as defined in § 2101 of Title 46) that depart a U.S. port or place and return to the same port or place without being entered in the United States from another port or place, and regular tonnage tax of 27 cents per net ton, not to exceed \$1.35 cents per net ton per annum, shall be imposed at each entry on all vessels which shall be entered in any port of the United States from any other foreign port. In determining the port of origin of a voyage to the United States and the rate of tonnage tax, the following shall be used as a guide:

(1) When the vessel has proceeded in ballast from a port to which the 27-cent rate is applicable to a port to which the 9-cent rate applies and there has laden cargo or taken passengers, tonnage tax upon entry in the United States shall be assessed at the 9-cent rate.

(2) The same rate shall be applied in a case in which the vessel has transported cargo or passengers from a 27-cent port to a 9-cent port when all such cargo or passengers have been unladen or discharged at the 9-cent port, without regard to whether the vessel thereafter has proceeded to the United States in ballast or with cargo or passengers laden or taken on board at the 9-cent port.

(3) The 27-cent rate shall be applied when the vessel proceeds from a 9-cent port to a 27-cent port en route to the United States under circumstances similar to paragraph (a) (1) or (2) of this section.

(4) If the vessel arrives in the United States with cargo or passengers taken at two or more ports to which different rates are applicable, tonnage tax shall be collected at the higher rate.

(b) The tonnage year shall be computed from the date of the first entry

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of the vessel concerned, without regard to the rate of the payment made at that entry, and shall expire on the day preceding the corresponding date of the following year. There may be 5 payments at the maximum (27 cent) and 5 at the minimum (9-cent) rate during a tonnage year, so that the maximum assessment of tonnage duty may amount to \$1.80 per net ton for the tonnage year of a vessel engaged in alternating trade.

(c) A vessel shall also be subject on every entry from a foreign port or place, whether or not regular tonnage tax is payable on the particular entry, to the payment of a special tonnage tax and to the payment of light money at the rates and under the circumstances specified in the following table:

Classes of vessels	Rate per net ton		
	Regular tax	Special tax	Light money
Vessels of the United States:			
1. Under provisional register, without regard to citizenship of officers .....	\$0.09 or \$0.27	.....	.....
2. All others:			
(i) If all the officers are citizens .....	.09 or .27	.....	.....
(ii) If any officer is not a citizen .....	.09 or .27	<sup>1</sup> 0.50	<sup>1</sup> .50
Undocumented vessels which are owned by citizens <sup>2</sup> .....	.09 or .27	.50	<sup>3</sup> .50
Foreign vessels:			
1. Of nations whose vessels are exempted from special tax or light money .....	.09 or .27	.....	.....
2. All others:			
(i) Built in the U.S. ....	.09 or .27	.30	.50
(ii) Not built in the U.S. ....	.09 or .27	.50	.50
(iii) In addition to (i) or (ii) of 2., Foreign Vessels, when entering from a foreign port or place where vessels of the U.S. are not ordinarily permitted to enter and trade <sup>3a</sup> .....	.09 or .27	4.20	4.50

<sup>1</sup> This does not apply on the first arrival of a vessel in a port of the United States from a foreign or intercoastal voyage if all the officers who are not citizens are below the grade of master and are filling vacancies which occurred on the voyage.

<sup>2</sup> This special tax and light money do not apply if the vessel is documented as a vessel of the United States before leaving the port.

<sup>3</sup> This does not apply if the vessel is under a certificate of protection and the owner or master files with the port director the oath required by 46 U.S.C. App. 129. An unrecorded bill of sale is not such a document as will exempt a vessel from the payment of light money under 46 U.S.C. App. 128, and the recording of such bill of sale after the arrival of the vessel is not sufficient to relieve it from the payment of the tax.

<sup>3a</sup> The Democratic People's Republic of Korea (North Korea), does not ordinarily permit vessels of the United States to enter and trade.

<sup>4</sup> This is to be collected on each entry of a vessel from such a port or place.

(d) Tonnage tax shall be imposed upon a vessel even though she enters a port of the United States only for orders.

(e) The fact that a vessel passes through the Panama Canal does not affect the rate of tonnage tax otherwise applicable to the vessel.

(f) For the purpose of computing tonnage tax, the net tonnage of a vessel stated in the vessel's marine document shall be accepted unless (1) such statement is manifestly wrong, in which case the net tonnage shall be estimated, pending admeasurement of the vessel, or the tonnage reported for her by any recognized classification society may be accepted, or (2) an appendix is attached to the marine document showing a net tonnage ascertained under the so-called "British rules" or the rules of any foreign country which

have been accepted as substantially in accord with the rules of the United States, in which case the tonnage so shown may be accepted and the date the appendix was issued shall be noted on the tonnage tax certificate, Customs Form 1002, and on the Vessel Entrance or Clearance Statement, Customs Form 1300. For the purpose of computing tonnage tax on a vessel with a tonnage mark and dual tonnages, the higher of the net tonnages stated in the vessel's marine document or tonnage certificate shall be used unless the Customs officer concerned is satisfied by report of the boarding officer, statement or certificate of the master, or otherwise that the tonnage mark was not submerged at the time of arrival. Whether the vessel has a tonnage mark, and if so, whether the mark was submerged on arrival, shall be

noted on Customs Form 1300 by the boarding officer.

(g) The decision of the Commissioner of Customs is the final administrative decision on any question of interpretation relating to the collection of tonnage tax or to the refund of such tax when collected erroneously or illegally, and any question of doubt shall be referred to him for instructions.

(h) Any person adversely affected by a decision of the Commissioner of Customs relating to the collection of tonnage tax, or to the refund of such tax when collected erroneously or illegally, may appeal the decision in the Court of International Trade provided that the appeal action is commenced in accordance with the rules of the Court within 2 years after the cause of action first accrues.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 71-169, 36 FR 12603, July 2, 1971; T.D. 75-110, 40 FR 21027, May 15, 1975; T.D. 76-280, 41 FR 42647, Sept. 28, 1976; T.D. 79-276, 44 FR 61956, Oct. 29, 1979; T.D. 82-145, 47 FR 35475, Aug. 16, 1982; T.D. 85-91, 50 FR 21429, May 24, 1985; T.D. 85-90, 50 FR 21430, May 24, 1985; T.D. 93-12, 58 FR 13196, Mar. 10, 1993; T.D. 95-76, 60 FR 48028, Sept. 18, 1995; T.D. 97-82, 62 FR 51769, Oct. 3, 1997; T.D. 00-22, 65 FR 16515, Mar. 29, 2000]

#### § 4.21 Exemptions from tonnage taxes.

(a) Tonnage taxes and light money shall be suspended in whole or in part whenever the President by proclamation shall so direct.

(b) The following vessels, or vessels arriving in the circumstances as defined below, shall be exempt from tonnage tax and light money:

(1) It comes into port for bunkers (including water), sea stores, or ship's stores; transacts no other business in the port; and departs within 24 hours after its arrival.

(2) It arrives in distress, even though required to enter.

(3) It is brought into port by orders of United States naval authorities and transacts no business while in port other than the taking on of bunkers, sea stores, or ship's stores.

(4) It is a vessel of war or other vessel which is owned by, or under the complete control and management of the United States or the government of a foreign country, and which is not carrying passengers or merchandise in

trade or, if in ballast, which is not arriving from a foreign port during the usual course of its employment as a vessel engaged in trade.

(5) It is a yacht or other pleasure vessel not carrying passengers or merchandise in trade.

(6) It is engaged exclusively in scientific activities.

(7) It is engaged exclusively in laying or repairing cables.

(8) It is engaged in whaling or other fisheries, even though it may have entered a foreign port for fuel or supplies, if it did not carry passengers or merchandise in trade.

(9) It is a passenger vessel making three trips or more a week between a port of the United States and a foreign port.

(10) It is used exclusively as a ferry boat, including a car ferry.

(11) It is a tug with a Great Lakes license endorsement on its vessel document, when towing vessels which are required to make entry.

(12) It is a documented vessel with a Great Lakes license endorsement which has touched at an intermediate foreign port or ports during a coastwise voyage.

(13) It enters otherwise than by sea from a foreign port at which tonnage or lighthouse duties or equivalent taxes are not imposed on vessels of the United States (applicable only where the vessel arrives from a port in the province of Ontario, Canada).

(14) It is a coastwise-qualified vessel solely engaged in the coastwise trade (although arriving from a foreign port or place, it is engaged in the transportation of merchandise or passengers, or the towing of a vessel other than a vessel in distress, between points in the U.S. via a foreign point) (see §§ 4.80, 4.80a, 4.80b, and 4.92).

(15) It is a vessel entering directly from the Virgin Islands (U.S.), American Samoa, the islands of Guam, Wake, Midway, Canton, or Kingman Reef, or Guantanamo Bay Naval Station.

(16) It is a vessel making regular daily trips between any port of the United States and any port in Canada wholly upon interior waters not navigable to the ocean, except that such a

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vessel shall pay tonnage taxes upon her first arrival in each calendar year.

(17) It is a vessel arriving at a port in the United States which, while proceeding between ports in the United States, touched at a foreign port under circumstances which would have exempted it from making entry under section 441(4), Tariff Act of 1930, as amended (19 U.S.C. 1441(4)), had it touched at a United States port.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 72-264, 37 FR 20317, Sept. 29, 1972; T.D. 75-110, 40 FR 21027, May 15, 1975; T.D. 75-206, 40 FR 34586, Aug. 18, 1975; T.D. 79-276, 44 FR 61956, Oct. 29, 1979; T.D. 83-214, 48 FR 46512, Oct. 13, 1983; T.D. 93-12, 58 FR 13197, Mar. 10, 1993]

#### § 4.22 Exemptions from special tonnage taxes.

Vessels of the following nations are exempted by treaties, Presidential proclamations, or orders of the Secretary of the Treasury from the payment of any higher tonnage duties than are applicable to vessels of the United States and are exempted from the payment of light money:

Algeria.  
Antigua and Barbuda.  
Arab Republic of Egypt.  
Argentina.  
Australia.  
Austria.  
Bahamas, The.  
Bahrain.  
Bangladesh.  
Barbados.  
Belgium.  
Belize.  
Bermuda.  
Bolivia.  
Brazil.  
Bulgaria.  
Burma.  
Canada.  
Chile.  
Colombia.  
Costa Rica.  
Cuba.  
Cyprus.  
Czechoslovakia.  
Denmark (including the Faeroe Islands).  
Dominica.  
Dominican Republic.  
Ecuador.  
El Salvador.  
Estonia.  
Ethiopia.  
Fiji.  
Finland.  
France.

Gambia, The.  
German Democratic Republic.  
German Federal Republic.  
Ghana.  
Great Britain (including the Cayman Islands).  
Greece.  
Greenland.  
Guatemala.  
Guinea, Republic of.  
Guyana.  
Haiti.  
Honduras.  
Hong Kong.  
Hungarian People's Republic  
Iceland.  
India.  
Indonesia.  
Iran.  
Iraq.  
Ireland (Eire).  
Israel.  
Italy.  
Ivory Coast, Republic of.  
Jamaica.  
Japan.  
Kenya.  
Korea.  
Kuwait.  
Latvia.  
Lebanon.  
Liberia.  
Libya.  
Luxembourg.  
Malaysia.  
Malta.  
Marshall Islands, Republic of.  
Mauritius.  
Mexico.  
Monaco.  
Morocco.  
Nauru, Republic of.  
Netherlands.  
Netherlands Antilles.  
New Zealand.  
Nicaragua.  
Nigeria.  
Norway.  
Oman.  
Pakistan.  
Panama.  
Papua New Guinea.  
Paraguay.  
People's Republic of China.  
Peru.  
Philippines.  
Poland.  
Portugal.  
Qatar.  
Rumania.  
Saudi Arabia.  
Senegal.  
Singapore, Republic.  
Somali, Republic.  
Spain.  
Sri Lanka.  
St. Vincent and The Grenadines.

Surinam, Republic of.  
 Sweden.  
 Switzerland.  
 Syrian Arab Republic.  
 Taiwan.  
 Thailand.  
 Togo.  
 Tonga.  
 Tunisia.  
 Turkey.  
 Tuvalu.  
 Union of South Africa.  
 Union of Soviet Socialist Republics.  
 United Arab Emirates (Abu Dhabi, Ajman,  
 Dubai, Fujairah, Ras Al Khaimah, Sharjah,  
 and Umm Al Qaiwain).  
 Uruguay.  
 Vanuatu, Republic of.  
 Venezuela.  
 Yugoslavia.  
 Zaire.

[28 FR 14596, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 4.22, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

**§ 4.23 Certificate of payment and cash receipt.**

Upon each payment of tonnage tax or light money, the master of the vessel shall be given a certificate on Customs Form 1002 on which the control number of the cash receipt (Customs Form 368 or 368A) upon which payment was recorded shall be written. This certificate shall constitute the official evidence of such payment and shall be presented upon each entry during the tonnage year to establish the date of commencement of the tonnage year and to insure against overpayment. In the absence of the certificate, evidence of payment of tonnage tax shall be obtained from the port director to whom the payment was made.

[T.D. 85-71, 50 FR 15415, Apr. 18, 1985, as amended by T.D. 92-56, 57 FR 24943, June 12, 1992]

**§ 4.24 Application for refund of tonnage tax.**

(a) The authority to make refunds in accordance with section 26 of the Act of June 26, 1884 (46 U.S.C. 8) of regular tonnage taxes described in § 4.20(a) is delegated to the Directors of the ports where the collections were made. If any doubt exists, the case shall first be re-

ferred to Headquarters, U.S. Customs Service for advice.

(b) Each application for refund of regular or special tonnage tax or light money prepared in accordance with this section shall be filed with the Customs officer to whom payment was made. After verification of the pertinent facts asserted in the claim, the application shall be forwarded with any necessary report or recommendation to the appropriate port director. Applications for refund of special tonnage tax and light money (see § 4.20(c)) with the reports and recommendations submitted therewith shall be forwarded by the port director to the Commissioner of Customs for decision. Any refund authorized by the Port Director under paragraph (a) of this section or any refund of special tonnage tax or light money authorized by the Commissioner of Customs shall be made by the appropriate Customs officer. The records of tonnage tax shall be clearly noted to show each refund authorized.

(c) The application shall be a direct request for the refund of a definite sum, showing concisely the reasons therefor, the nationality and name of the vessel, and the date, place, and amount of each payment for which refund is requested. The application shall be made within 1 year from date of the payment. A protest against a payment shall not be accepted as an application for its refund.

(d) When the application is based upon a claim that more than five payments of regular tax at either the 2-cent or the 6-cent rate have been made during a tonnage year, the application shall be supported by a statement from the appropriate Customs officer at the port where the application is submitted and from the appropriate Customs officer at each port at which any claimed payment was made verifying the facts and showing in each case whether refunds have been authorized.

(e) The application shall include a certificate by the owner or by the owner's agent that payment of tonnage tax at the applicable rate has been or will be made for each entry of the vessel on a voyage on which that rate is applicable before the end of the current tonnage year, exclusive of any payment which has been refunded or which may

be refunded as a result of such application.

(f) The owner or operator of the vessel involved, or other party in interest, may file with the port Director a petition addressed to the Commissioner of Customs for a review of the port director's decision on an application for refund of regular tonnage tax. Such petition shall be filed in duplicate within 30 days from the date of notice of the initial decision, shall completely identify the case, and shall set forth in detail the exceptions to the decision.

[T.D. 71-274, 36 FR 21025, Nov. 3, 1971, as amended by T.D. 95-77, 60 FR 50010, Sept. 27, 1995]

#### LANDING AND DELIVERY OF CARGO

##### § 4.30 Permits and special licenses for unloading and lading.

(a) Except as prescribed in paragraph (f), (g), or (k) of this section or in § 123.8 of this chapter, and except in the case of a vessel exempt from entry or clearance fees under 19 U.S.C. 288, no passengers, cargo, baggage, or other article shall be unladen from a vessel which arrives directly or indirectly from any port or place outside the Customs territory of the U.S., including the adjacent waters (see § 4.6 of this part), or from a vessel which transits the Panama Canal and no cargo, baggage, or other article shall be laden on a vessel destined to a port or place outside the Customs territory of the U.S., including the adjacent waters (see § 4.6 of this part) if Customs supervision of such lading is required, until the port director shall have issued a permit or special license therefore on Customs Form 3171 or electronically pursuant to an authorized electronic data interchange system or other means of communication approved by the Customs Service.

(1) U.S. and foreign vessels arriving at a U.S. port directly from a foreign port or place are required to make entry, whether it be formal or, as provided in § 4.8, preliminary, before the port director may issue a permit or special license to lade or unlade.

(2) U.S. vessels arriving at a U.S. port from another U.S. port at which formal entry was made may be issued a permit or special license to lade or unlade

without having to make either preliminary or formal entry at the second and subsequent ports. Foreign vessels arriving at a U.S. port from another U.S. port at which formal entry was made may be issued a permit or special license to lade or unlade at the second and subsequent ports prior to formal entry without the necessity of making preliminary entry. In these circumstances, after the master has reported arrival of the vessel, the port director may issue the permit or special license or may, in his discretion, require the vessel to be boarded, the master to make an oath or affirmation to the truth of the statements contained in the vessel's manifest to the Customs officer who boards the vessel, and require delivery of the manifest prior to issuing the permit.

(b) Application for a permit or special license will be made by the master, owner, or agent of the vessel on Customs Form 3171, or electronically pursuant to an authorized electronic data interchange system or other means of communication approved by the Customs Service, and will specifically indicate the type of service desired at that time, unless a term permit or term special license has been issued. Vessels that arrive in a Customs port with more than one vessel carrier sharing or leasing space on board the vessel (such as under a vessel sharing or slot charter arrangement) are required to indicate on the CF 3171 all carriers on board the vessel and indicate whether each carrier is transmitting its cargo declaration electronically or is presenting it on the Customs Form 1302. In the case of a term permit or term special license, upon entry of each vessel, a copy of the term permit or special license must be submitted to Customs during official hours in advance of the rendering of services so as to update the nature of the services desired and the exact times they will be needed. Permits must also be updated to reflect any other needed changes including those in the name of the vessel as well as the slot charter or vessel sharing parties. An agent of a vessel may limit his application to operations involved in the entry and unloading of the vessel or to operations involved in its lading

and clearance. Such limitation will be specifically noted on the application.

(c) The request for a permit or a special license shall not be approved (previously issued term permits or special licenses shall be revoked) unless the carrier complies with the provisions of paragraphs (l) and (m) of this section regarding terminal facilities and employee lists, and the required cash deposit or bond has been filed on Customs Form 301, containing the bond conditions set forth in §113.64 of this chapter relating to international carriers.<sup>62</sup> When a carrier has on file a bond on Customs Form 301, containing the bond conditions set forth in §113.63 of this chapter relating to basic custodial bond conditions, no further bond shall be required solely by reason of the unloading or lading at night or on a Sunday or holiday of merchandise or baggage covered by bonded transportation entries. Separate bonds shall be required if overtime services are requested by different principals.

(d) Except as prescribed in paragraph (f) or (g) of this section, a separate application for a permit or special license shall be filed in the case of each arrival.

(e) Stevedoring companies and others concerned in lading or unloading merchandise, or in removing or otherwise securing it, shall ascertain that the applicable preliminary Customs requirements have been complied with before commencing such operation, since per-

formance in the absence of such compliance render them severally liable to the penalties prescribed in section 453, Tariff Act of 1930, even though they may not be responsible for taking the action necessary to secure compliance.

(f) The port director may issue a term permit on Customs Form 3171, which will remain in effect until revoked by the port director, terminated by the carrier, or automatically cancelled by termination of the supporting continuous bond, to unlade merchandise, passengers, or baggage, or to lade merchandise or baggage during official hours.

