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Title 19—Customs Duties

(This book contains parts 0 to 140)

Part

CHAPTER I—Bureau of Customs and Border Protection, Department of Homeland Security, Department of the Treasury 0

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

EDITORIAL NOTE: Nomenclature changes to chapter I appear at T.D. 95–77, 60 FR 50021, Sept. 27, 1995.

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PART 0—TRANSFERRED OR DELEGATED AUTHORITY

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0.2 All other Customs Regulations issued under the authority of the Department of Homeland Security.
APPENDIX TO PART 0—TREASURY DEPARTMENT ORDER NO. 100–16

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

SOURCE: CBP Dec. 03–24, 68 FR 51869, Aug. 28, 2003, unless otherwise noted.

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

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

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

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

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

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

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

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

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

(b) When a regulation described in paragraph (a) of this section is published in the FEDERAL REGISTER, the preamble accompanying the regulation shall clearly indicate that it is being issued in accordance with paragraph (a) of this section.

APPENDIX TO 19 CFR PART 0—TREASURY DEPARTMENT ORDER NO. 100–16

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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, 2071 note; 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 28 U.S.C. 2461 note; 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 28 U.S.C. 2461 note; 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 4.94a also issued under 19 U.S.C. 1484b;
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.

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 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 cmmpanies; 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

[1–27] [Reserved]

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 complete 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 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 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 is transporting only property of the United States or passengers traveling on official business of the United States, or it is ballast. In addition, any vessel chartered by, and transporting only cargo that is the property of, the U.S. Department of Defense (DoD) will be treated as a Government vessel for the purpose of being exempt from entry, where the DoD-chartered vessel is manned entirely by the civilian crew of the vessel carrier under contract to DoD. Notwithstanding § 4.60(b)(3) of this part, such DoD-chartered vessel is not exempt from vessel clearance requirements. 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; CBP Dec. 03–32, 68 FR 68168, Dec. 5, 2003]

§4.6 Departure or unlading 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; advance filing of cargo declaration.

(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 crewmember'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 Statment.

(b)(1) With the exception of any Cargo Declaration that has been filed in advance as prescribed in paragraph (b)(2) of this section, the original and one copy of the manifest must 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.

(2) Subject to the effective date provided in paragraph (b)(5) of this section, and with the exception of any bulk or authorized break bulk cargo as prescribed in paragraph (b)(4) of this section, Customs and Border Protection (CBP) must receive from the incoming carrier, for any vessel covered under paragraph (a) of this section, the CBP-approved electronic equivalent of the vessel's Cargo Declaration (Customs Form 1302), 24 hours before the cargo is laden aboard the vessel at the foreign port (see §4.30(n)(1)). The current approved system for presenting electronic cargo declaration information to CBP is the Vessel Automated Manifest System (AMS).

(3)(i) Where a non-vessel operating common carrier (NVOCC), as defined in

paragraph (b)(3)(ii) of this section, delivers cargo to the vessel carrier for lading aboard the vessel at the foreign port, the NVOCC, if licensed by or registered with the Federal Maritime Commission and in possession of an International Carrier Bond containing the provisions of § 113.64 of this chapter, may electronically transmit the corresponding required cargo manifest information directly to Customs through the Vessel Automated Manifest System (AMS) that must be received 24 or more hours before the related cargo is laden aboard the vessel at the foreign port (see § 113.64(c) of this chapter); in the alternative, the NVOCC must fully disclose and present the required manifest information for the related cargo to the vessel carrier which, is required to present this information to Customs via the vessel AMS system.

(ii) A non-vessel operating common carrier (NVOCC) means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier. The term ''non-vessel operating common carrier'' does not include freight forwarders as defined in part 112 of this chapter.

(iii) Where the party electronically presenting to CBP the cargo information required in § 4.7a(c)(4) receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present the information on the basis of what the party reasonably believes to be true.

(4) Carriers of bulk cargo as specified in paragraph (b)(4)(i) of this section and carriers of break bulk cargo to the extent provided in paragraph (b)(4)(ii) of this section are exempt with respect to that cargo from the requirement set forth in paragraph (b)(2) of this section that a cargo declaration be filed with Customs 24 hours before such cargo is laden aboard the vessel at the foreign port. Any carriers of bulk or break bulk cargo that are exempted from the filing requirement of paragraph (b)(2) of this section must present their cargo declarations to Customs 24 hours prior to arrival in the U.S. if they are participants in the vessel AMS program, or upon arrival if they are non-automated carriers. These carriers must still report 24 hours in advance of loading any containerized or non-qualifying break bulk cargo they will be transporting.