(g) The port director may issue a term special license on Customs Form 3171, which will remain in effect until revoked by the port director, terminated by the carrier, or automatically cancelled by termination of the supporting continuous bond, to unlade merchandise, passengers, or baggage, or to lade merchandise or baggage during overtime hours or on a Sunday or holiday when Customs supervision is required. (See §24.16 of this chapter regarding pleasure vessels.)

(h) A special license for the unloading or lading of a vessel at night or on a Sunday or holiday shall be refused by the port director if the character of the merchandise or the conditions or facilities at the place of unloading or lading render the issuance of such special license dangerous to the revenue. In no case shall a special license for unloading or lading at night or on a Sunday or holiday be granted except on the ground of commercial necessity.

(i) The port director shall not issue a permit or special license to unlade cargo or equipment of vessels arriving directly or indirectly from any port or place outside the United States, except on compliance with one or more of the following conditions:

(1) The merchandise shall have been duly entered and permits issued; or

(2) A bond on Customs Form 301, containing the bond conditions set forth in §113.64 of this chapter relating to international carriers, or cash deposit shall have been given; or

(3) The merchandise is to be discharged into the custody of the port director as provided for in section 490(b), Tariff Act of 1930.

<sup>62</sup> "Before any such special license to unlade shall be granted, the master, owner, or agent of such vessel or vehicle, or the person in charge of such vehicle, shall be required to deposit sufficient money to pay, or to give a bond in an amount to be fixed by the Secretary conditioned to pay, the compensation and expenses of the customs officers and employees assigned to duty in connection with such unloading at night or on Sunday or a holiday, in accordance with the provisions of section 5 of the act of February 13, 1911, as amended (U.S.C. 1952 edition, title 19 sec. 267). In lieu of such deposit or bond the owner or agent of any vessel or vehicle or line of vessels or vehicles may execute a bond in an amount to be fixed by the Secretary of the Treasury to cover and include the issuance of special licenses for the unloading of such vessels or vehicles for a period not to exceed one year. \* \* \*" (Tariff Act of 1930, section 451, as amended, 19 U.S.C. 1451)

<sup>63-66</sup> [Reserved]

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(j) Bonds are not required under this section for vessels owned by the United States and operated for its account.

(k) In the case of vessels of 5 net tons or over which are used exclusively as pleasure vessels and which arrive from any country, the port director in his discretion and under such conditions as he deems advisable may allow the required application for unloading passengers and baggage to be made orally, and may authorize his inspectors to grant oral permission for unloading at any time, and to grant requests on Customs Form 3171 for overtime services.

(l) A permit to unlade pursuant to this part 4 or part 122 of this chapter shall not be granted unless the port director determines that the applicant provides or the terminal at which the applicant will unlade the cargo provides (1) sufficient space, capable of being locked, sealed, or otherwise secured, for the storage immediately upon unloading of cargo whose weight-to-value ratio renders it susceptible to theft or pilferage and of packages which have been broken prior to or in the course of unloading; and (2) an adequate number of vehicles, capable of being locked, sealed, or otherwise secured, for the transportation of such cargo or packages between the point of unloading and the point of storage. A term permit to unlade shall be revoked if the port director determines subsequent to such issuance that the requirements of this paragraph have not been met.

(m) A permit to unlade pursuant to this part 4 or part 122 of this chapter shall not be granted to an importing carrier, and a term permit to unlade previously granted to such a carrier shall be revoked, (1) if such carrier, within 30 days after the date of receipt of a written demand by the port director, does not furnish a written list of the names, addresses, social security numbers, and dates and places of birth of persons it employs in connection with the unloading, storage and delivery of imported merchandise; or (2) if, having furnished such a list, the carrier does not advise the port director in writing of the names, addresses, social security numbers, and dates and places of birth of any new personnel employed in connection with the unloading, stor-

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age and delivery of imported merchandise within 10 days after such employment. If the employment of any such person is terminated, the carrier shall promptly advise the port director. For the purposes of this part, a person shall not be deemed to be employed by a carrier if he is an officer or employee of an independent contractor engaged by a carrier to load, unload, transport or otherwise handle cargo.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 68-247, 33 FR 15022, Oct. 8, 1968; T.D. 71-39, 36 FR 1891, Feb. 3, 1971; T.D. 72-189, 38 FR 13975, July 15, 1972; T.D. 73-27, 38 FR 2448, Jan. 26, 1973; T.D. 84-213, 49 FR 41163, Oct. 19, 1984; T.D. 88-12, 53 FR 9314, Mar. 22, 1988; T.D. 92-74, 57 FR 35751, Aug. 11, 1992; T.D. 93-66, 58 FR 44130, Aug. 19, 1993; T.D. 93-96, 58 FR 67316, Dec. 21, 1993; T.D. 94-2, 58 FR 68523, Dec. 28, 1993; T.D. 95-77, 60 FR 50010, Sept. 27, 1995; T.D. 96-11, 61 FR 2414, Jan. 26, 1996; T.D. 93-96, 61 FR 3569, Feb. 1, 1996; T.D. 00-4, 65 FR 2873, Jan. 19, 2000]

#### §4.31 Unloading or transshipment due to casualty.

(a) When any cargo or stores of a vessel have been unladen or transshipped at any place in the United States or its Customs waters other than a port of entry because of accident, stress of weather, or other necessity, no penalty shall be imposed under section 453 or 586(a), Tariff Act of 1930, if due notice is given to the director of the port at which the vessel thereafter first arrives and satisfactory proof is submitted to him as provided for in section 586(f), Tariff Act of 1930, as amended, regarding such accident, stress of weather, or other necessity. The port director may accept the certificates of the master and two or more officers or members of the crew of the vessel, of whom the person next to the master in command shall be one, as proof that the unloading or transshipment was necessary by reason of unavoidable cause.

(b) The port director may then permit entry of the vessel and its cargo and permit the unloading of the cargo in such place at the port as he may deem proper. Unless its transportation has been in violation of the coastwise laws, the cargo may be cleared through Customs at the port where it is discharged or forwarded to the port of original

destination under an entry for immediate transportation or for transportation and exportation, as the case may be. All regulations shall apply in such cases as if the unloading and delivery took place at the port of original destination.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 95-77, 60 FR 50010, Sept. 27, 1995]

**§ 4.32 Vessels in distress; landing of cargo.**

(a) When a vessel from a foreign port arrives in distress at a port other than that to which it is destined, a permit to land merchandise or baggage may be issued if such action is necessary. Merchandise and baggage so unladen shall be taken into Customs custody and, if it has not been transported in violation of the coastwise laws, may be entered and disposed of in the same manner as any other imported merchandise or may be reladen without entry to be carried to its destination on the vessel from which it was unladen, subject only to charges for storage and safe-keeping.

(b) A bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers shall be given in an amount to be determined by the port director to insure the proper disposition of the cargo, whether such cargo be dutiable or free.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 84-213, 49 FR 41164, Oct. 19, 1984]

**§ 4.33 Diversion of cargo.**

(a) *Unloading at other than original port of destination.* A vessel may unlade cargo or baggage at an alternative port of entry to the port of original destination if:

(1) It is compelled by any cause to put into the alternative port and the director of that port issues a permit for the unloading of cargo or baggage; or

(2) As a result of an emergency existing at the port of destination, the port director authorizes the vessel to proceed in accordance with the residue cargo bond procedure to the alternative port. The owner or agent of the vessel shall apply for such authorization in writing, stating the reasons and agreeing to hold the port director and

the Government harmless for the diversion.

(b) *Disposition of cargo or baggage at emergency port.* Cargo and baggage unladen at the alternative port under the circumstances set forth in paragraph (a) of this section may be:

(1) Entered in the same manner as other imported cargo or baggage;

(2) Treated as unclaimed and stored at the risk and expense of its owner; or

(3) Reladen upon the same vessel without entry, for transportation to its original destination.

(c) *Substitution of ports of discharge on manifest.* After entry, the Cargo Declaration, Customs Form 1302, of a vessel may be changed at any time to permit discharge of manifested cargo at any domestic port in lieu of any other port shown on the Cargo Declaration, if:

(1) A written application for the diversion is made on the amended Cargo Declaration by the master, owner, or agent of the vessel to the director of the port where the vessel is located, after entry of the vessel at that port;

(2) An amended Cargo Declaration, under oath, covering the cargo, which it is desired to divert, is furnished in support of the application and is filed in such number of copies as the port director shall require for local Customs purposes; and

(3) The certified traveling manifest is not altered or added to in any way by the master, owner, or agent of the vessel. When an application under paragraph (c)(1) of this section is approved, the port director shall securely attach an approved copy of the amended manifest to the traveling manifest and shall send one copy of the amended Cargo Declaration to the director of the port where the vessel's bond was filed.

(d) *Retention of cargo on board for later return to the United States.* If, as the result of a strike or other emergency at a United States port for which inward foreign cargo is manifested, it is desired to retain the cargo on board the vessel for discharge at a foreign port but with the purpose of having the cargo returned to the United States, an application may be made by the master, owner, or agent of the vessel to amend the vessel's Cargo Declaration, Customs Form 1302, under a procedure

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similar to that described in paragraph (c) of this section, except that a foreign port shall be substituted for the domestic port of discharge. If the application is approved, it shall be handled in the same manner as an application filed under paragraph (c) of this section. However, before approving the application, the port director is authorized to require such bond as he deems necessary to insure that export control laws and regulations are not circumvented.

[T.D. 77-255, 42 FR 56320, Oct. 25, 1977]

#### § 4.34 Prematurely discharged, overcarried, and undelivered cargo.

(a) *Prematurely landed cargo.* Upon receipt of a satisfactory written application from the owner or agent of a vessel establishing that cargo was prematurely landed and left behind by the importing vessel through error or emergency, the port director may permit inward foreign cargo remaining on the dock to be reladen on the next available vessel owned or chartered by the owner of the importing vessel for transportation to the destination shown on the Cargo Declaration, Customs Form 1302, of the first vessel, provided the importing vessel actually entered the port of destination of the prematurely landed cargo. Unless so forwarded within 30 days from the date of landing, the cargo shall be appropriately entered for Customs clearance or for forwarding in bond; otherwise, it shall be sent to general order as unclaimed. If the merchandise is so entered for Customs clearance at the port of unloading, or if it is so forwarded in bond, other than by the importing vessel or by another vessel owned or chartered by the owner of the importing vessel, representatives of the importing vessel shall file at the port of unloading a Cargo Declaration in duplicate listing the cargo. The port director shall retain the original and forward the duplicate to the director of the originally intended port of discharge.

(b) *Overcarried cargo.* Upon receipt of a satisfactory written application by the owner or agent of a vessel establishing that cargo was not landed at its destination and was overcarried to another domestic port through error or emergency, the port director may per-

mit the cargo to be returned in the importing vessel, or in another vessel owned or chartered by the owner of the importing vessel, to the destination shown on the Cargo Declaration, Customs Form 1302, of the importing vessel, provided the importing vessel actually entered the port of destination.<sup>67</sup>

(c) *Inaccessibly stowed cargo.* Cargo so stowed as to be inaccessible upon arrival at destination may be retained on board, carried forward to another domestic port or ports, and returned to the port of destination in the importing vessel or in another vessel owned or chartered by the owner of the importing vessel in the same manner as other overcarried cargo.

(d) *Application for forwarding cargo.* When it is desired that prematurely landed cargo, overcarried cargo, or cargo so stowed as to be inaccessible, be forwarded to its destination by the importing vessel or by another vessel owned or chartered by the owner of the importing vessel in accordance with paragraph (a), (b), or (c) of this section, the required application shall be filed with the local director of the port of premature landing or overcarriage by the owner or agent of the vessel. The application shall be supported by a Cargo Declaration, Customs Form 1302, in such number of copies as the port director may require. Whenever practicable, the application shall be made on the face of the Cargo Declaration below the description of the merchandise. The application shall specify the vessel on which the cargo was imported, even though the forwarding to destination is by another vessel owned or chartered by the owner of the importing vessel, and all ports of departure and dates of sailing of the importing vessel. The application shall be stamped and signed to show that it has been approved.

(e) *Manifesting prematurely landed or overcarried cargo.* One copy of the Cargo

<sup>67</sup> See §141.69(c) of this chapter for the conditions under which such merchandise and goods removed from a port of intended entry under these or certain other circumstances may subsequently be cleared under a consumption entry which had been filed therefore before the merchandise was removed from the port of intended entry.

<sup>68-69</sup> [Reserved]

Declaration, Customs Form 1302, shall be certified by Customs for use as a substitute traveling manifest for the prematurely landed or overcarried cargo being forwarded as residue cargo, whether or not the forwarding vessel is also carrying other residue cargo. If the application for forwarding is made on the Cargo Declaration, the new substitute traveling manifest shall be stamped to show the approval of the application. If the application is on a separate document, a copy thereof, stamped to show its approval, shall be attached to the substitute traveling manifest. An appropriate cross-reference shall be placed on the original traveling manifest to show that the vessel has one or more substitute traveling manifests. A permit to proceed endorsed on a Vessel Entrance or Clearance Statement, Customs Form 1300, issued to the vessel transporting the prematurely landed or overcarried cargo to its destination shall make reference to the nature of such cargo, identifying it with the importing vessel.

(f) *Residue cargo procedure.* A vessel with prematurely landed or overcarried cargo on board shall comply upon arrival at all domestic ports of call with all the requirements of part 4 relating to foreign residue cargo for domestic ports. The substitute traveling manifest, carried forward from port to port by the oncarrying vessel, shall be finally surrendered at the port where the last portion of the prematurely landed or overcarried cargo is discharged.

(g) *Cargo undelivered at foreign port and returned to the U.S.* Merchandise shipped from a domestic port, but undelivered at the foreign destination and returned, shall be manifested as "Undelivered-to be returned to original foreign destination," if such a return is intended. The port director may issue a permit to retain the merchandise on board, or he may, upon written application of the steamship company, issue a permit on a Delivery Ticket, Customs Form 6043, allowing the merchandise to be transferred to another vessel for return to the original foreign destination. No charge shall be made against the bond on Customs Form 301, containing the bond conditions relating to international carriers set forth in

§ 113.64 of this chapter. The items shall be remanifested outward and an explanatory reference of the attending circumstances and compliance with export requirements noted.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 77-255, 42 FR 56321, Oct. 25, 1977; T.D. 85-123, 50 FR 29952, July 23, 1985; T.D. 95-77, 60 FR 50010, Sept. 27, 1995; T.D. 00-22, 65 FR 16515, Mar. 29, 2000]

#### § 4.35 Unlading outside port of entry.

(a) Upon written application from the interested party, the port director concerned, if he considers it necessary, may permit any vessel laden with merchandise in bulk to proceed, after entry, to any place outside the port where the vessel entered which such port director may designate for the purpose of unlading such cargo.

(b) In such case a deposit of a sum sufficient to reimburse the Government for the compensation, travel, and subsistence expenses of the officers detailed to supervise the unlading and delivery of the cargo may be required by the port director.

[28 FR 14596, Dec. 31, 1963, as amended at T.D. 95-77, 60 FR 50010, Sept. 27, 1995]

#### § 4.36 Delayed discharge of cargo.

(a) When pursuant to section 457, Tariff Act of 1930, customs officers are placed on a vessel which has retained merchandise on board more than 25 days after the date of the vessel's arrival, their compensation and subsistence expenses shall be reimbursed to the Government by the owner or master.

(b) The compensation of all Customs officers and employees assigned to supervise the discharge of a cargo within the purview of section 458, Tariff Act of 1930,<sup>70</sup> after the expiration of 25 days

<sup>70</sup> "The limitation of time for unlading shall not extend to vessels laden exclusively with merchandise in bulk consigned to one consignee and arriving at a port for orders, but if the master of such vessel requests a longer time to discharge its cargo, the compensation of the inspectors or other customs officers whose services are required in connection with the unlading shall, for every day consumed in unlading in excess of twenty-five (25) days from the date of the vessel's entry, be reimbursed by the master or owner

*Continued*

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after the date of the vessel's entry shall be reimbursed to the Government by the owner or master of the vessel.

(c) When cargo is manifested "for orders" upon the arrival of the vessel, no amendment of the manifest to show another port of discharge shall be permitted after 15 days after the date of the vessel's arrival, except as provided for in § 4.33.

(d) All reimbursements payable in accordance with this section shall be paid or secured to the port director before clearance is granted to the vessel.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 95-77, 60 FR 50010, Sept. 27, 1995; T.D. 98-74, 63 FR 51287, Sept. 25, 1998]

#### § 4.37 General order.

(a) Any merchandise or baggage regularly landed but not covered by a permit for its release shall be allowed to remain at the place of unloading until the fifteenth calendar day after landing. No later than 20 calendar days after landing, the master or owner of the vessel or the agent thereof shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. Failure to provide such notification may result in assessment of a monetary penalty of up to \$1,000 per bill of lading against the master or owner of the vessel or the agent thereof. If the value of the merchandise on the bill is less than \$1,000, the penalty shall be equal to the value of such merchandise.

(b) Any merchandise or baggage that is taken into custody from an arriving carrier by any party under a Customs-authorized permit to transfer or in-bond entry may remain in the custody of that party for 15 calendar days after receipt under such permit to transfer or 15 calendar days after arrival at the port of destination. No later than 20 calendar days after receipt under the permit to transfer or 20 calendar days after arrival under bond at the port of destination, the party shall notify Customs of any such merchandise or bag-

gage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. If the party fails to notify Customs of the unentered merchandise or baggage in the allotted time, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see § 113.63(c)(4) of this chapter).

(c) In addition to the notification to Customs required under paragraphs (a) and (b) of this section, the carrier (or any other party to whom custody of the unentered merchandise has been transferred by a Customs authorized permit to transfer or in-bond entry) shall provide notification of the presence of such unreleased and unentered merchandise or baggage to a bonded warehouse certified by the port director as qualified to receive general order merchandise. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system and shall be provided within the applicable 20-day period specified in paragraph (a) or (b) of this section. It shall then be the responsibility of the bonded warehouse proprietor to arrange for the transportation and storage of the merchandise or baggage at the risk and expense of the consignee. Any unentered merchandise or baggage shall remain the responsibility of the carrier, master, or person in charge of the importing vessel or the agent thereof or party to whom the merchandise has been transferred under a Customs authorized permit to transfer or in-bond entry, until it is properly transferred from his control in accordance with this paragraph. If the party to whom custody of the unentered merchandise or baggage has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to notify a Customs-approved bonded warehouse of such merchandise or baggage within the applicable 20-calendar-day period, he may be liable for the payment of liquidated damages of \$1,000 per bill of lading under the terms and conditions of his international carrier or custodial bond (see §§ 113.63(b), 113.63(c) and 113.64(b) of this chapter).

(d) If the bonded warehouse operator fails to take possession of unentered

of such vessel." (Tariff Act of 1930, sec. 458; 19 U.S.C. 1458)

<sup>71-75</sup> [Reserved]

and unreleased merchandise or baggage within five calendar days after receipt of notification of the presence of such merchandise or baggage under this section, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see §113.63(a)(1) of this chapter).

(e) In ports where there is no bonded warehouse authorized to accept general order merchandise or if merchandise requires specialized storage facilities which are unavailable in a bonded facility, the port director, after having received notice of the presence of unentered merchandise or baggage in accordance with the provisions of this section, shall direct the storage of the merchandise by the carrier or by any other appropriate means.

(f) Whenever merchandise remains on board any vessel from a foreign port more than 25 days after the date on which report of arrival of such vessel was made, the port director, as prescribed in section 457, Tariff Act of 1930, as amended (19 U.S.C. 1457), may take possession of such merchandise and cause it to be unladen at the expense and risk of the owners of the merchandise. Any merchandise so unladen shall be sent forthwith by the port director to a general order warehouse and stored at the risk and expense of the owners of the merchandise.