(i) A carrier is exempt from the filing requirement of paragraph (b)(2) of this section with respect to the bulk cargo it is transporting. Bulk cargo is defined for purposes of this section as homogeneous cargo that is stowed loose in the hold and is not enclosed in any container such as a box, bale, bag, cask, or the like. Such cargo is also described as bulk freight. Specifically, bulk cargo is composed of either:

(A) Free flowing articles such as oil, grain, coal, ore, and the like, which can be pumped or run through a chute or handled by dumping; or

(B) Articles that require mechanical handling such as bricks, pig iron, lumber, steel beams, and the like.

(ii) A carrier of break bulk cargo may apply for an exemption from the filing requirement of paragraph (b)(2) of this section with respect to the break bulk cargo it will be transporting. For purposes of this section, break bulk cargo is cargo that is not containerized, but which is otherwise packaged or bundled.

(A) To apply for an exemption, the carrier must submit a written request for exemption to the U.S. Customs Service, National Targeting Center, 1300 Pennsylvania Ave., NW., Washington, DC 20229. Until an application for an exemption is granted, the carrier must comply with the 24 hour advance manifest requirement set out in paragraph (b)(2) of this section. The written request for exemption must clearly set forth information such that Customs may assess whether any security concerns exist, such as: The carrier's IRS number; the source, identity and means of the packaging or bundling of the commodities being shipped; the ports of call, both foreign and domestic; the number of vessels the carrier

uses to transport break bulk cargo, along with the names of these vessels and their International Maritime Organization numbers; and the list of the carrier's importers and shippers, identifying any who are members of C-TPAT (The Customs-Trade Partnership Against Terrorism).

(B) Customs will evaluate each application for an exemption on a case by case basis. If Customs, by written response, provides an exemption to a break bulk carrier, the exemption is only applicable under the circumstances clearly set forth in the application for exemption. If circumstances set forth in the approved application change, it will be necessary to submit a new application.

(C) Customs may rescind an exemption granted to a carrier at any time.

(5) Within 90 days of December 5, 2003, all ocean carriers, and NVOCCs electing to participate, must be automated on the Vessel AMS system at all ports of entry in the United States.

(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.

(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.

(e) *Failure to provide manifest information; penalties/liquidated damages.* Any master who fails to provide manifest information as required by this section, or who presents or transmits electronically any document required by this section that is forged, altered or false, or who fails to present or transmit the information required by this section in a timely manner, may be liable for civil penalties as provided under 19 U.S.C. 1436, in addition to penalties applicable under other provisions of law. In addition, if any non-vessel operating common carrier (NVOCC) as defined in paragraph (b)(3)(ii) of this section elects to transmit cargo manifest information to Customs electronically and fails to do so in the manner and in the time period required by paragraph (b)(3)(i) of this section, or electronically transmits any false, forged or altered document, paper, manifest or data to Customs, such NVOCC may be liable for the payment of liquidated damages as provided in §113.64(c) of this chapter, in addition to any other

penalties applicable under other provisions of law.

[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; T.D. 02–62, 67 FR 66331, Oct. 31, 2002; 68 FR 1801, Jan. 14, 2003; CBP Dec. 03–32, 68 FR 68168, Dec. 5, 2003]

§ 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.

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(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 or a Customs-approved electronic equivalent) must list all the inward foreign cargo on board the vessel regardless of the U.S. port of discharge, and must separately list any other foreign cargo remaining on board (''FROB''). For the purposes of this part, ''FROB'' means cargo which is laden in a foreign port, is intended for discharge in a foreign port, and remains aboard a vessel during either direct or indirect stops at one or more intervening United States ports. 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 delaration:

> 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.

(4) In addition to the cargo manifest information required in paragraphs

(c)(1)–(c)(3) of this section, for all inward foreign cargo, the Cargo Declaration, either on Customs Form 1302, or on a separate sheet or Customs-approved electronic equivalent, must state the following:

(i) The last foreign port before the vessel departs for the United States;

(ii) The carrier SCAC code (the unique Standard Carrier Alpha Code assigned for each carrier; see paragraph (c)(2)(iii) of this section);

(iii) The carrier-assigned voyage number;

(iv) The date the vessel is scheduled to arrive at the first U.S. port in Customs territory;

(v) The numbers and quantities from the carrier's ocean bills of lading, either master or house, as applicable (this means that the carrier must transmit the quantity of the lowest external packaging unit; containers and pallets are not acceptable manifested quantities; for example, a container containing 10 pallets with 200 cartons should be manifested as 200 cartons);

(vi) The first foreign port where the carrier takes possession of the cargo destined to the United States;

(vii) A precise description (or the Harmonized Tariff Schedule (HTS) numbers to the 6-digit level under which the cargo is classified if that information is received from the shipper) and weight of the cargo or, for a sealed container, the shipper's declared description and weight of the cargo. Generic descriptions, specifically those such as ''FAK'' (''freight of all kinds''), ''general cargo'', and ''STC'' (''said to contain'') are not acceptable;

(viii) The shipper's complete name and address, or identification number, from all bills of lading. (At the master bill level, for consolidated shipments, the identity of the Non Vessel Operating Common Carrier (NVOCC), freight forwarder, container station or other carrier is sufficient; for non-consolidated shipments, and for each house bill in a consolidated shipment, the identity of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of the carrier, NVOCC, freight forwarder or consolidator is not acceptable; the identification number will be a unique number assigned by CBP upon the implementation of the Automated Commercial Environment);

(ix) The complete name and address of the consignee, or identification number, from all bills of lading. (For consolidated shipments, at the master bill level, the NVOCC, freight forwarder, container station or other carrier may be listed as the consignee. For non-consolidated shipments, and for each house bill in a consolidated shipment, the consignee is the party to whom the cargo will be delivered in the United States, with the exception of ''FROB'' (foreign cargo remaining on board). However, in the case of cargo shipped ''to order of [a named party],'' the carrier must report this named ''to order'' party as the consignee; and, if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact information (address) in the ''Notify Party'' field of the advance electronic data transmission to CBP, to the extent that the CBP-approved electronic data interchange system is capable of receiving this data. The identification number will be a unique number assigned by CBP upon implementation of the Automated Commercial Environment);

(x) The vessel name, country of documentation, and official vessel number. (The vessel number is the International Maritime Organization number assigned to the vessel);

(xi) The foreign port where the cargo is laden on board;

(xii) Internationally recognized hazardous material code when such materials are being shipped;

(xiii) Container numbers (for containerized shipments);

(xiv) The seal numbers for all seals affixed to containers; and

(xv) Date of departure from foreign, as reflected in the vessel log (this element relates to the departure of the vessel from the foreign port with respect to which the advance cargo declaration is filed (see § 4.7(b)(2)); the time frame for reporting this data element will be either:

(A) No later than 24 hours after departure from the foreign port of lading,

for those vessels that will arrive in the United States more than 24 hours after sailing from that foreign port; or

(B) No later than the presentation of the permit to unlade (Customs Form (CF) 3171, or electronic equivalent), for those vessels that will arrive less than 24 hours after sailing from the foreign port of lading); and

(xvi) Time of departure from foreign, as reflected in the vessel log (see §4.7a(c)(4)(xv) for the applicable foreign port and the time frame within which this data element must be reported to CBP).

(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:

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).

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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.''

(f) *Failure to provide manifest information; penalties/liquidated damages*. Any master who fails to provide manifest information 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 civil penalties as provided under 19 U.S.C. 1436, in addition to penalties applicable under other provisions of law. In addition, if any non-vessel operating common carrier (NVOCC) as defined in §4.7(b)(3)(ii) elects to transmit cargo manifest information to Customs electronically, and fails to do so as required by this section, or transmits electronically any document required by this section that is forged, altered or false, such NVOCC may be liable for liquidated damages as provided in §113.64(c) of this chapter, in addition to other penalties applicable under other provisions of law.