(g) Merchandise taken into the custody of the port director pursuant to section 490(b), Tariff Act of 1930, as amended (19 U.S.C. 1490(b)), shall be sent to a general order warehouse after 1 day after the day the vessel was entered, to be held there at the risk and expense of the consignee.

[T.D. 98-74, 63 FR 51287, Sept. 25, 1998]

#### § 4.38 Release of cargo.

(a) No imported merchandise shall be released from Customs custody until a permit to release such merchandise has been granted. Such permit shall be issued by the port director only after the merchandise has been entered and, except as provided for in §141.102(d) or part 142 of this chapter, the duties thereon, if any, have been estimated and paid. Generally, the permit shall consist of a document authorizing delivery of a particular shipment or an

electronic equivalent. Alternatively, the permit may consist of a report which lists those shipments which have been authorized for release. This alternative cargo release notification may be used when the manifest is not filed by the carrier through the Automated Manifest System, the entry has been filed through the Automated Broker Interface, and Customs has approved the cargo for release without submission of paper documents after reviewing the entry data submitted electronically through ABI and its selectivity criteria (see §143.34). The report shall be posted in a conspicuous area to which the public has access in the customhouse at the port of entry where the cargo was imported.

(1) Where the cargo arrives by vessel, the report shall consist of the following data elements:

- (i) Vessel name or code, if transmitted by the entry filer;
- (ii) Carrier code;
- (iii) Voyage number, if transmitted by the entry filer;
- (iv) Bill of lading number;
- (v) Quantity released; and
- (vi) Entry number (including filer code).

(2) Where the cargo arrives by air, the report shall consist of the following data elements:

- (i) Air waybill number;
- (ii) Quantity released;
- (iii) Entry number (including filer code);
- (iv) Carrier code; and
- (v) Flight number, if transmitted by the entry filer.

(3) In the case of merchandise traveling via in-bond movement, the report will contain the following data elements:

- (i) Immediate transportation bond number;
- (ii) Carrier code;
- (iii) Quantity released; and
- (iv) Entry number (including filer code).

When merchandise is released without proper permit before entry has been made, the port director shall issue a written demand for redelivery. The carrier or facility operator shall redeliver the merchandise to Customs within 30 days after the demand is made. The port director may authorize unentered

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merchandise brought in by one carrier for the account of another carrier to be transferred within the port to the latter carrier's facility. Upon receipt of the merchandise the latter carrier assumes liability for the merchandise to the same extent as though the merchandise had arrived on its own vessel.

(b) When packages of merchandise bear marks or numbers which differ from those appearing on the Cargo Declaration, Customs Form 1302, of the importing vessel for the same packages and the importer or a receiving bonded carrier, with the concurrence of the importing carrier, makes application for their release under such marks or numbers, either for consumption or for transportation in bond under an entry filed therefor at the port of discharge from the importing vessel, the port director may approve the application upon condition that (1) the contents of the packages be identified with an invoice or transportation entry as set forth below and (2) the applicant furnish at his own expense any bonded cartage or lighterage service which the granting of the application may require. The application shall be in writ-

ing in such number of copies as may be required for local Customs purposes. Before permitting delivery of packages under such an application, the port director shall cause such examination thereof to be made as will reasonably identify the contents with the invoice filed with the consumption entry. If the merchandise is entered for transportation in bond without the filing of an invoice, such examination shall be made as will reasonably identify the contents of the packages with the transportation entry.

(c) If the port director determines that, in a port or portion of a port, the volume of cargo handled, the incidence of theft or pilferage, or any other factor related to the protection of merchandise in Customs custody requires such measures, he shall require as a condition to the granting of a permit to release imported merchandise that the importer or his agent present to the carrier or his agent a fully executed pickup order in substantially the following format, in triplicate, to obtain delivery of any imported merchandise:

PICKUP ORDER

	<p>(Trucker name) _____</p> <p>is authorized to pick up the merchandise indicated below.</p> <p>COD <input type="checkbox"/> Bank release <input type="checkbox"/> Collect <input type="checkbox"/></p>														
<p>Broker Name and Authorized Signature (if applicable) _____</p>															
<table border="0" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: 1px solid black;">Marks and numbers</th> <th style="text-align: left; border-bottom: 1px solid black;">Pcs.</th> <th style="text-align: left; border-bottom: 1px solid black;">Description of goods</th> <th style="text-align: left; border-bottom: 1px solid black;">Entry No.</th> <th style="text-align: left; border-bottom: 1px solid black;">Importing carrier and AWB Number or B/L Number</th> <th style="text-align: left; border-bottom: 1px solid black;">Signature and date of receiving carrier</th> <th style="text-align: left; border-bottom: 1px solid black;">Remarks</th> </tr> </thead> <tbody> <tr> <td style="border-top: 1px solid black; height: 40px;"></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>		Marks and numbers	Pcs.	Description of goods	Entry No.	Importing carrier and AWB Number or B/L Number	Signature and date of receiving carrier	Remarks							
Marks and numbers	Pcs.	Description of goods	Entry No.	Importing carrier and AWB Number or B/L Number	Signature and date of receiving carrier	Remarks									

Delivered quantities verified \_\_\_\_\_  
 Customs officer badge No. \_\_\_\_\_  
 Date \_\_\_\_\_

The pickup order shall contain a duly authenticated customhouse broker's signature, unless it is presented by a

person properly identified as an employee or agent of the ultimate consignee. When delivered quantities are verified by a Customs officer, he shall certify all copies of the pickup order, returning one to the importer or his agent and two to the carrier making delivery.

(d) When the provisions of paragraph (c) of this section are invoked by the port director and verification of delivered quantities by Customs is required, a permit to release merchandise shall be effective as a release from Customs custody at the time that the delivery of the merchandise covered by the pickup order into the physical possession of a subsequent carrier or an importer or the agent of either is completed under the supervision of a Customs officer, and only to the extent of the actual delivery of merchandise described in such pickup order as verified by such Customs officer.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 71-39, 36 FR 1892, Feb. 3, 1971; T.D. 77-255, 42 FR 56321, Oct. 25, 1977; T.D. 91-46, 56 FR 22330, May 15, 1991; 56 FR 27559, June 14, 1991]

**§ 4.39 Stores and equipment of vessels and crews' effects; unloading or lading and retention on board.**

(a) The provisions of § 4.30 relating to unloading under a permit on Customs Form 3171 are applicable to the unloading of articles, other than cargo or baggage, which have been laden on a vessel outside the Customs territory of the United States, regardless of the trade in which the vessel may be engaged at the time of unloading, except that such provisions do not apply to such articles which have already been entered.

(b) Any articles other than cargo or baggage landed for delivery for consumption in the United States shall be treated in the same manner as other imported articles. A notation as to the landing of such articles, together with the number of the entry made therefor, shall be made on the vessel's store list, but such notation shall not subject the articles to the requirement of being included in a post entry to the manifest.

(c) Bags or dunnage constituting equipment of a vessel may be landed temporarily and reladen on such vessel

under Customs supervision without entry.

(d) Articles claimed to be sea or ships' stores which are in excess of the reasonable requirements of the vessel on which they are found shall be treated as cargo of such vessel.

(e) Under section 446, Tariff Act of 1930, port directors may permit narcotic drugs, except smoking opium, in reasonable quantities and properly listed as medical stores to remain on board vessels if satisfied that such drugs are adequately safeguarded and used only as medical supplies.

(f) Application for permission to transfer bunkers, stores or equipment as provided for in the proviso to section 446, Tariff Act of 1930, shall be made and the permit therefor granted on Customs Form 3171.

(g) Equipment of a vessel arriving either directly or indirectly from a foreign port or place, if in need of repairs in the United States, may be unladen from and reladen upon the same vessel under the procedures set forth in § 4.30 relating to the granting of permits and special licenses on Customs Form 3171 (CF 3171). Adequate protection of the revenue is insured under the appropriate International Carrier Bond during the period that equipment is temporarily landed for repairs (see § 113.64(b) of this chapter), and so resort to the procedures established for the temporary importation of merchandise under bond is unnecessary. Once equipment which has been unladen under the terms of a CF 3171 has been reladen on the same vessel, potential liability for that transaction existing under the bond will be extinguished.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 93-66, 58 FR 44130, Aug. 19, 1993; T.D. 00-61, 65 FR 56790, Sept. 20, 2000]

**§ 4.40 Equipment, etc., from wrecked or dismantled vessels.**

Ship's or sea stores, supplies, and equipment of a vessel wrecked either in the waters of the United States or outside such waters, on being recovered and brought into a United States port, and like articles landed from a vessel dismantled in a United States port shall be subject to the same Customs treatment as would apply if the articles were landed from a vessel arriving

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in the ordinary course of trade. Parts of the hull and fittings recovered from a vessel which arrived in the United States in the course of navigation and was wrecked in the waters of the United States or was dismantled in this country are free of duties and import taxes, but if such articles are recovered from vessels outside the waters of the United States and brought into a United States port, they shall be treated as imported merchandise.

#### § 4.41 Cargo of wrecked vessel.

(a) Any cargo landed from a vessel wrecked in the waters of the United States or on the high seas shall be subject at the port of entry to the same entry requirements and privileges as the cargo of a vessel regularly arriving in the foreign trade. In lieu of a Cargo Declaration, Customs Form 1302, to cover such cargo, the owner, underwriter (if the merchandise has been abandoned to him), or the salvor of the merchandise shall make entry on Customs Form 7501, and any such applicant shall be regarded as the consignee of the merchandise for Customs purposes.<sup>76</sup>

(b) All such merchandise shall be taken into possession by the director of the port where it shall first arrive and be retained in his custody pending entry. If it is not entered by the person entitled to make entry, or is not disposed of pursuant to court order, it shall be subject to sale as unclaimed merchandise.

(c) If such merchandise is from a vessel which has been sunk in waters of the United States for 2 years or more and has been abandoned by the owner, any person who has salvaged the cargo shall be permitted to enter the merchandise at the port where the vessel was wrecked free of duty upon the facts being established to the satisfaction of the director of the port of entry.<sup>77</sup> Any

<sup>76</sup> “\* \* \* The underwriters of abandoned merchandise and the salvors of merchandise saved from a wreck at sea or on or along a coast of the United States may be regarded as the consignees.” \* \* \* (Tariff Act of 1930, sec. 483; 19 U.S.C. 1483)

<sup>77</sup> “Whenever any vessel laden with merchandise, in whole or in part subject to duty, has been sunk in any river, harbor, bay, or waters subject to the jurisdiction of the

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other such merchandise is subject to the same tariff classification as like merchandise regularly imported in the ordinary course of trade.

(d) If the merchandise is libeled for salvage,<sup>78</sup> the port director shall notify the United States attorney of the claim of the United States for duties, and request him to intervene for such duties.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 77-255, 42 FR 56321, Oct. 25, 1977; T.D. 87-75, 52 FR 20066, May 29, 1987; T.D. 95-77, 60 FR 50010, Sept. 27, 1995; T.D. 99-27, 64 FR 13675, Mar. 22, 1999]

#### PASSENGERS ON VESSELS

#### § 4.50 Passenger lists.

(a) The master of every vessel arriving at a port of the United States from a port or place outside the Customs territory (see § 4.6 of this part) and required to make entry, except a vessel arriving from Canada, otherwise than by sea, at a port on the Great Lakes, or their connections or tributary waters, shall submit passenger and crew lists, as required by § 4.7(a) of this part. If the vessel is arriving from noncontiguous foreign territory and is carrying steerage passengers, the additional information respecting such passengers required by Customs and Immigration Form I-418 shall be included therein.

(b) A passenger within the meaning of this part is any person carried on a vessel who is not connected with the

United States, and within its limits, for the period of two years and is abandoned by the owner thereof, any person who may raise such vessel shall be permitted to bring any merchandise recovered therefrom into the port nearest to the place where such vessel was so raised free from the payment of any duty thereupon, but under such regulations as the Secretary of the Treasury may prescribe.” (Tariff Act of 1930, sec. 310; 19 U.S.C. 1310)

<sup>78</sup> Salvors have an uncertain interest in the goods salvaged, dependent upon the decree of a competent tribunal, and have a presumptive right without such decree to possession of merchandise salvaged by them from abandoned wrecks. The salvors are entitled in either case to make entry of derelict or wrecked goods.

<sup>79-96</sup> [Reserved]

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operation of such vessel, her navigation, ownership, or business.

[28 FR 14596, Dec. 31, 1963 as amended by T.D. 71-169, 36 FR 12603, July 2, 1971; T.D. 82-145, 47 FR 35475, Aug. 16, 1982; T.D. 93-96, 58 FR 67316, Dec. 21, 1993]

### § 4.51 Reporting requirements for individuals arriving by vessel.

(a) *Arrival of vessel reported.* Individuals on vessels, which have reported their arrival to Customs in accordance with 19 U.S.C. 1433 and § 4.2 of this part, shall remain on board until authorized by Customs to depart. Upon departing the vessel, such individuals shall immediately report to a designated Customs location together with all of their accompanying articles.

(b) *Arrival of vessel not reported.* Individuals on vessels, which have not reported their arrival to Customs in accordance with 19 U.S.C. 1433 and § 4.2 of this part, shall immediately notify Customs and report their arrival together with appropriate information regarding the vessel, and shall present themselves and their accompanying articles at a designated Customs location.

(c) *Departure from designated Customs location.* Individuals required to report to designated Customs locations under this section shall not depart from such locations until authorized to do so by any appropriate Customs officer.

[T.D. 93-96, 58 FR 67316, Dec. 21, 1993]

### § 4.52 Penalties applicable to individuals.

Individuals violating any of the reporting requirements of § 4.51 of this part or who present any forged, altered, or false document or paper to Customs in connection with this section, may be liable for certain civil penalties, as provided under 19 U.S.C. 1459, in addition to other penalties applicable under other provisions of law. Further, if the violation of these reporting requirements is intentional, upon conviction, additional criminal penalties may be applicable, as provided by under 19 U.S.C. 1459, in addition to other penalties applicable under other provisions of law.

[T.D. 93-96, 58 FR 67317, Dec. 21, 1993; 59 FR 1918, Jan. 13, 1994]

## FOREIGN CLEARANCES

### § 4.60 Vessels required to clear.

(a) Unless specifically excepted by law, the following vessels must obtain clearance from the Customs Service before departing from a port or place in the United States:

(1) All vessels departing for a foreign port or place;

(2) All foreign vessels departing for another port or place in the United States;

(3) All American vessels departing for another port or place in the United States that have merchandise on board that is being transported in-bond (not including bonded ship's stores or supplies), or foreign merchandise for which entry has not been made; and

(4) All vessels departing for points outside the territorial sea to visit a hovering vessel or to receive merchandise or passengers while outside the territorial sea, as well as foreign vessels delivering merchandise or passengers while outside the territorial sea.

(b) The following vessels are not required to clear:

(1) A documented vessel with a pleasure license endorsement or an undocumented American pleasure vessel (i.e., an undocumented vessel wholly owned by a United States citizen or citizens, whether or not it has a certificate of number issued by the State in which the vessel is principally used under 46 U.S.C. 1466-1467 and not engaged in trade nor violating the Customs or navigation laws of the United States and not having visited any hovering vessel (see 19 U.S.C. 1709(d)).

(2) Any documented vessel with a Great Lakes license endorsement which during a voyage on the Great Lakes will touch at a foreign port only for taking on bunker fuel. (see § 4.82).

(3) A vessel exempted from entry by section 441, Tariff Act of 1930. (See § 4.5.)

(4) A vessel of less than 5 net tons which departs from the United States to proceed to a contiguous country otherwise than by sea.

(c) Vessels which will merely transit the Panama Canal without transacting

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any business there shall not be required to be cleared because of such transit.

(d) In the event that departure is delayed beyond the second day after clearance, the delay shall be reported within 72 hours after clearance to the port director who shall note the fact of detention on the certificate of clearance and on the official record of clearance. When the proposed voyage is canceled after clearance, the reason therefor shall be reported in writing within 24 hours after such cancellation and the certificate of clearance and related papers shall be surrendered.

(e) No vessel shall be cleared for the high seas *except*, a vessel bound to another vessel on the high seas to—

(1) Transship export merchandise which it has transported from the U.S. to the vessel on the high seas; or

(2) Receive import merchandise from the vessel on the high seas and transport the merchandise to the U.S.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 79-276, 44 FR 61956, Oct. 29, 1979; T.D. 83-214, 48 FR 46512, Oct. 13, 1983; T.D. 85-91, 50 FR 21429, May 24, 1985; T.D. 94-24, 59 FR 13200, Mar. 21, 1994; T.D. 95-77, 60 FR 50010, Sept. 27, 1995; T.D. 00-4, 65 FR 2873, Jan. 19, 2000]

#### §4.61 Requirements for clearance.

(a) *Application for clearance.* A clearance application for a vessel intending to depart for a foreign port must be made by filing Customs Form 1300 (Vessel Entrance or Clearance Statement) executed by the vessel master or other proper officer. The master, licensed deck officer, or purser may appear in person to clear the vessel, or the properly executed Customs Form 1300 may be delivered to the customhouse by the vessel agent or other personal representative of the master. Necessary information may also be transmitted electronically pursuant to a system authorized by Customs. Clearance will be granted by Customs either on the Customs Form 1300 or by approved electronic means. Customs port directors may permit the clearance of vessels at locations other than the customhouse, and at times outside of normal business hours. Customs may take local resources into consideration in allowing clearance to be transacted on board vessels themselves or at other

mutually convenient sites and times either within or outside of port limits. Customs must be satisfied that the place designated for clearance is sufficiently under Customs control at the time of clearance, and that the expenses incurred by Customs will be reimbursed as authorized. Customs may require that advance notice of vessel departure be given prior to granting requests for optional clearance locations.

(b) *When clearance required.* Under certain circumstances, American vessels departing from ports of the United States directly for other United States ports must obtain Customs clearance. The clearance of such vessels is required when they have merchandise aboard which is being transported in-bond, or when they have unentered foreign merchandise aboard. For the purposes of the vessel clearance requirements, merchandise transported in-bond does not include bonded ship's stores or supplies. While American vessels transporting unentered foreign merchandise must fully comply with usual clearance procedures, American vessels carrying no unentered foreign merchandise but that have in-bond merchandise aboard may satisfy vessel clearance requirements by reporting intended departure within 72 hours prior thereto by any means of communication that is satisfactory to the local Customs port director, and by presenting a completed Customs Form 1300 (Vessel Entrance or Clearance Statement). Also, the Customs officer may require the production of any documents or papers deemed necessary for the proper inspection/examination of the vessel, cargo, passenger, or crew. Report of departure together with providing information to Customs as specified in this paragraph satisfies all clearance requirements for the subject vessels.

(c) *Verification of compliance.* Before clearance is granted to a vessel bound to a foreign port as provided in §4.60 and this section, the port director will verify compliance with respect to the following matters:

(1) Accounting for inward cargo (see §4.62).

(2) Outward Cargo Declarations; shippers export declarations (see §4.63).

(3) Documentation (see §4.0(c)).

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(4) Verification of nationality and tonnage (see § 4.65).

(5) Verification of inspection (see § 4.66).

(6) Inspection under State laws (46 U.S.C. App. 97).

(7) Closed ports or places (see § 4.67).

(8) Passengers (see § 4.68).

(9) Shipping articles and enforcement of Seamen's Act (see § 4.69).

(10) Medicine and slop chests.

(11) Load line regulations (see § 4.65a).

(12) Carriage of United States securities, etc. (46 U.S.C. App. 98).

(13) Carriage of mail.

(14) Public Health regulations (see § 4.70).

(15) Inspection of vessels carrying livestock (see § 4.71).

(16) Inspection of meat, meat-food products, and inedible fats (see § 4.72).

(17) Neutrality exportation of arms and munitions (see § 4.73).

(18) Payment of State and Federal fees and fees due the Government of the Virgin Islands of the United States (46 U.S.C. App. 100).

(19) Orders restricting shipping (see § 4.74).

(20) Estimated duties deposited or a bond given to cover duties on foreign repairs and equipment for vessels of the United States (see § 4.14).

(21) Illegal discharge of oil (see § 4.66a).

(22) Attached or arrested vessel.

(23) Immigration laws.

(d) *Vessel built for foreign account.* A new vessel built in the United States for foreign account will be cleared under a certificate of record, Coast Guard Form 1316, in lieu of a marine document.

(e) *Clearance not granted.* Clearance will not be granted to any foreign vessel using the flag of the United States or any distinctive signs or markings indicating that the vessel is an American vessel (22 U.S.C. 454a).

(f) *Clearance in order of itinerary.* Unless otherwise provided in this section, every vessel bound for a foreign port or ports will be cleared for a definite port or ports in the order of its itinerary, but an application to clear for a port or place for orders, that is, for instructions to masters as to destination of the vessel, may be accepted if the vessel is in ballast or if any cargo on

board is to be discharged in a port of the same country as the port for which clearance is sought.

[T.D. 00-4, 65 FR 2874, Jan. 19, 2000; T.D. 00-22, 65 FR 16515, Mar. 29, 2000]

### § 4.62 Accounting for inward cargo.

Inward cargo discrepancies shall be accounted for and adjusted by correction of the Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A, but the vessel may be cleared and the adjustment deferred if the discharging officer's report has not been received. (See § 4.12.)

[T.D. 77-255, 42 FR 56322, Oct. 25, 1977, as amended by T.D. 84-193, 49 FR 35485, Sept. 10, 1984]

### § 4.63 Outward cargo declaration; shippers' export declarations.

(a) No vessel shall be cleared directly for a foreign port, or for a foreign port by way of another domestic port or other domestic ports (see § 4.87(b)), unless there has been filed with the appropriate Customs officer at the port from which clearance is being sought:

(1) A Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A. Copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest must be attached in such manner as to constitute one document, together with a Vessel Entrance or Clearance Statement, Customs Form 1300, and export declarations as are required by pertinent regulations of the Bureau of the Census, Department of Commerce; or

(2) An incomplete Cargo Declaration as provided for in § 4.75.

(b) Except as hereafter stated, the number of the export declaration covering each shipment for which an authenticated export declaration is required shall be shown on the Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A, in the marginal column headed "B/L No." If an export declaration is not required for a shipment, a notation shall be made on the Cargo Declaration Outward With Commercial Forms (Customs Form 1302-A) describing the basis for the exemption with a reference to the number of the section in the Census Regulations (see 15 CFR 30.39, 30.50

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through 30.57) where the particular exemption is provided. If shipments are exempt on the basis of value and destination, the appearance of the value and destination on a bill of lading or other commercial documents is acceptable as evidence of the exemption and reference to the applicable section in the Census Regulations is not required.

(c) The following minimal information shall be included on the Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A (other information required to be on a Customs Form 1302-A as shown on the form itself must also be included thereon) or on attached copies of bills of lading or equivalent commercial documents:

- (1) Name and address of shipper;
- (2) Description of the cargo (see paragraph (d) of this section);
- (3) Number of packages and gross weight (see paragraph (d) of this section);
- (4) Name of vessel or carrier;
- (5) Port of exit (this shall be the port where the merchandise is loaded on the vessel); and
- (6) Port of destination (this shall be the foreign port of discharge of the merchandise).

(d) If the bills of lading or equivalent commercial documents attached to the Customs Form 1302-A show on their face the cargo information required by columns 6, 7, and either column 8 or 9, of the Customs Form 1302-A, that information need not be shown again on the Customs Form 1302-A. However, in that case, the cargo information must be incorporated by a suitable reference on the face of the Customs Form 1302-A such as "Cargo as per attached commercial documents."

(e) For each shipment to be exported under an entry or withdrawal for exportation or for transportation and exportation, the Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A, or commercial document attached to the Cargo Declaration and made a part thereof in accordance with paragraph (a)(1) of this section, shall clearly show for such shipment the number, date, and class of such Customs entry or withdrawal (i.e., T. & E., Wd. T. & E., I. E., Wd. Ex., or Wd. T., as applicable) and the name of

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the port where the merchandise is laden for exportation.

(f) Customs officers shall accept a Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A, covering containerized or palletized cargo which indicates by the use of appropriate words of qualification (see § 4.7a(c)(3)) that the declaration has been prepared on the basis of information furnished by the shipper.

[T.D. 84-193, 49 FR 35484, Sept. 10, 1984; T.D. 00-22, 65 FR 16515, Mar. 29, 2000]

#### § 4.64 [Reserved]

#### § 4.65 Verification of nationality and tonnage.

The nationality and tonnage of a vessel shall be verified by examination of its marine document. If such examination discloses that insufficient tonnage tax was collected on entry of the vessel, no clearance shall be granted until the deficiency is paid.

#### § 4.65a Load lines.

(a) If a port director is notified by an officer of the United States Coast Guard that a detention order has been issued against a vessel engaged in the foreign trade under the International Voyage Load Line Act of 1973, clearance shall not be granted until the order is withdrawn.

(b) If a port director issues a detention order under the Coastwise Load Line Act, 1935, as amended, or is notified by an officer of the United States Coast Guard that a detention order has been issued against a vessel under the aforesaid Act, clearance shall not be granted until the order is withdrawn.

[T.D. 75-133, 40 FR 24518, June 9, 1975]

#### § 4.66 Verification of inspection.

(a) No clearance shall be granted unless the port director is satisfied that a proper certificate of inspection is in force and the vessel is in compliance with such certificate, if the vessel is:

(1) A vessel of the United States required to be inspected as specified in Title 46, Code of Federal Regulations.

(2) A foreign vessel carrying passengers from the United States.

(b) In the case of vessels of foreign nations which are signatories of the

International Convention for the Safety of Life at Sea, 1948, carrying passengers from the United States, an unexpired Certificate of Examination for Foreign Passenger Vessel, Form CG-989, or an unexpired Certificate for Foreign Vessel to Carry Persons in Addition to Crew, Form CG-3463, issued by the United States Coast Guard, may be accepted as evidence that a proper certificate of inspection is in force and the vessel is in compliance with such certificate.

(c) In the case of vessels of the United States subject to inspection proceeding to another port for repairs, a valid Permit to Proceed to Another Port for Repairs, Form CG-948, issued by the United States Coast Guard, shall be accepted in lieu of the certificate of inspection required by this section.

[T.D. 56173, 29 FR 6681, May 22, 1964, as amended by T.D. 69-266, 34 FR 20422, Dec. 31, 1969]

**§ 4.66a Illegal discharge of oil and hazardous substances.**

If a port director receives a request from an officer of the U.S. Coast Guard to withhold clearance of a vessel whose owner or operator is subject to a civil penalty for discharging oil or a hazardous substance into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone in quantities determined to be harmful by appropriate authorities, such clearance shall not be granted until the port director is informed that a bond or other surety satisfactory to the Coast Guard has been filed.

[T.D. 82-28, 47 FR 5226, Feb. 4, 1982]

**§ 4.66b Pollution of coastal and navigable waters.**

(a) If any Customs officer has reason to believe that any refuse matter is being or has been deposited in navigable waters or any tributary of any navigable waters in violation of section 13 of the Act of March 3, 1899 (30 Stat. 1152; 33 U.S.C. 407), or oil or a hazardous substance is being or has been discharged into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone in violation of

the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1321), he shall promptly furnish to the port director a full report of the incident, together with the names of witnesses and, when practicable, a sample of the material discharged from the vessel in question.

(b) The port director shall forward this report immediately, without recommendation, to the district commander of the Coast Guard district concerned and a copy of such report shall be furnished to Headquarters, U.S. Customs Service.

[T.D. 73-18, 38 FR 1587, Jan. 16, 1973, as amended by T.D. 82-28, 47 FR 5226, Feb. 4, 1982]

**§ 4.66c Oil pollution by oceangoing vessels.**

(a) If a port director receives a request from a Coast Guard officer to refuse or revoke the clearance or permit to proceed of a vessel because the vessel, its owner, operator, or person in charge, is liable for a fine or civil penalty, or reasonable cause exists to believe that they may be subject to a fine or civil penalty under the provisions of 33 U.S.C. 1908 for violating the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL Protocol), the Act to Prevent Pollution from Ships, 1980 (33 U.S.C. 1901-1911), or regulations issued thereunder, such clearance or a permit to proceed shall be refused or revoked. Clearance or a permit to proceed may be granted when the port director is informed that a bond or other security satisfactory to the Coast Guard has been filed.

(b) If a port director receives a notification from a Coast Guard officer that an order has been issued to detain a vessel required to have an International Oil Pollution Prevention (IOPP) Certificate which does not have a valid certificate on board, or whose condition or whose equipment's condition does not substantially agree with the particulars of the certificate on board, or which presents an unreasonable threat of harm to the marine environment, the port director shall refuse or revoke the clearance or permit to proceed of the vessel if requested to do so by a Coast Guard officer. The port

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director shall not grant clearance or issue a permit to proceed to the vessel until notified by a Coast Guard officer that detention of the vessel is no longer required.

(c) If a port director receives a notification from a Coast Guard officer to detain a vessel operated under the authority of a country not a party to the MARPOL Protocol which does not have a valid certificate on board showing that the vessel has been surveyed in accordance with and complies with the requirements of the MARPOL Protocol, or whose condition or whose equipment's condition does not substantially agree with the particulars of the certificate on board, or which presents an unreasonable threat of harm to the marine environment, the port director shall refuse or revoke the clearance or permit to proceed of the vessel if requested to do so by a Coast Guard officer. The port director shall not grant clearance or issue a permit to proceed to the vessel until notified by a Coast Guard officer that detention of the vessel is no longer required.

[T.D. 81-148, 49 FR 28695, July 16, 1984]

#### § 4.67 Closed ports or places.

No foreign vessel shall be granted a clearance or permit to proceed to any port or place from which such vessels are excluded by orders or regulations of the United States Navy Department except with the prior approval of that Department.

#### § 4.68 Federal Maritime Commission certificates for certain passenger vessels.

No vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports will be granted a clearance at the port or place of departure from the United States unless it is established that the vessel has valid certificates issued by the Federal Maritime Commission.

[T.D. 00-4, 65 FR 2874, Jan. 19, 2000]

#### § 4.69 Shipping articles.

No vessel of the U.S. on a voyage between a U.S. port and a foreign port (except a port in Canada, Mexico, or the West Indies), or if of at least 75

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gross tons, on a voyage between a U.S. port on the Atlantic Ocean and a U.S. port on the Pacific Ocean, shall be granted clearance before presentation, to the appropriate Customs officer, of the shipping articles agreements, including any seaman's allotment agreement, required by 46 U.S.C. chapter 103, in the form provided for in 46 CFR 14.05-1.

[T.D. 92-52, 57 FR 23945, June 5, 1992]

#### § 4.70 Public Health Service requirements.

No clearance will be granted to a vessel subject to the foreign quarantine regulations of the Public Health Service.

[T.D. 00-4, 65 FR 2874, Jan. 19, 2000]

#### § 4.71 Inspection of livestock.

A proper export inspection certificate issued by the Veterinary Services, Animal and Plant Health Inspection Service, Department of Agriculture, shall be filed before the clearance of a vessel carrying horses, mules, asses, cattle, sheep, swine, or goats (9 CFR part 91)

[T.D. 79-32, 44 FR 5650, Jan. 29, 1979]

#### § 4.72 Inspection of meat, meat-food products, and inedible fats.

(a) No clearance shall be granted to any vessel carrying meat or meat-food products, as defined and classified by the U.S. Department of Agriculture, Food Safety and Inspection Service, Meat and Poultry Inspection until there have been filed with the port director such copies of export certificates concerning such meat or meat-food products as are required by the pertinent regulations of the U.S. Department of Agriculture, Food Safety and Inspection Service, Meat and Poultry Inspection (9 CFR part 322). If such certificate has been obtained but is unavailable at the scheduled time of a vessel's departure, the vessel may be cleared on the basis of the receipt of a statement, under the shipper's or shipper's agent's letterhead, certifying the number of boxes, the number of pounds, the product name and the U.S. Department of Agriculture export certificate number that covers the shipment of the product. If such statement

has been used as the basis for obtaining vessel clearance, the duplicate of the certificate must be filed with Customs within the time period prescribed by § 4.75.

(b) No clearance shall be granted to any vessel carrying tallow, stearin, oleo oil, or other rendered fat derived from cattle, sheep, swine, or goats for export from the United States, which has not been inspected, passed, and marked by the United States Department of Agriculture, unless the port director is furnished with a certificate by the exporter that the article is inedible.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 78-99, 43 FR 13059, Mar. 29, 1978; T.D. 91-77, 56 FR 46114, Sept. 10, 1991; T.D. 95-54, 60 FR 35838, July 12, 1995]

#### § 4.73 Neutrality; exportation of arms and munitions.

(a) Clearance shall not be granted to any vessel if the port director has reason to believe that her departure or intended voyage would be in violation of any provision of the Neutrality Act of 1939 or other neutrality law of the United States,<sup>104</sup> or of any regulation or instruction issued pursuant to any such law.

(b) The port director shall refuse clearance for and detain any vessel manifestly built for warlike purposes and about to depart from the United States with a cargo consisting principally of arms and munitions of war<sup>105</sup> when the number of men intending to sail or other circumstances render it probable that the vessel is intended to commit hostilities against the subjects, citizens, or property or any foreign country, with which the United States is at peace, until the decision of the President thereon is received, or until the owners shall have given bond or security in double the value of the vessel and its cargo that she will not be so employed.

(c) A port director shall promptly communicate all the facts to Headquarters, U.S. Customs Service, if he

<sup>104</sup> See 18 U.S.C. 961 through 967 and 22 U.S.C. 441 through 457.

<sup>105</sup> Clearance for vessel shall not be denied for the sole reason that her cargo contains contraband of war.

<sup>106-110</sup> [Reserved]

learns while the United States is at peace that any vessel of a belligerent power which has arrived as a merchant vessel is altering, or will attempt to alter, her status as a merchant vessel so as to become an armed vessel or an auxiliary to armed vessels of a foreign power.

(d) If a port director has reason to believe during the existence of a war to which the United States is not a party that any vessel at his port is about to carry arms, munitions, supplies, dispatches, information, or men to any warship or tender or supply ship of a belligerent nation, he shall withhold the clearance of such vessel and report the facts promptly to Headquarters, U.S. Customs Service.

#### § 4.74 Transportation orders.

Clearance shall not be granted to any vessel if the port director has reason to believe that her departure or intended voyage would be in violation of any provision of any transportation order, regulation, or restriction issued under authority of the Defense Production Act of 1950 (50 U.S.C. App. 2061-2066).

#### § 4.75 Incomplete manifest; incomplete export declarations; bond.

(a) *Pro forma manifest.* Except as provided for in § 4.75(c), if a master desiring to clear his vessel for a foreign port does not have available for filing with the port director a complete Cargo Declaration Outward with Commercial Forms, Customs Form 1302-A (see § 4.63) in accordance with 46 U.S.C. 91, or all required shipper's export declarations (see 15 CFR 30.24), the port director may accept in lieu thereof an incomplete manifest (referred to as a *pro forma manifest*) on the Vessel Entrance or Clearance Statement, Customs Form 1300, if there is on file in his office a bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers, executed by the vessel owner or other person as attorney in fact of the vessel owner. The "Incomplete Manifest for Export" box in item 17 of the Vessel Entrance or Clearance Statement form must be checked.

(b) *Time in which to file complete manifest and export declarations.* Not later

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than the fourth business day after clearance from each port in the vessel's itinerary, the master, or the vessel's agent on behalf of the master, shall deliver to the director of each port a complete Cargo Declaration Outward with Commercial Forms, Customs Form 1302-A, in accordance with §4.63, of the cargo laden at such port together with duplicate copies of all required shipper's export declarations for such cargo and a Vessel Entrance or Clearance Statement, Customs Form 1300. The statutory grace period of 4 days for filing the complete manifest and missing export declarations begins to run on the first day (exclusive of any day on which the customhouse is not open for marine business) following the date on which clearance is granted.

(c) *Countries for which vessels may not be cleared until complete manifests and shipper's export declarations are filed.* To aid the Customs Service in the enforcement of export laws and regulations, no vessel shall be cleared for any port in the following countries until a complete outward foreign manifest and all required shipper's export declarations have been filed with the port director:

Albania	Laos
Bulgaria	Latvia
Cambodia	Libya
China, People's Republic of	Lithuania
Cuba	Mongolian People's Republic
Czechoslovakia	North Korea
Estonia	Polish People's Republic (Including Danzig)
German Democratic Republic (Soviet Zone of Germany and Soviet Zone sector of Berlin)	Rumania
Hungary	South Yemen
Iran	Union of Soviet Socialist Republics
Iraq	Viet Nam

[T.D. 87-1, 52 FR 255, Jan. 5, 1987, as amended by T.D. 91-60, 56 FR 32085, July 15, 1991; T.D. 00-22, 65 FR 16515, Mar. 29, 2000]

**§4.76 Procedures and responsibilities of carriers filing outbound vessel manifest information via the AES.**

(a) *The sea carrier's module.* The Sea Carrier's Module is a component of the Automated Export System (AES) (see, part 192, subpart B, of this chapter) that allows for the filing of outbound vessel manifest information electronically (see, 15 CFR part 30). All sea car-

riers are eligible to apply for participation in the Sea Carrier's Module. Application and certification procedures for AES are found at 15 CFR 30.60. A sea carrier certified to use the module that adheres to the procedures set forth in this section and the Census Regulations (15 CFR part 30) concerning the electronic submission of an outbound vessel manifest information meets the outward cargo declaration filing requirements (CF 1302-A) of §§4.63 and 4.75, except as otherwise provided in §§4.75 and 4.84.

(b) *Responsibilities.* The performance requirements and operational standards and procedures for electronic submission of outbound vessel manifest information are detailed in the AES Trade Interface Requirements handbook (available on the Customs internet web site (www.customs.gov)). Carriers and their agents are responsible for reporting accurate and timely information and for responding to all notifications concerning the status of their transmissions and the detention and release of freight in accordance with the procedures set forth in the AES Trade Interface Requirements handbook. Customs will send messages to participant carriers regarding the accuracy of their transmissions. AES participants are required to comply with the recordkeeping requirements contained at §30.66 of the Census Regulations (15 CFR 30.66) and any other applicable recordkeeping requirements. Where paper SEDs have been submitted by exporters prior to departure, participant carriers will be responsible for submitting those SEDs to Customs within four (4) business days after the departure of the vessel from each port, unless a different time requirement is specified by §§4.75 or 4.84. Upon written agreement with participant sea carriers, Customs and Census can provide for an alternative to the location filing requirement for paper SEDs set forth in §4.75(b) by which the participant carriers are otherwise bound.