[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; T.D. 02–62, 67 FR 66332, Oct. 31, 2002; CBP Dec. 03–32, 68 FR 68169, Dec. 5, 2003]

§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

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, except that the Cargo Declaration, Customs Form (CF) 1302, must be presented to Customs electronically in the manner provided in § 4.7(b)(2). Vessels seeking preliminary entry in advance of arrival must do so: By presenting to Customs the electronic equivalent of a complete Customs Form 1302 (Cargo Declaration), in the manner provided in § 4.7(b), showing all cargo on board the vessel; and by presenting Customs Form 3171 electronically 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, as amended by T.D. 02–62, 67 FR 66332, Oct. 31, 2002]

§ 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 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 direct 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 [Reserved]

§ 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 operation 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 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.

(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.

[66 FR 16397, Mar. 26, 2001]

§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.[28] 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 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 2 cents per net ton, not to exceed in the aggregate 10 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

[28] 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.

[29–61] [Reserved]

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 6 cents per net ton, not to exceed 30 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 6-cent rate is applicable to a port to which the 2-cent rate applies and there has laden cargo or taken passengers, tonnage tax upon entry in the United States shall be assessed at the 2-cent rate.

(2) The same rate shall be applied in a case in which the vessel has transported cargo or passengers from a 6-cent port to a 2-cent port when all such cargo or passengers have been unladen or discharged at the 2-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 2-cent port.

(3) The 6-cent rate shall be applied when the vessel proceeds from a 2-cent port to a 6-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 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 (6 cent) and 5 at the minimum (2-cent) rate during a tonnage year, so that the maximum assessment of tonnage duty may amount to 40 cent 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	$.02 or $.06	.....	.....
2. All others:			
(i) If all the officers are citizens	.02 or .06	.....	.....
(ii) If any officer is not a citizen	.02 or .06	[1] 0.50	[1] .50
Undocumented vessels which are owned by citizens [2]	.02 or .06	.50	[3] .50
Foreign vessels:			
1. Of nations whose vessels are exempted from special tax or light money	.02 or .06	.....	.....
2. All others:			
(i) Built in the U.S	.02 or .06	.30	.50
(ii) Not built in the U.S	.02 or .06	.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 [3a]	.02 or .06	[4] 2.00	[4] .50

[1] 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.

[2] 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.

[3] 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.

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

[4] 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; CBP Dec. 03–16, 68 FR 48280, Aug. 13, 2003]

§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 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 referred 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 tonnae 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 unlading 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 unlading 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.[62] 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 unlading 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 unlading merchandise, or in removing or otherwise securing it, shall ascertain that the applicable preliminary Customs requirements have been complied with before

[62] "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 unlading 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 unlading 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)

[63–66] [Reserved]

commencing such operation, since performance 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 unlading 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 unlading or lading render the issuance of such special license dangerous to the revenue. In no case shall a special license for unlading 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.

(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 unlading passengers and baggage to be made orally, and may authorize his inspectors to grant oral permission for unlading 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 unlading 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 unlading; 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 unlading 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 unlading, 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 unlading, storage 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.

(n)(1) Customs will not issue a permit to unlade before it has received the cargo declaration information pursuant to §4.7(b). In cases in which Customs does not receive complete cargo manifest information from the carrier or from the NVOCC, in the manner and format required by §4.7(b), 24 hours prior to the lading of the cargo aboard the vessel at the foreign port, Customs may delay issuance of a permit to unlade the entire vessel until all required information is received. Customs may also decline to issue a permit to unlade the specific cargo for which a declaration is not received 24 hours before lading in a foreign port. Furthermore, where the carrier does not present an advance cargo manifest to Customs electronically, in the manner provided in §4.7(b)(2), preliminary entry pursuant to §4.8(b) will be denied.

(2) In addition, while the advance presentation of the cargo manifest for any vessel subject to §4.7(b)(2) may be made in paper form or by electronic transmission through a Customs-approved electronic data interchange system, the submission of an electronic manifest for the cargo in this regard, as opposed to a paper manifest, will further facilitate the prompt issuance of a permit to unlade the 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; T.D. 02–62, 67 FR 66332, Oct. 31, 2002]

§4.31 Unlading 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 unlading 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 unlading 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 unlading 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 safekeeping.

(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) *Unlading 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 unlading 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 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 unlading, 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 unlading 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 permit 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.[67]

(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 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

[67] 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.