(c) *Messages required to be filed within the sea carrier's module.* Participant carriers will be responsible for transmitting and responding to the following messages:

(1) *Booking.* Booking information identifies all the freight that is scheduled for export. Booking information will be transmitted to Customs via AES for each shipment as far in advance of departure as practical, but no later than seventy-two hours prior to departure for all information available at that time. Bookings received within seventy-two hours of departure will be transmitted to Customs via AES as received;

(2) *Receipt of booking.* When the carrier receives the cargo or portion of the cargo that was booked, the carrier will inform Customs so that Customs can determine if an examination of the cargo is necessary. Customs will notify the carrier of shipments designated for examination. Customs will also notify the carrier when the shipment designated for inspection is released and may be loaded on the vessel;

(3) *Departure.* No later than the first calendar day following the actual departure of the vessel, the carrier will notify Customs of the date and time of departure; and

(4) *Manifest.* Within ten (10) calendar days after the departure of the vessel from each port, the carrier will submit the manifest information to Customs via AES for each booking loaded on the departed vessel. However, if the destination of the vessel is a foreign port listed in § 4.75(c), the carrier must transmit complete manifest information before vessel departure. Time requirements for transmission of complete manifest information for carriers destined to Puerto Rico and U.S. possessions are the same as the requirement for the submission of the complete manifest as found in § 4.84.

(d) All penalties and liquidated damages that apply to the submission of paper manifests (*see*, applicable provisions in this part) apply to the electronic submission of outbound vessel manifest information through the Sea Carrier's Module.

[T.D. 99-57, 64 FR 40986, July 28, 1999]

#### COASTWISE PROCEDURE

### § 4.80 Vessels entitled to engage in coastwise trade.

(a) No vessel shall transport, either directly or by way of a foreign port,

any passenger or merchandise between points in the United States embraced within the coastwise laws, including points within a harbor, or merchandise for any part of the transportation between such points, unless it is:

(1) Owned by a citizen and is so documented under the laws of the United States as to permit it to engage in the coastwise trade;

(2) Owned by a citizen, is exempt from documentation, and is entitled to or, except for its tonnage, would be entitled to be documented with a coastwise license or, where appropriate, a Great Lakes license endorsement.

(3) Owned by a partnership or association in which at least a 75 percent interest is owned by such a citizen, is exempt from documentation and is entitled to or, except for its tonnage, or citizenship of its owner, or both, would be entitled to be documented for the coastwise trade. The term "citizen" for vessel documentation purposes, whether for an individual, partnership, or corporation owner, is defined in 46 CFR 67.3.

(b) *Penalties for violating coastwise laws.* (1) The penalty imposed for the illegal transportation of merchandise between coastwise points is forfeiture of the merchandise or, in the discretion of the port director, forfeiture of a monetary amount up to the value of the merchandise to be recovered from the consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing the merchandise to be transported (46 U.S.C. 883).

(2) The penalty imposed for the unlawful transportation of passengers between coastwise points is \$200 for each passenger so transported and landed (46 U.S.C. 289).

(c) Any vessel of the United States, whether or not entitled under paragraph (a) of this section to engage in the coastwise trade, and any foreign vessel may proceed between points in the United States embraced within the coastwise laws to discharge cargo or passengers laden at a foreign port, to lade cargo or passengers for a foreign port, in ballast, or to transport certain articles in accordance with § 4.93. Cargo laden at a foreign port may be retained

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onboard during such movements. Furthermore, certain barges of United States or foreign flag may transport transferred merchandise between points in the United States embraced within the coastwise laws, excluding transportation between the continental United States and a noncontiguous point in the United States embraced within the coastwise laws, in accordance with § 4.81a.

(d) No vessel owned by a corporation which is a citizen of the United States under the Act of September 2, 1958 (46 U.S.C. 883-1) shall be used in any trade other than the coastwise trade and shall not be used in that trade unless it is properly documented for such use or is exempt from documentation and is entitled to or, except for its tonnage, would be entitled to a coastwise license, or where appropriate, a Great Lakes license endorsement. Such a vessel shall not be documented for nor engage in the foreign trade or the fisheries and shall not transport merchandise or passengers coastwise for hire except as a service for a parent or a subsidiary corporation as defined in the aforesaid Act or while under demise or bareboat charter at prevailing rates for use otherwise than in trade with noncontiguous territory of the United States to a common or contract carrier subject to Part III of the Interstate Commerce Act, as amended (49 U.S.C. 901 through 923), which otherwise qualifies as a citizen of the United States under section 2 of the Shipping Act, 1916, as amended (46 U.S.C. 802), and which is not connected, directly or indirectly, by way of ownership or control with such owning corporation.

(e) No vessel which has acquired the lawful right to engage in the coastwise trade, by virtue of having been built in or documented under the laws of the United States, shall have the right to engage in such trade if it thereafter has been sold or transferred foreign in whole or in part or placed under foreign registry, or, if of more than 500 gross tons, has been rebuilt unless the entire rebuilding, including the construction of any major components of the hull or superstructure of the vessel, was effected within the United States, its Territories (not including trust territories), or its possessions. However,

no rebuilt vessel shall be deemed to have lost its coastwise privileges within the meaning of the above if rebuilt within the United States, its Territories (not including trust territories), or its possessions under a contract executed before July 5, 1960, if the work of rebuilding commenced not later than 24 months after such date.

(f) No foreign-built vessel owned and documented as a vessel of the United States prior to February 1, 1920, by a citizen nor one owned by the United States on June 5, 1920, and sold to and owned by a citizen, shall engage in the American fisheries, but it is otherwise unlimited as to trade so long as it continues in such ownership (section 22, Merchant Marine Act, of June 5, 1920; 46 U.S.C. 13). No foreign-built vessel which is owned by a citizen, but which was not so owned and documented on February 1, 1920, or which was not owned by the United States on June 5, 1920, shall engage in the coastwise trade or the American fisheries. No foreign-built vessel which has been sold, leased, or chartered by the Secretary of Commerce to any citizen, shall engage in the American fisheries, but it is otherwise unlimited as to trade so long as it continues in such ownership, lease, or charter (section 9 of the Act of Sept. 7, 1916, as amended, 46 U.S.C. 808). A vessel engaged in taking out fishing parties for hire, unless it intends to proceed to a foreign port, is considered to be engaged in the coastwise trade and not the fisheries.

(g) Certain vessels not documented under the laws of the United States which are acquired by or made available to the Secretary of Commerce may be documented under section 3 of the Act of August 9, 1954 (50 U.S.C. 198). Such vessels shall not engage in the coastwise trade unless in possession of a valid unexpired permit to engage in that trade issued by the Secretary of Commerce under authority of section 3(c) of the said Act.

(h) A vessel which is at least 50 percent owned by a citizen as defined in 46 CFR subpart 68.05, and which, except for citizenship requirements, is otherwise entitled to be documented with a coastwise endorsement, may be documented with a limited coastwise endorsement, provided the vessel is

owned by a not-for-profit oil spill response cooperative or by one or more members of such a cooperative who dedicate the vessel to the use of the cooperative (46 U.S.C. 12106(d)). Notwithstanding 46 U.S.C. App. 883, a vessel may be documented with such a limited endorsement even if formerly owned by a not-for-profit oil spill response cooperative or by one or more members thereof, as long as the citizenship criteria of 46 CFR subpart 68.05 are met. A vessel so documented may operate on the navigable waters of the United States or in the Exclusive Economic Zone only for the purpose of training for oil spill cleanup operations; deploying equipment, supplies and personnel for cleanup operations; and recovering and/or transporting oil discharged in a spill. Such vessel may also engage in any other employment for which a registry, fishery, or Great Lakes endorsement is not required, and may qualify to operate for other purposes by meeting the applicable requirements of 46 CFR part 67.

(i) Any vessel, entitled to be documented and not so documented, employed in a trade for which a Certificate of Documentation is issued under the vessel documentation laws (see § 4.0(c)), other than a trade covered by a registry, is liable to a civil penalty of \$500 for each port at which it arrives without the proper Certificate of Documentation. If such a vessel has on board any foreign merchandise (sea stores excepted), or any domestic taxable alcoholic beverages, on which the duty and taxes have not been paid or secured to be paid, the vessel and its cargo are subject to seizure and forfeiture.

[T.D. 69-266, 34 FR 20422, Dec. 31, 1969, as amended by T.D. 79-160, 44 FR 31956, June 4, 1979; T.D. 83-214, 48 FR 46512, Oct. 13, 1983; T.D. 93-78, 58 FR 50257, Sept. 27, 1993; T.D. 97-82, 62 FR 51769, Oct. 3, 1997]

#### § 4.80a Coastwise transportation of passengers.

(a) For the purposes of this section, the following terms will have the meaning set forth below:

(1) *Coastwise port* means a port in the U.S., its territories, or possessions embraced within the coastwise laws.

(2) *Nearby foreign port* means any foreign port in North America, Central America, the Bermuda Islands, or the West Indies (including the Bahama Islands, but not including the Leeward Islands of the Netherlands Antilles, i.e., Aruba, Bonaire, and Curacao). A port in the U.S. Virgin Islands shall be treated as a nearby foreign port.

(3) *Distant foreign port* means any foreign port that is not a nearby port.

(4) *Embark* means a passenger boarding a vessel for the duration of a specific voyage and *disembark* means a passenger leaving a vessel at the conclusion of a specific voyage. The terms *embark* and *disembark* are not applicable to a passenger going ashore temporarily at a coastwise port who reboards the vessel and departs with it on sailing from the port.

(5) *Passenger* has the meaning defined in § 4.50(b).

(b) The applicability of the coastwise law (46 U.S.C. 289) to a vessel not qualified to engage in the coastwise trade (i.e., either a foreign-flag vessel or a U.S.-flag vessel that is foreign-built or at one time has been under foreign-flag) which embarks a passenger at a coastwise port is as follows:

(1) If the passenger is on a voyage solely to one or more coastwise ports and the passenger disembarks or goes ashore temporarily at a coastwise port, there is a violation of the coastwise law.

(2) If the passenger is on a voyage to one or more coastwise ports and a nearby foreign port or ports (but at no other foreign port) and the passenger disembarks at a coastwise port other than the port of embarkation, there is a violation of the coastwise law.

(3) If the passenger is on a voyage to one or more coastwise ports and a distant foreign port or ports (whether or not the voyage includes a nearby foreign port or ports) and the passenger disembarks at a coastwise port, there is no violation of the coastwise law provided the passenger has proceeded with the vessel to a distant foreign port.

(c) An exception to the prohibition in this section is the transportation of passengers between ports in Puerto Rico and other ports in the U.S. on passenger vessels not qualified to engage

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in the coastwise trade. Such transportation is permitted until there is a finding under 46 U.S.C. 289c that a qualified U.S.-flag passenger vessel is available for such service.

(d) The owner or charterer of a foreign vessel or any other interested person may request from Headquarters, U.S. Customs Service, Attention: Entry Procedures and Carriers Branch, an advisory ruling as to whether a contemplated voyage would be considered to be coastwise transportation in violation of 46 U.S.C. 289. Such a request shall be filed in accordance with the provisions of part 177, Customs Regulations (19 CFR part 177).

[T.D. 85-109, 50 FR 26984, July 1, 1985, as amended by T.D. 85-109, 50 FR 37519, Sept. 16, 1985; T.D. 99-27, 64 FR 13675, Mar. 22, 1999]

#### § 4.80b Coastwise transportation of merchandise.

(a) *Effect of manufacturing or processing at intermediate port or place.* A coastwise transportation of merchandise takes place, within the meaning of the coastwise laws, when merchandise laden at a point embraced within the coastwise laws ("coastwise point") is unladen at another coastwise point, regardless of the origin or ultimate destination of the merchandise. However, merchandise is not transported coastwise if at an intermediate port or place other than a coastwise point (that is at a foreign port or place, or at a port or place in a territory or possession of the United States not subject to the coastwise laws), it is manufactured or processed into a new and different product, and the new and different product thereafter is transported to a coastwise point.

(b) *Request for ruling.* Interested parties may request an advisory ruling from Headquarters, United States Customs Service, Attention: Entry Procedures and Carriers Branch, as to whether a specific action taken or to be taken with respect to merchandise at the intermediate port or place will result in its becoming a new and different product for purposes of this section. The request shall be filed in ac-

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cordance with the provisions of part 177 of this chapter.

[T.D. 79-193, 44 FR 42178, July 19, 1979, as amended by T.D. 91-77, 56 FR 46114, Sept. 10, 1991; 56 FR 47268, Sept. 18, 1991; T.D. 99-27, 64 FR 13675, Mar. 22, 1999]

#### § 4.81 Reports of arrivals and departures in coastwise trade.

(a) No vessel which is documented with a coastwise license or registry endorsement or is owned by a citizen and exempt from documentation, and which is in ballast or laden only with domestic products or passengers being carried only between points in the United States shall be required to report arrival or to enter when coming into one port of the United States from any other such port, except as provided for in sections 4.83 and 4.84, nor to obtain a clearance, permit to proceed, or permission to depart when going from one port in the United States to any other such port except when transporting merchandise to a port in noncontiguous territory.<sup>111</sup>

(b) When the facts are as above stated except that the vessel is carrying bonded merchandise, the master shall report its arrival as provided for in § 4.2.

(c) [Reserved]

(d) The traveling Crew's Effects Declaration, Customs Form 1304, or Customs and Immigration Form I-418 with attached Customs Form 5129, referred to in § 4.85 (b), (c), and (e) shall be deposited with the port director upon arrival at each port in the United States and finally surrendered to the appropriate Customs officer or director of the port where the vessel first departs directly for a foreign port.

(e) Before any foreign vessel departs in ballast, or solely with articles to be transported in accordance with § 4.93, from any port in the United States for any other such port, the master must apply to the port director for a permit to proceed by filing a Vessel Entrance or Clearance Statement, Customs Form 1300, in duplicate. If a vessel is proceeding in ballast and therefore the Cargo Declaration (Customs Form 1302) is omitted, the words "No merchandise

<sup>111</sup> See § 4.84.

on board" shall be inserted in item 16 of the Vessel Entrance or Clearance Statement. However, articles to be transported in accordance with § 4.93 must be manifested on the Cargo Declaration, as required by § 4.93(c). Three copies of the Cargo Declaration must be filed with the port director. When the port director grants the permit by making an appropriate endorsement on the Vessel Entrance or Clearance Statement (see § 4.85(b)), the duplicate copy, together with two copies of the Cargo Declaration covering articles to be transported in accordance with § 4.93, must be returned to the master. The traveling Crew's Effects Declaration, Customs Form 1304, and all unused crewmembers' declarations on Customs Form 5129 will be placed in a sealed envelope addressed to the appropriate Customs officer at the next intended domestic port and returned to the master for delivery. The master must execute a receipt for all unused crewmembers' declarations which are returned to him. Immediately upon arrival at the next United States port the master must report his arrival to the port director. He must make entry within 48 hours by filing with the port director the permit to proceed on the Vessel Entrance or Clearance Statement received at the previous port, a newly executed Vessel Entrance or Clearance Statement, a Crew's Effects Declaration of all unentered articles acquired abroad by crewmembers which are still on board, a Ship's Stores Declaration, Customs Form 1303, in duplicate of the stores remaining on board, both copies of the Cargo Declaration covering articles transported in accordance with § 4.93, and the document of the vessel. The traveling Crew's Effects Declaration and all unused crewmembers' declarations on Customs Form 5129 returned at the prior port to the master must be delivered by him to the appropriate Customs officer.

(f) The master, licensed deck officer, or purser who enters or clears a vessel, or who obtains permission for a vessel to depart, when required under the provisions of this section or of §§ 4.82, 4.84, 4.85, 4.87, 4.89, or 4.91 of the regulations of this part, may appear in person at the customhouse for that purpose, or

any required oaths, related documents, and other papers properly executed by the master or other proper officer may be delivered at the customhouse by the vessel agent or other personal representative of the master.

(g) In lieu of the procedures stated in §§ 4.85 and 4.87 and at the option of the owner or operator, unmanned non-self-propelled barges specifically designed for carriage aboard a vessel and regularly carried aboard a vessel in the foreign trade, hereinafter referred to as LASH-type barges, may move under a simplified permit-to-proceed procedure as follows:

(1) At the port where a LASH-type barge begins a coastwise movement with inward foreign cargo, a permit to proceed on the Vessel Entrance or Clearance Statement, Customs Form 1300, must be obtained. A single permit to proceed may be used for all the barges proceeding to the same port of unloading in the same town. An inward foreign manifest of the cargo in each barge, destined to the port of unloading shown on the permit to proceed, must be attached to each permit. At the port of unloading of the barge, report of arrival and entry must be made immediately upon arrival to the appropriate Customs officer by presentation of the permit to proceed, manifests, and a new Vessel Entrance or Clearance Statement, Customs Form 1300. If only part of the inward foreign cargo is unladen, a new permit to proceed must be obtained and the inward foreign manifests must be attached to it.

(2) At the port where a LASH-type barge begins a coastwise movement with export cargo, a permit to proceed on the Vessel Entrance or Clearance Statement, Customs Form 1300, must be presented to the appropriate Customs officer. A single permit to proceed may be presented for all the barges proceeding from the same port of lading in the same tow. Required shipper's export declarations for LASH-type barges must be filed at the port where the barges will be taken aboard a barge-carrying vessel. At the next port, a report of arrival must be made immediately upon arrival and entry must be made within 48 hours by presentation of the permit to proceed received upon departure from the prior

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port and a newly executed Vessel Entrance or Clearance Statement, Customs Form 1300.

(3) When foreign LASH-type barges are proceeding between ports of the United States under paragraph (e) of this section, a single permit to proceed may be used for all the barges proceeding to the same port in the same tow.

(4) In lieu of the master of the towing vessel executing and delivering documents required under permit-to-proceed procedures (see §4.81(f)) at the port where a LASH-type barge begins a coastwise movement, the master of the towing vessel may designate in writing the owner or operator of the barges as his representative with authority to execute and deliver such documents at the customhouse. The owner or operator of the barges may designate representatives to perform such functions at ports or places where permit-to-proceed documents must be delivered. Documents obtained from Customs officers at one place by such a representative may be forwarded by any suitable means to the representative who must present them to Customs officers at another place, the only requirement being that the forms are properly completed and are presented within the prescribed time periods. Moreover, instead of a written designation from each master of a towing vessel, a blanket designation in writing from the owner or operator of one or more towing vessels on behalf of masters of their towing vessels, designating the owner or operator of the barges to be the representative of the master for purposes of executing and delivering permit-to-proceed documents, is authorized.

(5) [Reserved]

(6) When a LASH-type barge is proceeding to a place in the United States that is not a port of entry, §101.4(a) and (b) of this chapter are applicable. No merchandise shall be unladen from a LASH-type barge until a permit or special license therefor is obtained in accordance with §4.30 except that a single permit to unlade may be used for all

barges that arrived at the port of unloading in the same tow.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 71-169, 36 FR 12604, July 2, 1971; T.D. 74-63, 39 FR 6108, Feb. 19, 1974; T.D. 74-284, 39 FR 39718, Nov. 11, 1974; T.D. 75-315, 40 FR 58852, Dec. 19, 1975; T.D. 77-241, 42 FR 54936, Oct. 12, 1977; T.D. 77-255, 42 FR 56322, Oct. 25, 1977; T.D. 83-214, 48 FR 46512, Oct. 13, 1983; T.D. 92-74, 57 FR 35752, Aug. 11, 1992; T.D. 93-96, 58 FR 67317, Dec. 21, 1993; T.D. 00-22, 65 FR 16515, Mar. 29, 2000]

#### §4.81a Certain barges carrying merchandise transferred from another barge.

(a) A LASH-type barge (as defined in §4.81(g)) documented as a vessel of the United States but not qualified to engage in the coastwise trade or a LASH-type barge of a nation found to grant reciprocal privileges to United States-flag LASH-type barges may transport inward foreign and export cargo between points embraced within the coastwise laws of the United States after the merchandise has been transferred to it from another LASH-type barge owned or leased by the same owner or operator. This section is not applicable to transportation between the continental United States and non-contiguous States, districts, territories, and possessions embraced within the coastwise laws. The permit to proceed shall include a statement that the unqualified LASH-type barge is owned or leased by the owner or operator of the LASH-type barge from which the merchandise was transferred.

(b) The following nations have been found to extend privileges reciprocal to those provided in paragraph (a) of this section to LASH-type barges of the United States:

Federal Republic of Germany.

Netherlands.

Sweden.

Union of Soviet Socialist Republics.

[T.D. 74-63, 39 FR 6108, Feb. 19, 1974, as amended by T.D. 74-292, 39 FR 41360, Nov. 27, 1974; T.D. 75-7, 39 FR 44660, Dec. 26, 1974; T.D. 75-315, 40 FR 58852, Dec. 19, 1975; T.D. 78-492, 43 FR 58814, Dec. 18, 1978]

**§ 4.82 Touching at foreign port while in coastwise trade.**

(a) A United States documented vessel with a registry or, coastwise endorsement, or both which, during a voyage between ports in the United States, touches at one or more foreign ports and there discharges or takes on merchandise, passengers, baggages, or mail shall obtain a permit to proceed or clearance at each port of lading in the United States for the foreign port or ports at which it is intended to touch. The Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A (see § 4.63), shall show only the cargo for foreign destination. (See §§ 4.61 and 4.87.)

(b) The master shall also present to the port director a coastwise Cargo Declaration in triplicate of the merchandise to be transported via the foreign port or ports to the subsequent ports in the United States. It shall describe the merchandise and show the marks and numbers of the packages, the names of the shippers and consignees, and the destinations. The port director shall certify the two copies and return them to the master. Merchandise carried by the vessel in bond under a transportation entry and manifest, Customs Form 7512, shall not be shown on the coastwise Cargo Declaration.

(c) Upon arrival from the foreign port or ports at the subsequent port in the United States, a report of arrival and entry of the vessel shall be made, and tonnage taxes shall be paid unless the vessel is properly operating under a document with Great Lakes license endorsement. The master shall present Cargo Declaration in accordance with § 4.7 and the certified copies of the coastwise Cargo Declaration, Customs Form 1302.

(d) All merchandise on the vessel upon its arrival at the subsequent port in the United States is subject to such Customs examination and treatment as may be necessary to protect the revenue. Any article on board which is not identified to the satisfaction of the port director, by the coastwise Cargo Declaration, Customs Form 1302, or otherwise, as part of the coastwise

cargo, shall be treated as imported merchandise.

[T.D. 77-255, 42 FR 56322, Oct. 25, 1977, as amended by T.D. 83-214, 48 FR 46513, Oct. 13, 1983; T.D. 84-193, 49 FR 35485, Sept. 10, 1984; T.D. 99-64, 64 FR 43265, Aug. 10, 1999]

**§ 4.83 Trade between United States ports on the Great Lakes and other ports of the United States.**

(a) If a vessel proceeding from or to a port of the United States on the Great Lakes to or from any other port of the United States via the St. Lawrence River is intended to touch at any foreign port and does so touch, it will be subject to the usual requirements for manifesting, clearing, report of arrival, entry, payment of fees for entry and clearance, and tonnage taxes. Vessels which are boarded on the St. Lawrence River by Canadian authorities for the purposes of inspecting the vessel and taking a passing report are not deemed to have touched at a foreign port, provided that no ship's stores are landed or taken aboard and no other business is transacted at the port or place of boarding.

(b) A vessel in the coastwise trade only, which is proceeding from a port of the United States on the Great Lakes via the Hudson River and otherwise than by sea, may operate under a document with a Great Lakes license endorsement and shall not be subject to the requirements for clearance, report of arrival, or entry.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 69-266, 34 FR 20423, Dec. 31, 1969; T.D. 83-214, 48 FR 46513, Oct. 13, 1983]

**§ 4.84 Trade with noncontiguous territory.**

(a) No foreign vessel shall depart from a port in noncontiguous territory of the United States for any other port in noncontiguous territory or for any port in any State or the District of Columbia, nor from any port in any State or the District of Columbia for any port in noncontiguous territory, until a clearance for the vessel has been granted. Such a clearance shall be granted in accordance with the applicable provisions of § 4.61 of the regulations of this part, including clearance of a vessel simultaneously engaged in one or more of the transactions listed

<sup>112-114</sup> [Reserved]

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in § 4.90(a)(4), (5), or (6) of this part. When merchandise is laden on a foreign vessel in noncontiguous territory other than Puerto Rico, for transportation on that vessel to a port in any State, the District of Columbia, or noncontiguous territory, and when this transportation is not forbidden by the coastwise laws, the merchandise may be laden and shipped without shipper's export declarations.

(b) The master of every foreign vessel arriving at a port in any State or the District of Columbia or in noncontiguous territory of the United States from a port in noncontiguous territory to which the coastwise laws do not apply (e.g., Virgin Islands and American Samoa), or arriving at any port in noncontiguous territory to which the coastwise laws do not apply from any place embraced within the coastwise laws, shall immediately report its arrival and make entry for the vessel within 48 hours after its arrival.

(c)(1) A vessel which is not required to clear but which is transporting merchandise from a port in any State or the District of Columbia to any noncontiguous territory of the United States (excluding Puerto Rico), or from Puerto Rico to any State or the District of Columbia, or any other noncontiguous territory, shall not be permitted to depart without filing a complete manifest, when required by regulations of the Bureau of the Census (15 CFR part 30), and all required Shipper's Export Declarations, unless before the vessel departs an approved bond is filed for the timely production of the required documents, as specified in 15 CFR 30.24. Requests for permission to depart may be written or oral and permission to depart shall be granted orally by the appropriate Customs officer. However, if the request is to depart prior to the filing of the required manifest and export declarations, permission shall not be granted unless the appropriate bond is on file. In the latter case, the Customs officer shall keep a simplified record of the necessary information in order to assure that the manifest and export declarations are filed within the required time period. The Vessel Entrance or Clearance Statement, Customs Form 1300 (see § 4.63(a)), required at the time of clear-

ance is not required to be taken to obtain permission to depart.

(2) A vessel which is not required to clear but which is transporting merchandise from a port in any State or the District of Columbia to Puerto Rico shall file a complete manifest, when required by the regulations of the Bureau of the Census (15 CFR part 30), and all required Shipper's Export Declarations within one business day after arrival, as defined in § 4.2(b) of this part, with the appropriate Customs officer in Puerto Rico. If the complete manifest and all required Shipper's Export Declarations are not filed with the appropriate Customs officer within that time frame, an appropriate bond shall be filed with the Customs officer for the timely production of the required documents as specified in 15 CFR 30.24. In these instances when a bond is filed, the Customs officer shall keep a simplified record of the necessary information in order to ensure that the manifest and export declarations are filed not later than the seventh business day after arrival in Puerto Rico.

(d) Upon arrival of a vessel of the United States at a port in any State, the District of Columbia, or Puerto Rico from a port in noncontiguous territory other than Puerto Rico, the master shall immediately report its arrival and shall prepare, produce, and file a Cargo Declaration in the form and manner and at the times specified in §§ 4.7 and 4.9 but shall not be required to make entry. If the vessel proceeds directly to another port in any State, the District of Columbia, or Puerto Rico, the master shall prepare, produce, and file a Cargo Declaration in the form and manner and at the times specified in § 4.85 but no permit to proceed on the Vessel Entrance or Clearance Statement, Customs Form 1300, shall be required for the purposes of this paragraph. No cargo shall be unladen from any such vessel until Cargo Declarations have been filed and a permit to unlade has been issued in accordance with the procedure specified in § 4.30.

(e) No vessel shall bring guano to the United States from a guano island appertaining to the United States (see 48

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U.S.C. 1411) unless such a vessel is entitled to engage in the coastwise trade.

(f) No vessel owned by a corporation which qualifies as a citizen under the Act of September 2, 1958 (46 U.S.C. 883-1) shall, while under demise or bareboat charter from such corporation, be granted clearance or permitted to depart in trade with noncontiguous territory.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 69-266, 34 FR 20423, Dec. 31, 1969; T.D. 71-169, 36 FR 12604, July 2, 1971; T.D. 77-255, 42 FR 56323, Oct. 25, 1977; T.D. 79-276, 44 FR 61956, Oct. 29, 1979; T.D. 93-61, 58 FR 41425, Aug. 4, 1993; T.D. 93-96, 58 FR 67317, Dec. 21, 1993; T.D. 00-22, 65 FR 16516, Mar. 29, 2000]

**§ 4.85 Vessels with residue cargo for domestic ports.**

(a) Any foreign vessel or documented vessel with a registry or, where appropriate, a Great Lakes license endorsement, arriving from a foreign port with cargo or passengers manifested for ports in the United States other than the port of first arrival, may proceed with such cargo or passengers from port to port, provided a bond on Customs Form 301, containing the bond conditions set forth in §113.64 of this chapter relating to international carriers in a suitable amount is on file with the director of the port of first entry.<sup>115</sup> No additional bond shall be required at subsequent ports of entry. Before the vessel departs from the port of first arrival, the master shall obtain from the port director a certified copy of the complete inward foreign manifest (hereinafter referred to as the traveling manifest). The certified copy shall have a legend similar to the following endorsed on the Vessel Entrance or Clearance Statement, Customs Form 1300:

Port	Date

<sup>115</sup> \* \* \* Any vessel arriving from a foreign port or place having on board merchandise shown by the manifest to be destined to a port or ports in the United States other than the port of entry at which such vessel first arrived and made entry may proceed with such merchandise from port to lading thereof." (Tariff Act of 1930, sec. 442; 19 U.S.C. 1442)

<sup>116-118</sup> [Reserved]

Certified to be a true copy of the original inward foreign manifest.

\_\_\_\_\_  
Signature and title

(b)(1) Before a vessel proceeds from one domestic port to another with cargo or passengers on board as described in paragraph (a) of this section, the master must present to the director of such port of departure an application in triplicate on Customs Form 1300 for a permit to proceed to the next port. When a port director grants the permit on Customs Form 1300, the following legend must be endorsed on the form:

Port  
Date  
Permission is granted to proceed to the port named in item 12.

\_\_\_\_\_  
Signature and title

(2) The duplicate must be attached to the traveling manifest and the triplicate (the permit to proceed to be delivered at the next port) must be returned to the master, together with the traveling manifest and the vessel's document, if on deposit. If no inward foreign cargo or passengers are to be discharged at the next port, that fact must be indicated on Customs Form 1300 by inserting "To load only" in parentheses after the name of the port to which the vessel is to proceed. The traveling Crew's Effects Declaration covering articles acquired abroad by officers and members of the crew, together with the unused crewmembers' declarations prepared for such articles, will be placed in a sealed envelope addressed to the appropriate Customs officer at the next port and given to the master for delivery.

(c)(1) Upon the arrival of a vessel at the next and each succeeding domestic port with inward foreign cargo or passengers still on board, the master must immediately report its arrival and make entry within 48 hours. To make such entry, he must deliver to the port director the vessel's document, the permit to proceed (Customs Form 1300 endorsed in accordance with paragraph (b) of this section), the traveling manifest, and the traveling Crew's Effects

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Declaration (Customs Form 1304), together with the crewmembers' declarations received on departure from the previous port. The master must also present an abstract manifest consisting of a newly executed Vessel Entrance or Clearance Statement, Customs Form 1300, a Cargo Declaration, Customs Form 1302, and a Passenger List, Customs and Immigration Form I-418, in such number of copies as may be required for local Customs purposes, of any cargo or passengers on board manifested for discharge at that port, a Crew's Effects Declaration in duplicate of all unentered articles acquired abroad by officers and crewmembers which are still on board, a Ship's Stores Declaration, Customs Form 1303, in duplicate of the sea or ship's stores remaining on board, and if applicable, the Cargo Declaration required by §4.86. If no inward foreign cargo or passengers are to be discharged, the Cargo Declaration or Passenger List may be omitted from the abstract manifest, and the following legend must be placed in item 15 of the Vessel Entrance or Clearance Statement:

Vessel on an inward foreign voyage with residue cargo/passengers for \_\_\_\_\_. No cargo or passengers for discharge at this port.

(2) The traveling manifest, together with a copy of the newly executed Vessel Entrance or Clearance Statement, will serve the purpose of a copy of an abstract manifest at the port where it is finally surrendered.

(d) If boarding is required before the port director will issue a permit or special license to lade or unlade, the abstract manifest described in paragraph (c) of this section shall be ready for presentation to the boarding officer.

(e) The traveling manifest shall be surrendered to the director of the final domestic port of discharge of the cargo, except that if residue foreign cargo remains on board for discharge at a foreign port or ports, the traveling manifest shall be surrendered at the final port of departure from the United States. However, it shall not be surrendered at the port from which the vessel departs for another United States port, via an intermediate foreign port, under §4.89 if residue foreign cargo remains

on board for discharge at a subsequent U.S. port. The traveling Crew's Effects Declaration shall be finally surrendered to the director of any port from which the vessel will depart directly for a foreign port.

[T.D. 71-169, 36 FR 12604, July 2, 1971, as amended by T.D. 77-255, 42 FR 56323, Oct. 25, 1977; T.D. 83-214, 48 FR 46513, Oct. 13, 1983; T.D. 84-213, 49 FR 41164, Oct. 19, 1984; T.D. 92-74, 57 FR 35752, Aug. 11, 1992; T.D. 93-96, 58 FR 67317, Dec. 21, 1993; T.D. 94-24, 59 FR 13200, Mar. 21, 1994; T.D. 00-22, 65 FR 16516, Mar. 29, 2000]

#### §4.86 Intercoastal residue—cargo procedure; optional ports.

(a) When a vessel arrives at an Atlantic or Pacific coast port from a foreign port or ports with residue cargo for delivery at a port or ports on the opposite coast or on the Great Lakes, or where such arrival is at a port on the Great Lakes, with residue cargo for delivery at a port or ports on the Atlantic or Pacific coasts, or both, and the master, owner, or agent is unable at that time to designate the specific port or ports of discharge of that residue cargo, the Cargo Declaration, Customs Form 1302, filed on entry in accordance with §4.7(b) shall show such cargo as destined for "optional ports, Atlantic coast," or "optional ports, Pacific coast," or "optional ports, Great Lakes coast," as the case may be. The traveling manifest shall be similarly noted. Upon arrival of the vessel at the first port on the next coast, the master, owner, or agent must designate the port or ports of discharge of residue cargo as required by section 431, Tariff Act of 1930.

(b) For this purpose, the master shall furnish with the other papers required upon entry a Cargo Declaration, Customs Form 1302 in original only of inward foreign cargo remaining on board for discharge at optional ports on that coast, and the Cargo Declaration, must designate the specific ports of intended discharge for that cargo. The traveling manifest shall be amended to agree with that Cargo Declaration so as to show the newly designated ports of discharge on that coast and shall be used

to verify the abstract Cargo Declarations surrendered at subsequent ports on that coast.

[T.D. 77-255, 42 FR 56323, Oct 25, 1977]

**§ 4.87 Vessels proceeding foreign via domestic ports.**

(a) Any foreign vessel or documented vessel with a registry or, where appropriate, a Great Lakes license endorsement may proceed from port to port in the United States to lade cargo or passengers for foreign ports.

(b) When applying for a clearance from the first and each succeeding port of lading, the master must present to the port director a Vessel Entrance or Clearance Statement, Customs Form 1300, in duplicate and a Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A, in accordance with § 4.63(a), of all the cargo laden for export at that port. The Vessel Entrance or Clearance Statement must clearly indicate all previous ports of lading.

(c) Upon compliance with the applicable provisions of § 4.61, the port director will grant the permit to proceed by making the endorsement prescribed by § 4.85(b) on the Vessel Entrance or Clearance Statement, Customs Form 1300. One copy will be returned to the master, together with the vessel's document if on deposit. The traveling Crew's Effects Declaration, Customs Form 1304, together with any unused crewmembers' declarations, will be placed in a sealed envelope addressed to the appropriate Customs officer at the next domestic port and returned to the master.

(d) On arrival at the next and each succeeding domestic port, the master must immediately report arrival. He must also make entry within 48 hours by presenting the vessel's document, the permit to proceed on the Vessel Entrance or Clearance Statement, Customs Form 1300, received by him upon departure from the last port, a Crew's Effects Declaration, Customs Form 1304, in duplicate listing all unentered articles acquired aboard by officers and crew of the vessel which are still retained on board, and a Ship's Stores Declaration, Customs Form 1303, in duplicate of the stores remaining aboard. The master must also execute a Vessel

Entrance or Clearance Statement. The traveling Crew's Effects Declaration, together with any unused crewmembers' declarations returned to the master at the prior port, will be delivered by him to the port director.

(e) Clearance shall be granted at the final port of departure from the United States in accordance with § 4.61.

(f) If a complete Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A (see § 4.63), and all required shipper's export declarations are not available for filing before departure of a vessel from any port, clearance on the Vessel Entrance or Clearance Statement, Customs Form 1300, may be granted in accordance with § 4.75, subject to the limitation specified in § 4.75(c).

(g) When the procedure outlined in paragraph (f) of this section is followed at any port, the owner or agent of the vessel must deliver to the director of that port within 4 business days after the vessel's clearance a Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A (see § 4.63), and the export declarations to cover the cargo laden for export at that port.

[T.D. 77-255, 42 FR 56324, Oct. 25 1977, as amended by T.D. 83-214, 48 FR 46513, Oct. 13, 1983; T.D. 84-193, 49 FR 35485, Sept. 10, 1984; T.D. 92-74, 57 FR 35752, Aug. 11, 1992; T.D. 93-96, 58 FR 67317, Dec. 21, 1993; T.D. 00-22, 65 FR 16517, Mar. 29, 2000]

**§ 4.88 Vessels with residue cargo for foreign ports.**

(a) Any foreign vessel or documented vessel with a registry or, where appropriate, a Great Lakes license endorsement which arrives at a port in the United States from a foreign port shall not be required to unlade any merchandise manifested for a foreign destination provided a bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers in a suitable amount is on file with the director of the port of first entry.<sup>119</sup>

<sup>119</sup> "Any vessel having on board merchandise shown by the manifest to be destined to a foreign port or place may, after the report and entry of such vessel under the provisions of this Act, proceed to such foreign port of

*Continued*

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(b) The port director shall designate the items of such merchandise, if any, for which foreign landing certificates<sup>120</sup> will be required.

(c) If the vessel clears directly foreign from the first port of arrival, cargo brought in from foreign ports and retained on board may be declared on the Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A (see § 4.63), by the insertion of the following statement:

All cargo declared on entry in this port as cargo for discharge at foreign ports and so shown on the Cargo Declaration filed upon entry has been and is retained on board.

If any such cargo has been landed, the Cargo Declaration shall describe each item of the cargo from a foreign port which has been retained on board (see § 4.63(a)).

(d) If the vessel is proceeding to other ports in the United States with foreign residue cargo on board manifested for discharge at a foreign port or ports, a procedure like that set forth in § 4.85 shall be followed with respect thereto.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 77-255, 42 FR 56324, Oct. 25, 1977; T.D. 83-214, 48 FR 46513, Oct. 13, 1983; T.D. 84-193, 49 FR 35485, Sept. 10, 1984; 49 FR 41164, Oct. 19, 1984]

#### § 4.89 Vessels in foreign trade proceeding via domestic ports and touching at intermediate foreign ports.

(a) A vessel proceeding from port to port in the United States in accordance with §§ 4.85, 4.86, or 4.87 may touch at an intermediate foreign port or ports to lade or discharge cargo or passengers. In such a case the vessel shall obtain clearance from the last port of departure in the United States before proceeding to the intermediate foreign port or ports at which it is intended to

destination with the cargo so destined therefor, without unloading the same and without the payment of duty thereon. \* \* \* (Tariff Act of 1930, sec. 442; 19 U.S.C. 1442)

<sup>120</sup> "The Secretary of the Treasury may by regulations require the production of landing certificates in respect of merchandise exported from the United States, or in respect of residue cargo, in cases in which he deems it necessary for the protection of the revenue." (Tariff Act of 1930, sec. 622; 19 U.S.C. 1622)

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touch. The Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A (see § 4.63), shall show the cargo for such foreign destination in the manner provided in § 4.88(c).