[68–69] [Reserved]

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,[70] after the expiration of 25 days after the date of the vessel's entry

[70] ''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 of such vessel.'' (Tariff Act of 1930, sec. 458; 19 U.S.C. 1458)

[71–75] [Reserved]

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 unlading 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 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. 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. The arriving carrier (or other party to whom custody of the merchandise was transferred by the arriving carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receiptof the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (*see* §19.9 of this chapter). 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 a carrier or any other party to whom custody of the unentered merchandise has been transferred by means of a Customs-authorized permit to transfer or in-bond entry fails to timely relinquish custody of the merchandise to a Customs-approved bonded General Order warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) If the bonded warehouse operator fails to take possession of unentered 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). If the port director finds that the warehouse operator cannot accept the goods because they are required by law to be exported or destroyed (*see* § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (*see* §§ 113.63(c)(3) and 113.64(b) of this chapter).

(f) 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.

(g) 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.

(h) 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, as amended by T.D. 02–65, 67 FR 68032, Nov. 8, 2002]

§ 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 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 writing 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

(Trucker name)

is authorized to pick up the merchandise indicated below.

COD ☐ Bank release ☐ Collect ☐

Broker Name and Authorized Signature (if applicable)

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; unlading or lading and retention on board.

(a) The provisions of § 4.30 relating to unlading under a permit on Customs Form 3171 are applicable to the unlading 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 unlading, 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 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.[76]

(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.[77] Any

[76] "* * * 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)

[77] "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 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

Continued

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,[78] 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 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 with19 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

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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)

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

[79–96] [Reserved]

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 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)).

(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.

(24) Electronic receipt of required vessel cargo information (see § 192.14(c) of this chapter).

(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; CBP Dec. 03–32, 68 FR 68169, Dec. 5, 2003]

§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 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

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 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

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,[104] 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[105] 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

[104] See 18 U.S.C. 961 through 967 and 22 U.S.C. 441 through 457.

[105] Clearance for vessel shall not be denied for the sole reason that her cargo contains contraband of war.

[106–110] [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 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
Bulgaria
Cambodia
China, People's Republic of
Cuba
Czechoslovakia
Estonia
German Democratic Republic (Soviet Zone of Germany and Soviet Zone sector of Berlin)
Hungary
Iran
Iraq
Laos
Latvia
Libya
Lithuania
Mongolian People's Republic
North Korea
Polish People's Republic (Including Danzig)
Rumania
South Yemen
Union of Soviet Socialist Republics
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 carriers 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 $300 for each passenger so transported and landed (46 U.S.C. App. 289, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990).

(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 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; T.D. 03–11, 68 FR 13820, Mar. 21, 2003]

§ 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 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 accordance 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 noncontinguous territory.[111]

(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 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,

[111] See § 4.84.

[112–114] [Reserved]

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 unlading in the same town. An inward foreign manifest of the cargo in each barge, destined to the port of unlading shown on the permit to proceed, must be attached to each permit. At the port of unlading 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 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 unlading 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 noncontiguous 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 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 clearance 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 U.S.C. 1411) unless such a vessel is entitled to engage in the coastwide 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.[115] 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

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,

[115] "* * * 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)

[116–118] [Reserved]

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 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.[119]

(b) The port director shall designate the items of such merchandise, if any, for which foreign landing certificates[120] 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 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).

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

[120] "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)

(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,[121] 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).

(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 noncontiguous 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),[122] 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

[121] 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.

[122] See § 4.33.

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[123] all cargo and passengers from one vessel of the United States to another such vessel under Customs supervision, if the first vessel 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 transshipped 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 transshipped 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 provision are a fine of from $350 to $1100 against the owner or master of the towing vessel and a further penalty against the towing vessel of $60 per ton of the towed vessel (46 U.S.C. App. 316(a), as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990).

[T.D. 93–12, 58 FR 13197, Mar. 10, 1993, as amended by T.D. 03–11, 68 FR 13820, Mar. 21, 2003]

§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,

[123] See §4.31.

[124] [Reserved]

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 unlading of that vessel, and is transported without charge for use in the handling of cargo in foreign trade.[125]

(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

[125] "* * * *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 unlading of that vessel, and is transported without charge for use in the handling of cargo in foreign trade." (46 U.S.C. 883).

[126–130] [Reserved]

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. 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 handing 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.
Marshall Islands.
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 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 _____ of (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.

§4.94a Large yachts imported for sale.

(a) *General.* An otherwise dutiable vessel used primarily for recreation or pleasure and exceeding 79 feet in length that has been previously sold by a manufacturer or dealer to a retail consumer and that is imported with the intention to offer for sale at a boat show in the United States may qualify at the time of importation for a deferral of entry completion and deposit of duty. The following requirements and conditions will apply in connection with a deferral of entry completion and duty deposit under this section:

(1) The importer of record must certify to Customs in writing that the vessel is being imported pursuant to 19 U.S.C. 1484b for sale at a boat show in the United States;

(2) The certification referred to in paragraph (a)(1) of this section must be accompanied by the posting of a single entry bond containing the terms and conditions set forth in appendix C of part 113 of this chapter. The bond will have a duration of 6 months after the date of importation of the vessel, and no extensions of the bond period will be allowed;

(3) The filing of the certification and the posting of the bond in accordance with this section will permit Customs to determine whether the vessel may be released;

(4) All subsequent transactions with Customs involving the vessel in question, including any transaction referred to in paragraphs (b) through (d) of this section, must be carried out in the same port of entry in which the certification was filed and the bond was posted under this section; and

(5) The vessel in question will not be eligible for issuance of a cruising license under §4.94 and must comply with the laws respecting vessel entry and clearance when moving between ports of entry during the 6-month bond period prescribed under this section.

(b) *Exportation within 6-month period.* If a vessel for which entry completion and duty payment are deferred under paragraph (a) of this section is not sold but is exported within the 6-month bond period specified in paragraph (a)(2) of this section, the importer of record must inform Customs in writing of that fact within 30 calendar days after the date of exportation. The bond posted with Customs will be returned to the importer of record and no entry completion and duty payment will be required. The exported vessel will be precluded from reentry under the terms of paragraph (a) of this section for a period of 3 months after the date of exportation.

(c) *Sale within 6-month period.* If the sale of a vessel for which entry completion and duty payment are deferred under paragraph (a) of this section is completed within the 6-month bond period specified in paragraph (a)(2) of this

section, the importer of record within 15 calendar days after completion of the sale must complete the entry by filing an Entry Summary (Customs Form 7501) and must deposit the appropriate duty (calculated at the applicable rates provided for under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States and based upon the value of the vessel at the time of importation). Upon entry completion and deposit of duty under this paragraph, the bond posted with Customs will be returned to the importer of record.

(d) *Expiration of bond period.* If the 6-month bond period specified in paragraph (a)(2) of this section expires without either the completed sale or the exportation of a vessel for which entry completion and duty payment are deferred under paragraph (a) of this section, the importer of record within 15 calendar days after expiration of that 6-month period must complete the entry by filing an Entry Summary (Customs Form 7501) and must deposit the appropriate duty (calculated at the applicable rates provided for under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States and based upon the value of the vessel at the time of importation). Upon entry completion and deposit of duty under this paragraph, the bond posted with Customs will be returned to the importer of record, and a new bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter, may be required by the appropriate port director.

[68 FR 13625, Mar. 20, 2003]

§ 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. 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 county,

(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[131a] 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

[131a] 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)

[132] [Reserved]

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 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.[133]

(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.

(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

[133] ''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))

article II of the treaty between the United States and Great Britain signed on May 18, 1908,[134] or by section 725, title 46, United States Code.[135] 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.

(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.[136]

[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 Regulations (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

[134] "The High Contracting Parties agree that vessels and wrecking appliances, either from the United States or from the Dominion of Canada, may salve 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 salving operations of such vessels or wrecking appliances.

"Vessels from either country employed in salving 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 salving takes place." (35 Stat. 2036)

[135] "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.

[136] "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)

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.

(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 noncontiguous 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 23, 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,[1] [2] the warehouse withdrawal shall contain on the face thereof a statement of the kind and quantity of all imported merchandise (in its condition as imported) and imported containers used in the manufacture and putting up of such spirits and wines. The duty assessed on the imported merchandise and containers so used, and their classification and value, shall be shown on the withdrawal in accordance with § 144.41 of this chapter. If no imported merchandise or containers have been used, the warehouse withdrawal shall bear an endorsement to that effect. (See §§ 191.105 and 191.106 of this chapter.)