(b) The master shall also present to the port director the Cargo Declaration or Cargo Declarations required by §§ 4.85, 4.86, or 4.87, and obtain a permit to proceed on the Vessel Entrance or Clearance Statement, Customs Form 1300, to the next port in the United States at which the vessel will touch.

(c) Upon arrival at the next port in the United States after touching at a foreign port or ports a report of arrival and entry shall be made. The Cargo Declaration, Customs Form 1302, filed at time of entry shall list the cargo laden at the intermediate foreign port or ports.

(d) The master shall also present to the port director the permit to proceed on the Vessel Entrance or Clearance Statement, Customs Form 1300, and the Cargo Declaration from the last previous port in the United States as provided for in §§ 4.85, 4.86, or 4.87.

[T.D. 77-255, 42 FR 56324, Oct. 25, 1977, as amended by T.D. 84-193, 49 FR 35485, Sept. 10, 1984; T.D. 00-22, 65 FR 16517, Mar. 29, 2000]

#### § 4.90 Simultaneous vessel transactions.

(a) A vessel may proceed from port to port in the United States for the purpose of engaging in two or more of the following transactions simultaneously,<sup>121</sup> subject to the limitations hereafter mentioned in this section and the conditions stated in the sections indicated in the list:

- (1) Coastwise trade (§ 4.80).
- (2) Touching at a foreign port while in coastwise trade (§ 4.82).
- (3) Trade with noncontiguous territory of the United States (§ 4.84).
- (4) Carriage of residue cargo or passengers from foreign ports (§§ 4.85-4.86).
- (5) Carriage of cargo or passengers laden for foreign ports (§ 4.87).

<sup>121</sup> For the purposes of this part, an inward foreign voyage is completed at the port of final discharge of inbound passengers or cargo, and an outward foreign voyage begins at the port where cargo or passengers are first laden for carriage to a foreign destination.

(6) Carriage of residue cargo for foreign ports (§4.88).

(b) When a vessel is engaged simultaneously in two or more such transactions, the master shall indicate each type of transaction in which the vessel is engaged in his application for clearance on Customs Form 1300. The master shall conform simultaneously to all requirements of these regulations with respect to each transaction in which the vessel is engaged.

(c) A foreign vessel is not authorized by this section to engage in the coastwise trade, including trade with non-contiguous territory embraced within the coastwise laws.

(d) A documented vessel may engage in transactions (2), (4), (5), or (6) only if the vessel's document has a registry or, where appropriate, a Great Lakes license endorsement. Such a vessel shall not engage in transactions (1) or (3) unless permitted by the endorsement on its Certificate of Documentation to do so.

(e) When a single entry bond, containing the bond conditions set forth in §113.64, relating to international carriers, is filed at any port and it is applicable to the current voyage of the vessel, it shall cover all other transactions engaged in on that voyage of a like nature and another bond containing the international carrier bond conditions need not be filed.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 71-169, 36 FR 12605, July 2, 1971; T.D. 83-214, 48 FR 46513, Oct. 13, 1983; T.D. 84-213, 49 FR 41164, Oct. 19, 1984; T.D. 00-22, 65 FR 16517, Mar. 29, 2000]

**§4.91 Diversion of vessel; transshipment of cargo.**

(a) If any vessel granted a permit to proceed from one port in the United States for another such port as provided for in §§4.81(e), 4.85, 4.87, or 4.88, is, while en route, diverted to a port in the United States other than the one specified in the permit to proceed (Customs Form 1300),<sup>122</sup> the owner or agent of the vessel immediately shall give notice of the diversion to the port director who granted the permit, informing him of the new destination of the vessel and requesting him to notify the

director of the latter port. Such notification by the port director shall constitute an amendment of the permit previously granted, shall authorize the vessel to proceed to the new destination, and shall be filed by the director of the latter port with the Form 1300 submitted on entry of the vessel.

(b) If any vessel cleared from a port in the United States for a foreign port as provided for in §4.60 is diverted, while en route, to a port in the United States other than that from which it was cleared, the owner or agent of the vessel immediately shall give notice of the diversion to the port director who granted the clearance, informing him of the new destination of the vessel and requesting him to notify the director of the latter port. Such notification by the port director shall constitute a permit to proceed coastwise, and shall authorize the vessel to proceed to the new destination. On arrival at the new destination, the master shall immediately report arrival. He shall also make entry within 48 hours by presenting (1) the vessel's document, (2) the foreign clearance on Form 1300 granted by the director of the port of departure, (3) a certificate that when the vessel was cleared from the last previous port in the United States there were on board cargo and/or passengers for the ports named in the foreign clearance certificate only and that additional cargo or passengers (have) (have not) been taken on board or discharged since such clearance was granted (specifying the particulars if any passengers or cargo were taken on board or discharged), (4) a Crew's Effects Declaration in duplicate of all unentered articles acquired abroad by the officers and crew of the vessel which are still retained on board, and (5) a Ship's Stores Declaration in duplicate of the stores on board.

(c) In a case of necessity, a port director may grant an application on Customs Form 3171 of the owner or agent of an established line for permission to transship<sup>123</sup> all cargo and passengers from one vessel of the United States to another such vessel under Customs supervision, if the first vessel

<sup>122</sup> See §4.33.

<sup>123</sup> See §4.31.

<sup>124</sup> [Reserved]

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is transporting residue cargo for domestic or foreign ports or is on an outward foreign voyage or a voyage to noncontiguous territory of the United States, and is following the procedure prescribed in §§4.85, 4.87, or 4.88. When inward foreign cargo or passengers are so transhipped to another vessel, a separate traveling manifest (Cargo Declaration, Customs Form 1302, or Passenger List, Customs and Immigration Form I-418) shall be used for the transhipped cargo or passengers, whether or not the forwarding vessel is also carrying other residue cargo or passengers. An appropriate cross-reference shall be made on the separate traveling manifest to show whether any other traveling manifest is being carried forward on the same vessel.

[T.D. 71-169, 36 FR 12605, July 2, 1971, as amended by T.D. 77-255, 42 FR 56324, Oct. 25, 1977; T.D. 93-96, 58 FR 67317, Dec. 21, 1993; T.D. 00-22, 65 FR 16517, Mar. 29, 2000]

#### §4.92 Towing.

No vessel other than a vessel documented for the coastwise or Great Lakes trade, or which would be entitled to be so documented except for its tonnage (see §4.80), may tow a vessel other than a vessel in distress between points in the U.S. embraced within the coastwise laws, or for any part of such towing (46 U.S.C. App. 316(a)). The penalties for violation of this prohibition are a fine of from \$250 to \$1000 against the owner or master of the towing vessel and a further penalty against the towing vessel of \$50 per ton of the towed vessel.

[T.D. 93-12, 58 FR 13197, Mar. 10, 1993]

#### §4.93 Coastwise transportation by certain vessels of empty vans, tanks, and barges, equipment for use with vans and tanks; empty instruments of international traffic; stevedoring equipment and material; procedures.

(a) Vessels of the United States prohibited from engaging in the coastwise trade and vessels of nations found to grant reciprocal privileges to vessels of the United States may transport the following articles between points embraced within the coastwise laws of the United States:

(1) Empty cargo vans, empty lift vans, and empty shipping tanks; equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and equipment, excluding propulsion equipment, for use with such barges; and empty instruments of international traffic exempted from application of the Customs laws by the Secretary of the Treasury pursuant to the provisions of section 322(a), Tariff Act of 1930 (19 U.S.C. 1322(a)), if such articles are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade.

(2) Stevedoring equipment and material, if such equipment and material is owned or leased by the owner or operator of the transporting vessel, or is owned or leased by the stevedoring company contracting for the lading or unloading of that vessel, and is transported without charge for use in the handling of cargo in foreign trade.<sup>125</sup>

<sup>125</sup> \* \* \* \* \* *Provided further*, That upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States, this section shall not apply to the transportation by vessels of the United States not qualified to engage in the coastwise trade, or by vessels of foreign registry, of (a) empty cargo vans, empty lift vans, and empty shipping tanks, (b) equipment for use with cargo vans, lift vans, or shipping tanks, (c) empty barges specifically designed for carriage aboard a vessel, and (d) any empty instrument for international traffic exempted from application of the customs laws by the Secretary of the Treasury pursuant to the provisions of section 322(a), Tariff Act of 1930 (19 U.S.C. 1322(a)), if the articles described in clauses (a) through (d) are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade; and (e) stevedoring equipment and material, if such equipment and material is owned or leased by the owner or operator of the transported vessel, or is owned or leased by the stevedoring company contracting for the lading or unloading of that vessel, and is transported without charge for use in the handling of cargo in foreign trade.' (46 U.S.C. 883).

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(b)(1) The following nations have been found to extend privileges reciprocal to those provided in paragraph (a) of this section for empty cargo vans, empty lift vans, and empty shipping tanks to vessels of the United States:

Antigua and Barbuda.  
Australia.  
Austria.  
Bahamas, The.  
Bahrain  
Belgium.  
Bermuda.  
Brazil.  
Canada.  
Chile.  
China\*.  
Colombia.  
Cyprus.  
Denmark.  
Ecuador.  
Finland.  
France.  
Guatemala.  
Germany, Federal Republic of.  
Greece.  
Iceland.  
India.  
Iran.  
Ireland.  
Israel.  
Italy.  
Ivory Coast.  
Japan.  
Kuwait.  
Liberia.  
Luxembourg.  
Malta.  
Marshall Islands, Republic of the.  
Mexico.  
Netherlands.  
Netherlands Antilles.  
Norway.  
Pakistan.  
Philippines.  
Polish People's Republic.  
Portugal.  
Republic of Korea.  
Republic of Panama.  
Republic of Singapore.  
Republic of Zaire.  
St. Vincent and the Grenadines.  
Saudi Arabia.  
South Africa.  
Spain.  
Sweden.  
Taiwan.  
Union of Soviet Socialist Republics.  
United Arab Emirates.  
United Kingdom (including The Cayman Islands and Hong Kong).  
Vanuatu, Republic of.  
Yugoslavia, Socialist Federal Republic of.

\*See also Taiwan.

(2) The following nations have been found to extend similar reciprocal privileges in respect to the other articles mentioned in paragraph (a) of this section:

Antigua and Barbuda.  
Australia.  
Austria.  
Bahamas, The.  
Bahrain  
Belgium.  
Bermuda.  
Brazil.  
Chile.  
Colombia.  
Denmark.  
Federal Republic of Germany.  
Finland.  
France.  
Greece.  
Guatemala.  
Iceland.  
India.  
Ireland.  
Israel.  
Italy.  
Ivory Coast.  
Kuwait.  
Liberia.  
Luxembourg.  
Malta.  
Mexico.  
Netherlands.  
Netherlands Antilles.  
Norway.  
Polish People's Republic.  
Portugal.  
Republic of Korea.  
Republic of Panama.  
Republic of Singapore.  
Republic of Zaire.  
St. Vincent and the Grenadines.  
South Africa.  
Spain.  
Sweden.  
Taiwan.  
Union of Soviet Socialist Republics.  
United Arab Emirates.  
United Kingdom (including The Cayman Islands and Hong Kong).  
Vanuatu, Republic of.

(c) Any Cargo Declaration, Customs Form 1302, required to be filed under this part by any foreign vessel shall describe any article mentioned in paragraph (a) of this section laden aboard and transported from one United States port to another, giving its identifying number or symbol, if any, or such other identifying data as may be appropriate, the names of the shipper and consignee, and the destination.

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The Cargo Declaration shall also include a statement (1) that the articles specified in paragraph (a)(1) of this section are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade; or (2) that the stevedoring equipment and material specified in paragraph (a)(2) of this section is owned or leased by the owner or operator of the transporting vessel, or is owned or leased by the stevedoring company contracting for the lading or unlading of that vessel, and is transported without charge for his use in handling his cargo in foreign trade. If the director of the port of lading is satisfied that there will be sufficient control over the coastwise transportation of the article without identifying it by number or symbol or such other identifying data on the Cargo Declaration, he may permit the use of a Cargo Declaration that does not include such information provided the Cargo Declaration includes a statement, that the director of the port of unlading will be presented with a statement at the time of entry of the vessel that will list the identifying number or symbol or other appropriate identifying data for the article to be unladen at that port. Applicable penalties under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be assessed for violation of this paragraph.

[T.D. 68-302, 33 FR 18436, Dec. 12, 1968]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §4.93, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

#### GENERAL

#### §4.94 Yacht privileges and obligations.

(a) Any documented vessel with a pleasure license endorsement, as well as any undocumented American pleasure vessel, shall be used exclusively for pleasure and shall not transport merchandise nor carry passengers for pay. Such a vessel which is not engaged in any trade nor in any way violating the Customs or navigation laws of the U.S. may proceed from port to port in the U.S. or to foreign ports without clearing and is not subject to entry upon its arrival in a port of the U.S., provided it

has not visited a hovering vessel, received merchandise while in the customs waters beyond the territorial sea, or received merchandise while on the high seas. Such a vessel shall immediately report arrival to Customs when arriving in any port or place within the U.S., including the U.S. Virgin Islands, from a foreign port or place.

(b) A cruising license may be issued to a yacht of a foreign country only if it has been made to appear to the satisfaction of the Secretary of the Treasury that yachts of the United States are allowed to arrive at and depart from ports in such foreign country and to cruise in the waters of such ports without entering or clearing at the customhouse thereof and without the payment of any charges for entering or clearing, dues, duty per ton, tonnage, taxes, or charges for cruising licenses. It has been made to appear to the satisfaction of the Secretary of the Treasury that yachts of the United States are granted such privileges in the following countries:

Argentina.  
Australia.  
Austria.  
Bahama Islands.  
Belgium.  
Bermuda.  
Canada.  
Denmark.  
Finland.  
France.  
Germany, Federal Republic of.  
Great Britain (including Turks and Caicos Islands; St. Vincent (including the territorial waters of the Northern Grenadine Islands), the Cayman Islands, the St. Christopher - Nevis - Anguilla Islands and the British Virgin Islands).  
Greece.  
Honduras.  
Ireland.  
Italy.  
Jamaica.  
Liberia.  
Netherlands.  
New Zealand.  
Norway.  
Sweden.  
Switzerland.  
Turkey.

(c) In order to obtain a cruising license for a yacht of any country listed in paragraph (b) of this section, there shall be filed with the port director an application therefor executed by either the yacht owner or the master which

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shall set forth the owner's name and address and identify the vessel by flag, rig, name, and such other matters as are usually descriptive of a vessel. The application shall also include a description of the waters in which the yacht will cruise, and a statement of the probable time it will remain in such waters. Upon approval of the application, the port director will issue a cruising license in the form prescribed by paragraph (d) of this section permitting the yacht, for a stated period not to exceed one year, to arrive and depart from the United States and to cruise in specified waters of the United States without entering and clearing, without filing manifests and obtaining or delivering permits to proceed, and without the payment of entrance and clearance fees, or fees for receiving manifests and granting permits to proceed, duty on tonnage, tonnage tax, or light money. The license shall be granted subject to the condition that the vessel shall not engage in trade or violate the laws of the United States in any respect. Upon the vessel's arrival at any port or place within the U.S. or the U.S. Virgin Islands, the master shall comply with 19 U.S.C. 1433 by immediately reporting arrival at the nearest Customs facility or other place designated by the port director. Individuals shall remain on board until directed otherwise by the appropriate Customs officer, as provided in 19 U.S.C. 1459.

(d) Cruising licenses shall be in the following form:

LICENSE TO CRUISE IN THE WATERS OF THE UNITED STATES

To Port Directors:

For a period of \_\_\_\_\_ from \_\_\_\_\_ (Date) the \_\_\_\_\_ (Flag) \_\_\_\_\_ (Rig) yacht \_\_\_\_\_ (Name) belonging to \_\_\_\_\_ (Owner's name) \_\_\_\_\_ (Address) shall be permitted to arrive at and depart from the United States and to cruise in the waters of the Customs port of \_\_\_\_\_

(Name of port or ports) without entering and clearing, without filing manifests and obtaining or delivering permits to proceed, and without the payment of entry and clearance fees, or fees for receiving manifests and granting permits to proceed, duty on tonnage, tonnage tax, or light money.

This license is granted subject to the condition that the yacht named herein shall not engage in trade or violate the laws of the United States in any respect. Upon arrival at each port or place in the United States, the master shall report the fact of arrival to the Customs officer at the nearest customhouse. Such report shall be immediately made.

Issued this \_\_\_\_ day of \_\_\_\_\_, 19\_\_

(Port Director of Customs)

WARNING: This vessel is dutiable:

(1) If owned by a resident of the United States (including Puerto Rico), or brought into the United States (including Puerto Rico), for sale or charter to a resident thereof, or

(2) If brought into the United States (including Puerto Rico) by a nonresident free of duty as part of personal effects and sold or chartered within one year from date of entry.

Any offer to sell or charter (for example, a listing with yacht brokers or agents) is considered evidence that the vessel was brought in for sale or charter to a resident or, if made within one year of entry of a vessel brought in free of duty as personal effects, that the vessel no longer is for the personal use of the non-resident.

If the vessel is sold or chartered, or offered for sale or charter, in the circumstances described, without the owner first having filed a consumption entry and having paid duty, the vessel may be subject to seizure or to a monetary claim equal to the value of the vessel. See Chapter 89, Additional U.S. Note 1, HTSUS, and subheadings 8903.10, 8903.91, 8903.92, 8903.99.10, 8903.99.20, and 8903.99.90, HTSUS.

(e) A foreign-flag yacht which is not in possession of a cruising license shall be required to comply with the laws applicable to foreign vessels arriving at, departing from, and proceeding between ports of the United States.

[T.D. 69-266, 34 FR 20423, Dec. 31, 1969]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §4.94, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

**§ 4.95 Records of entry and clearance of vessels.**

Permanent records shall be prepared at each customhouse of all entries of vessels on Customs Form 1400 and of all clearances and permits to proceed on Customs Form 1401. Whenever a vessel is diverted, as provided for in §4.91 (a) or (b), Customs Form 1401 shall be amended to show the new destination.

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These records shall be open to public inspection.

[T.D. 82-224, 47 FR 53727, Nov. 29, 1982]

#### § 4.96 Fisheries.

(a) As used in this section:

(1) The term "convention vessel" means a Canadian fishing vessel which, at the time of its arrival in the United States, is engaged only in the North Pacific halibut fishery and which is therefore entitled to the privileges provided for by the Halibut Fishing Vessels Convention between the United States and Canada signed at Ottawa, Canada, on March 24, 1950 (T.D. 52862);

(2) The term "nonconvention fishing vessel" means any vessel other than a convention vessel which is employed in whole or in part in fishing at the time of its arrival in the United States and

(i) Which is documented under the laws of a foreign country,

(ii) Which is undocumented, of 5 net tons or over, and owned in whole or in part by a person other than a citizen of the United States, or

(iii) Which is undocumented, of less than 5 net tons, and owned in whole or in part by a person who is neither a citizen nor a resident of the United States;

(3) The term "nonconvention cargo vessel" means any vessel which is not employed in fishing at the time of its arrival in the United States, but which is engaged in whole or in part in the transportation of fish or fish products<sup>131a</sup> and

(i) Which is documented under the laws of a foreign country or

(ii) Which is undocumented and owned by a person other than a citizen of the United States;

(4) The term "treaty vessel" means a Canadian fishing vessel which at the

time of its arrival in the United States is engaged in the albacore tuna fishery and which is therefore entitled to the privileges provided for by the treaty with Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, entered into force at Ottawa, Canada, on July 29, 1981 (T.D. 81-227); and

(5) The term "fishing" means the planting, cultivation, or taking of fish, shell fish, marine animals, pearls, shells, or marine vegetation, or the transportation of any of those marine products to the United States by the taking vessel or another vessel under the complete control and management of a common owner or bareboat charterer.

(b) Except as otherwise provided by treaty or convention to which the United States is a party (see paragraphs (d) and (g) of this section), no foreign-flag vessel shall, whether documented as a cargo vessel or otherwise, land in a port of the United States its catch of fish taken on board such vessel on the high seas or fish products processed therefrom, or any fish or fish products taken on board such vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products. (46 U.S.C. 251). This prohibition applies regardless of the intended ultimate disposition of the fish or fish products (e.g., it applies to transshipments from the foreign vessel to another vessel in United States territorial waters; it applies to landing for transshipment in bond to Canada or Mexico; it applies to landing for exportation under bond; and it applies to landing in a Foreign Trade Zone). However, the prohibition is limited to fish, or fish products processed therefrom, taken on board the foreign vessel on the high seas.

(c) A vessel of the United States to be employed in the fisheries must have a Certificate of Documentation endorsed with a fishery license. "Fisheries" includes processing, storing, transporting (except in foreign commerce), planting, cultivating, catching, taking, or harvesting fish, shellfish, marine animals, pearls, shells, or marine vegetation in the navigable waters of the United States or the exclusive economic zone.

(d) A convention vessel may come into a port of entry on the Pacific

<sup>131a</sup> Except as otherwise provided by treaty or convention to which the United States is a party, no foreign-flag vessel shall, whether documented as a cargo vessel or otherwise, land in a port of the United States its catch of fish taken on board such vessels on the high seas or fish products processed therefrom, or any fish or fish products taken on board such vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products." (46 U.S.C. 251)

<sup>132</sup> [Reserved]

coast of the United States, including Alaska, to land its catch of halibut and incidentally-caught sable fish, or to secure supplies, equipment, or repairs. Such a vessel may come into any other port of entry or, if properly authorized to do so under § 101.4(b) of this chapter, into any place other than a port of entry, for the purpose of securing supplies, equipment, or repairs only, but shall not land its catch. A convention vessel which comes into the United States as provided for in this paragraph shall comply with the usual requirements applicable to foreign vessels arriving at and departing from ports of the United States.

(e) A nonconvention fishing vessel, other than a treaty vessel, may come into a port of entry in the United States or, if granted permission under § 101.4(b) of this chapter, into a place other than a port of entry for the purpose of securing supplies, equipment, or repairs, but shall not land its catch. A nonconvention fishing vessel which comes into the United States as provided for in this paragraph shall comply with the usual requirements applicable to foreign vessels arriving at and departing from ports of the United States.

(f) A nonconvention cargo vessel, although not prohibited by law from coming into the United States, shall not be permitted to land in the United States its catch of fish taken on the high seas or any fish or fish products taken on board on the high seas from a vessel employed in fishing or in the processing of fish or fish products, but may land fish taken on board at any place other than the high seas upon compliance with the usual requirements. Before any such fish may be landed the master shall satisfy the port director that the fish were not taken on board on the high seas by presenting declarations of the master and two or more officers or members of the crew of the vessel, of whom the person next in authority to the master shall be one, or other evidence acceptable to the port director which establishes the place of lading to his satisfaction.

(g) A treaty vessel may come into a port or place of the United States named in Annex B of the Treaty with Canada on Pacific Coast Albacore Tuna

Vessels and Port Privileges to land its catch of albacore tuna, or to secure fuel, supplies, equipment and repairs. Such a vessel may come into any other port of entry or, if properly authorized to do so under § 101.4(b) of this chapter, into any place other than a port of entry, for the purpose of securing supplies, equipment, or repairs only, but shall not land its catch. A treaty vessel which comes into the United States as provided for in this paragraph shall comply with the usual requirements applicable to foreign vessels arriving at and departing from ports of the United States.

(h) A convention vessel, a nonconvention fishing vessel, a nonconvention cargo vessel, or a treaty vessel, which arrives in the United States in distress shall be subject to the usual requirements applicable to foreign vessels arriving in distress. While in the United States, supplies, equipment, or repairs may be secured, but, except as specified in the next sentence, fish shall not be landed unless the vessel's master, or other authorized representative of the owner, shows to the satisfaction of the port director that it will not be possible, by the exercise of due diligence, for the vessel to transport its catch to a foreign port without spoilage, in which event the port director may allow the vessel upon compliance with all applicable requirements, to land, transship, or otherwise dispose of its catch. Nothing herein shall prevent, upon compliance with normal Customs procedures, a convention vessel arriving in distress from landing its catch of halibut and incidentally-caught sable fish at a port of entry on the Pacific coast, including Alaska; a foreign cargo vessel arriving in distress from landing its cargo of fish taken on board at any place not on the high seas; or a treaty vessel arriving in distress from landing its catch of albacore tuna at a port of entry on the Pacific coast, including Alaska.

[T.D. 82-144, 47 FR 35182, Aug. 13, 1982, as amended by T.D. 83-214, 48 FR 46513, Oct. 13, 1983; T.D. 83-214, 48 FR 50075, Oct. 31, 1983; T.D. 93-12, 58 FR 13197, Mar. 10, 1993]

#### § 4.97 Salvage vessels.

(a) Only a vessel of the United States, a numbered motorboat owned

by a citizen, or a vessel operating within the purview of paragraph (d) or (e) of this section, shall engage in any salvage operation in territorial waters of the United States unless an application addressed to the Commissioner of Customs to use another specified vessel in a completely described operation has been granted.<sup>133</sup>

(b) Upon receipt of such an application, the Commissioner of Customs will cause an investigation to be made immediately to determine whether a suitable vessel of the United States or a suitable numbered motorboat owned by a citizen is available for the operation. If he finds that no such vessel is available and that the facts otherwise warrant favorable action, he will grant the application.

(c) If the application is granted, the applicant shall make a full report of the operation as soon as possible to the director of the port nearest the place where the operation was conducted.

<sup>133</sup> "No foreign vessel shall, under penalty of forfeiture, engage in salvaging operations on the Atlantic or Pacific coast of the United States, in any portion of the Great Lakes or their connecting or tributary waters, including any portion of the Saint Lawrence River through which the international boundary line extends, or in territorial waters of the United States on the Gulf of Mexico, except when authorized by a treaty or in accordance with the provisions of section 725 of this title: *Provided, however*, That if, on investigation, the Secretary of the Treasury is satisfied that no suitable vessel wholly owned by a person who is a citizen of the United States and documented under the laws of the United States or numbered pursuant to section 288 of this title, is available in any particular locality he may authorize the use of a foreign vessel or vessels in salvaging operations in that locality and no penalty shall be incurred for such authorized use." (46 U.S.C. 316(d))

"Nothing in this section shall be held or construed to prohibit or restrict any assistance to vessels or salvage operations authorized by Article II of the treaty between the United States and Great Britain 'concerning reciprocal rights for United States and Canada in the conveyance of prisoners and wrecking and salvage' signed at Washington, May 18, 1908 (35 Stat. 2036), or by the treaty between the United States and Mexico 'to facilitate assistance to and salvage of vessels in territorial waters,' signed at Mexico City, June 13, 1935 (49 Stat. 3359)." (46 U.S.C. 316(e))

(d) A Canadian vessel may engage in salvage operations on any vessel in any territorial waters of the United States in which Canadian vessels are permitted to conduct such operations by article II of the treaty between the United States and Great Britain signed on May 18, 1908,<sup>134</sup> or by section 725, title 46, United States Code.<sup>135</sup> If any such vessel engages in a salvage operation in territorial waters of the United States, the owner or master of the vessel shall make a full report of the operation as soon as possible to the director of the port nearest the place where the operation was conducted.

<sup>134</sup> "The High Contracting Parties agree that vessels and wrecking appliances, either from the United States or from the Dominion of Canada, may salvage any property wrecked and may render aid and assistance to any vessels wrecked, disabled or in distress in the waters or on the shores of the other country in that portion of the St. Lawrence River through which the International Boundary line extends, and, in Lake Ontario, Lake Erie, Lake St. Clair, Lake Huron, and Lake Superior, and in the Rivers Niagara, Detroit, St. Clair, and Ste. Marie, and the Canals at Sault Ste. Marie, and on the shores and in the waters of the other country along the Atlantic and Pacific Coasts within a distance of thirty miles from the International Boundary on such Coasts.

"It is further agreed that such reciprocal wrecking and salvage privileges shall include all necessary towing incident thereto, and that nothing in the Customs, Coasting or other laws or regulations of either country shall restrict in any manner the salvaging operations of such vessels or wrecking appliances.

"Vessels from either country employed in salvaging in the waters of the other shall, as soon as practicable afterwards, make full report at the nearest custom house of the country in whose waters such salvaging takes place." (35 Stat. 2036)

<sup>135</sup> "Canadian vessels and wrecking appurtenance may render aid and assistance to Canadian or other vessels and property wrecked, disabled, or in distress in the waters of the United States contiguous to the Dominion of Canada.

"This section shall be construed to apply to the canal and improvement of the waters between Lake Erie and Lake Huron, and to the waters of the Saint Mary's River and Canal: \* \* \*." (46 U.S.C. 725)

The waters of Lake Michigan are not contiguous to the Dominion of Canada within the meaning of this statute.

(e) A Mexican vessel may engage in a salvage operation on a Mexican vessel in any territorial waters of the United States in which Mexican vessels are permitted to conduct such operations by the treaty between the United States and Mexico signed on June 13, 1935.<sup>136</sup>

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 69-266, 34 FR 20423, Dec. 31, 1969]

#### § 4.98 Navigation fees.

(a)(1) The Customs Service shall publish a General Notice in the FEDERAL REGISTER and Customs Bulletin periodically, setting forth a revised schedule of navigation fees for the following services:

##### *Fee No. and description of services*

- 1 Entry of vessel, including American, from foreign port:
  - (a) Less than 100 net tons.
  - (b) 100 net tons and over.
- 2 Clearance of vessel, including American, to foreign port:
  - (a) Less than 100 net tons.
  - (b) 100 net tons or over.
- 3 Issuing permit to foreign vessel to proceed from port to port, and receiving manifest.
- 4 Receiving manifest of foreign vessel on arrival from another port, and granting a permit to unlade.
- 5 Receiving post entry.
- 6 [Reserved]
- 7 Certifying payment of tonnage tax for foreign vessels only.
- 8 Furnishing copy of official document, including certified outward foreign manifest, and others not elsewhere enumerated.

The published revised fee schedule shall remain in effect until changed.

(2) The fees shall be calculated in accordance with § 24.17(d) Customs Regu-

lations (19 CFR 24.17(d)), and be based upon the amount of time the average service requires of a Customs officer in the fifth step of GS-9.

(3) The party requesting a vessel service described in paragraph (a)(1) of this section for which reimbursable overtime compensation is payable under 19 U.S.C. 267 or 19 U.S.C. 1451 and § 24.16 of this chapter shall pay only the applicable overtime charge, and not both the overtime charge and the fee specified in the fee schedule.

(4) The revised fee schedule shall be made available to the public in Customs offices.

(5) The respective fees shall be designated in correspondence and reports by the applicable fee number.

(b) Fee 1 shall be collected at the first port of entry only. It shall not be collected from a vessel entering directly from a port in noncontiguous territory of the United States nor from one entering at a port on a northern, northeastern, or northwestern frontier otherwise than by sea.

(c) Fee 2 shall be collected at the final port of departure from the United States. It shall be collected from a yacht or public vessel which obtains a clearance, but shall not be collected from a vessel clearing directly for a port in noncontiguous territory of the United States nor from one clearing from a port on the northern, northeastern, or northwestern frontier otherwise than by sea. It shall be collected only upon the first clearance each year of a vessel making regular daily trips between a port of the United States and a port in Canada wholly upon interior waters not navigable to the ocean.

(d) Fee 3 shall be collected for granting a permit to a foreign vessel to proceed to another Customs port. It shall be collected from a foreign vessel clearing directly for a port in noncontiguous territory of the United States outside its Customs territory. This fee shall not be collected in the case of a foreign vessel proceeding on a voyage by sea from one port in the United States to another port via a foreign port. Only one fee shall be collected in case of simultaneous vessel transactions.

<sup>136</sup> "The High Contracting Parties agree that vessels and rescue apparatus, public or private, of either country, may aid or assist vessels of their own nationality, including the passengers and crews thereof, which may be disabled or in distress on the shores or within the territorial waters of the other country within a radius of seven hundred and twenty nautical miles of the intersection of the International Boundary Line and the coast of the Pacific Ocean, or within a radius of two hundred nautical miles of the intersection of the International Boundary Line and the coast of the Gulf of Mexico." (49 Stat. 3360)

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(e) Fee 4 shall be collected for receiving the manifest of a foreign vessel arriving from another Customs port. It shall be collected from a foreign vessel entering directly from a port in non-contiguous territory of the United States outside its Customs territory. This fee shall not be collected in the case of a foreign vessel which arrives at one port in the United States from another port on a voyage by sea via a foreign port. Only one fee shall be collected in the case of simultaneous vessel transactions.

(e-1) Fee 5 shall be collected from a foreign or American vessel at each port where the vessel is required to file a post entry in accordance with the provisions of §4.12(a)(3). An original post entry may be supplemented by additional post entries in instances where items were omitted from the original post entry. A separate fee shall be collected for each supplemental post entry made to the original post entry.

(f) [Reserved]

(g) Fee 7 shall be collected from foreign vessels only.

(h) Fee 8 shall be collected for each copy of any official document, whether certified or not, furnished to any person other than a Government officer.

(i) Private and commercial vessels, and passengers aboard commercial vessels, may be subject to the payment of fees for services provided in connection with their arrival as set forth in §24.22 of this chapter.

(j) The loading or unloading of merchandise or passengers from a commercial vessel at a U.S. port may cause the harbor maintenance fee set forth in §24.24 of this chapter to be assessed.

[T.D. 69-266, 34 FR 20423, Dec. 31, 1969, as amended by T.D. 74-194, 39 FR 26153, July 17, 1974; T.D. 80-25, 45 FR 3572, Jan. 18, 1980; T.D. 82-224, 47 FR 53727, Nov. 29, 1982; T.D. 84-149, 49 FR 28698, July 16, 1984; T.D. 86-109, 51 FR 21155, June 11, 1986; T.D. 87-44, 52 FR 10211, Mar. 30, 1987; T.D. 93-85, 58 FR 54282, Oct. 21, 1993]

### §4.99 Forms; substitution.

(a) Customs Forms 1300, 1302, 1302-A, 1303, and 1304 printed by private parties or foreign governments shall be accepted provided the forms so printed:

(1) Conform to the official Customs forms in wording arrangement, style, size of type, and paper specifications;

(2) Conform to the official Customs forms in size, except that:

(i) Each form may be printed on metric A4 size paper, 210 by 297 millimeters (approximately 8¼ by 11⅔ inches).

(ii) The vertical format of Customs Forms 1300, 1302-A, 1303, and 1304 may be increased in size up to a maximum of 14 inches.

(iii) Customs Form 1302 may be reduced in size to not less than either 8½ by 11 inches or 210 by 297 millimeters (metric A4 size). If Customs Form 1302 is reduced in size, the size of type used may be reduced proportionately.

(b) If instructions are printed on the reverse side of the official Customs form, the instructions may be omitted from the privately printed forms, but the instructions shall be followed.

(c) The port director, in his discretion, may accept a computer printout instead of Customs Form 1302 for use at a specific port. However, to ensure that computer printouts may be used at all ports, the private party or foreign government first must obtain specific approval from Headquarters, U.S. Customs Service.

(d) Forms which do not comply with the requirements of this section are not acceptable without the specific approval of the Commissioner of Customs.

[T.D. 79-255, 44 FR 57088, Oct. 4, 1979; T.D. 00-22, 65 FR 16517, Mar. 29, 2000]

### §4.100 Licensing of vessels of less than 30 net tons.

(a) The application for a license to import merchandise in a vessel of less than 30 net tons in accordance with section 6, Anti-Smuggling Act of August 5, 1935, shall be addressed to the Secretary of the Treasury and delivered to the directors of the ports where foreign merchandise is to be imported in such vessel.

(b) The application shall contain the following information:

(1) Name of the vessel, rig, motive power, and home port.

(2) Name and address of the owner.

(3) Name and address of the master.

(4) Net tonnage of the vessel.

(5) Kind of merchandise to be imported.

(6) Country or countries of exportation.

(7) Ports of the United States where the merchandise will be imported.

(8) Whether the vessel will be used to transport and import merchandise from a hovering vessel.

(9) Kind of document under which the vessel is operating.

(c) If the port director finds that the applicant is a reputable person and that the revenue would not be jeopardized by the issuance of a license, he may issue the license for a period not to exceed 12 months, incorporating therein any special conditions he believes to be necessary or desirable, and deliver it to the licensee.

(d) The master or owner shall keep the license on board the vessel at all times and exhibit it upon demand of any duly authorized officer of the United States. This license is personal to the licensee and is not transferable.

(e) The Secretary of the Treasury or the port director at whose office the license was issued may revoke the license if any of its terms have been willfully or intentionally violated or for any other cause which may be considered prejudicial to the revenue or otherwise against the interest of the United States.

[T.D. 72-211, 37 FR 16486, Aug. 15, 1972]

**§ 4.101 Prohibitions against Customs officers and employees.**

No Customs officer or employee shall:

(a) Own, in whole or in part, any vessel except a yacht or other pleasure boat;

(b) Act as agent, attorney, or consignee for the owner or owners of any vessel, or of any cargo or lading on board the vessel; or

(c) Import or be concerned directly or indirectly in the importation of any merchandise for sale into the United States

[T.D. 78-394, 43 FR 49787, Oct. 25, 1978]

**PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION**

Sec.

7.1 Puerto Rico; spirits and wines withdrawn from warehouse for shipment to; duty on foreign-grown coffee.

7.2 Insular possessions of the United States other than Puerto Rico.

7.3 Duty-free treatment of goods imported from insular possessions of the United States other than Puerto Rico.

7.4 Watches and watch movements from U.S. insular possessions.

7.11 Guantanamo Bay Naval Station.

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1623, 1624; 48 U.S.C. 1406i.

**§ 7.1 Puerto Rico; spirits and wines withdrawn from warehouse for shipment to; duty on foreign-grown coffee.**

(a) When spirits and wines are withdrawn from a bonded manufacturing warehouse for shipment in bond to Puerto Rico pursuant to section 311, Tariff Act of 1930, as amended,<sup>1,2</sup> the warehouse withdrawal shall contain on

<sup>1</sup>[Reserved]

<sup>2</sup>\* \* \* Distilled spirits and wines which are rectified in bonded manufacturing warehouses, class six, and distilled spirits which are reduced in proof and bottled in such warehouses, shall be deemed to have been manufactured within the meaning of this section and may be withdrawn as hereinbefore provided, and likewise for shipment in bond to Puerto Rico, subject to the provisions of this section, and under such regulations as the Secretary of the Treasury may prescribe, there to be withdrawn for consumption or be rewarehoused and subsequently withdrawn for consumption: *Provided*, That upon withdrawal in Puerto Rico for consumption, the duties imposed by the customs laws of the United States shall be collected on all imported merchandise (in its condition as imported) and imported containers used in the manufacture and putting up of such spirits and wines in such warehouses: *Provided further*, That no internal-revenue tax shall be imposed on distilled spirits and wines rectified in class six warehouses if such distilled spirits and wines are exported or shipped in accordance with the provisions of this section, \* \* \*'' (Tariff Act of 1930, sec. 311, as amended; 19 U.S.C. 1311)