(b) The spirits and wines shall be forwarded in accordance with the general provisions of the regulations governing the transportation of merchandise in bond, part 18 of this chapter.

(c) A regular entry shall be made for all foreign-grown coffee shipped to Puerto Rico from the United States, but special Customs invoices shall not be required for such shipments.[3]

(Secs. 311, 319, 484(a), 46 Stat. 691, as amended, 696, 722, as amended; 19 U.S.C. 1311, 1319, 1484(a); R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

[28 FR 14636, Dec. 31, 1963, as amended by T.D. 73–175, 38 FR 17445, July 2, 1973; T.D. 83–212, 48 FR 46770, Oct. 14, 1983; T.D. 98—16, 63 FR 11004, Mar. 5, 1998]

§ 7.2 Insular possessions of the United States other than Puerto Rico.

(a) Insular possessions of the United States other than Puerto Rico are also American territory but, because those insular possessions are outside the customs territory of the United States, goods imported therefrom are subject to the rates of duty set forth in column 1 of the Harmonized Tariff Schedule of the United States (HTSUS) except as otherwise provided in § 7.3 or in part 148 of this chapter. The principal such insular possessions are the U.S. Virgin Islands, Guam, American Samoa, Wake Island, Midway Islands, and Johnston Atoll. Pursuant to section 603(c) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America, Public Law 94–241, 90 Stat. 263, 270, goods imported from the Commonwealth of the Northern Mariana Islands are entitled to the same tariff treatment as imports from Guam and thus are also subject to the provisions of § 7.3 and of part 148 of this chapter.

(b) Importations into Guam, American Samoa, Wake Island, Midway Islands, Johnston Atoll, and the Commonwealth of the Northern Mariana Islands are not governed by the Tariff Act of 1930, as amended, or the regulations contained in this chapter. The

[1] [Reserved]

[2] "* * * 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)

[3] Section 319, Tariff Act of 1930, authorizes the Legislature of Puerto Rico to impose a duty on coffee imported into Puerto Rico, including coffee grown in a foreign country coming into Puerto Rico from the United States, and the Legislature of Puerto Rico has imposed such a duty.

customs administration of Guam is under the Government of Guam. The customs administration of American Samoa is under the Government of American Samoa. The customs administration of Wake Island is under the jurisdiction of the Department of the Air Force (General Counsel). The customs administration of Midway Islands is under the jurisdiction of the Department of the Navy. There is no customs authority on Johnston Atoll, which is under the operational control of the Defense Nuclear Agency. The customs administration of the Commonwealth of the Northern Mariana Islands is under the Government of the Commonwealth.

(c) The Secretary of the Treasury administers the customs laws of the U.S. Virgin Islands through the United States Customs Service. The importation of goods into the U.S. Virgin Islands is governed by Virgin Islands law; however, in situations where there is no applicable Virgin Islands law or no U.S. law specifically made applicable to the Virgin Islands, U.S. laws and regulations shall be used as a guide and be complied with as nearly as possible. Tariff classification of, and rates of duty applicable to, goods imported into the U.S. Virgin Islands are established by the Virgin Islands legislature.

[T.D. 97–75, 62 FR 46439, Sept. 3, 1997]

§ 7.3 Duty-free treatment of goods imported from insular possessions of the United States other than Puerto Rico.

(a) *General.* Under the provisions of General Note 3(a)(iv), Harmonized Tariff Schedule of the United States (HTSUS), the following goods may be eligible for duty-free treatment when imported into the customs territory of the United States from an insular possession of the United States:

(1) Except as provided in Additional U.S. Note 5 to Chapter 91, HTSUS, and except as provided in Additional U.S. Note 2 to Chapter 96, HTSUS, and except as provided in section 423 of the Tax Reform Act of 1986, as amended (19 U.S.C. 2703 note), goods which are the growth or product of any such insular possession, and goods which were manufactured or produced in any such insular possession from materials that were the growth, product or manufacture of any such insular possession or of the customs territory of the United States, or of both, provided that such goods:

(i) Do not contain foreign materials valued at either more than 70 percent of the total value of the goods or, in the case of goods described in section 213(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)), more than 50 percent of the total value of the goods; and

(ii) Come to the customs territory of the United States directly from any such insular possession; and

(2) Goods previously imported into the customs territory of the United States with payment of all applicable duties and taxes imposed upon or by reason of importation, provided that:

(i) The goods were shipped from the United States directly to the insular possession and are returned from the insular possession to the United States by direct shipment; and

(ii) There was no remission, refund or drawback of such duties or taxes in connection with the shipment of the goods from the United States to the insular possession.

(b) *Origin of goods.* For purposes of this section, goods shall be considered to be the growth or product of, or manufactured or produced in, an insular possession if:

(1) The goods are wholly the growth or product of the insular possession; or

(2) The goods became a new and different article of commerce as a result of production or manufacture performed in the insular possession.

(c) *Foreign materials.* For purposes of this section, the term ''foreign materials'' covers any material incorporated in goods described in paragraph (b)(2) of this section other than:

(1) A material which was wholly the growth or product of an insular possession or of the customs territory of the United States;

(2) A material which was substantially transformed in an insular possession or in the customs territory of the United States into a new and different article of commerce which was then used in an insular possession in the production or manufacture of a new and different article which is shipped directly to the United States; or

(3) A material which may be imported into the customs territory of the United States from a foreign country and entered free of duty either:

(i) At the time the goods which incorporate the material are entered; or

(ii) At the time the material is imported into the insular possession, provided that the material was incorporated into the goods during the 18-month period after the date on which the material was imported into the insular possession.

(d) *Foreign materials value limitation.* For purposes of this section, the determination of whether goods contain foreign materials valued at more than 70 or 50 percent of the total value of the goods shall be made based on a comparison between:

(1) The landed cost of the foreign materials, consisting of:

(i) The manufacturer's actual cost for the materials or, where a material is provided to the manufacturer without charge or at less than fair market value, the sum of all expenses incurred in the growth, production, or manufacture of the material, including general expenses, plus an amount for profit; and

(ii) The cost of transporting those materials to the insular possession, but excluding any duties or taxes assessed on the materials by the insular possession and any charges which may accrue after landing; and

(2) The final appraised value of the goods imported into the customs territory of the United States, as determined in accordance with section 402 of the Tariff Act of 1930, as amended (19 U.S.C. 1401a).

(e) *Direct shipment*—(1) *General.* For purposes of this section, goods shall be considered to come to the United States directly from an insular possession, or to be shipped from the United States directly to an insular possession and returned from the insular possession to the United States by direct shipment, only if:

(i) The goods proceed directly to or from the insular possession without passing through any foreign territory or country;

(ii) The goods proceed to or from the insular possession through a foreign territory or country, the goods do not enter into the commerce of the foreign territory or country while en route to the insular possession or the United States, and the invoices, bills of lading, and other shipping documents show the insular possession or the United States as the final destination; or

(iii) The goods proceed to or from the insular possession through a foreign territory or country, the invoices and other shipping documents do not show the insular possession or the United States as the final destination, and the goods:

(A) Remained under the control of the customs authority of the foreign territory or country;

(B) Did not enter into the commerce of the foreign territory or country except for the purpose of sale other than at retail, and the port director is satisfied that the importation into the insular possession or the United States results from the original commercial transaction between the importer and the producer or the latter's sales agent; and

(C) Were not subjected to operations in the foreign territory or country other than loading and unloading and other activities necessary to preserve the goods in good condition.

(2) *Evidence of direct shipment.* The port director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the goods were shipped to the United States directly from an insular possession or shipped from the United States directly to an insular possession and returned from the insular possession to the United States by direct shipment within the meaning of paragraph (e)(1) of this section, and such evidence of direct shipment shall be subject to such verification as deemed necessary by the port director. Evidence of direct shipment shall not be required when the port director is otherwise satisfied, taking into consideration the kind and value of the merchandise, that the goods qualify for duty-free treatment under General Note 3(a)(iv), HTSUS, and paragraph (a) of this section.

(f) *Documentation.* (1) When goods are sought to be admitted free of duty as

provided in paragraph (a)(1) of this section, there shall be filed with the entry/entry summary a properly completed certificate of origin on Customs Form 3229, signed by the chief or assistant chief customs officer or other official responsible for customs administration at the port of shipment, showing that the goods comply with the requirements for duty-free entry set forth in paragraph (a)(1) of this section. Except in the case of goods which incorporate a material described in paragraph (c)(3)(ii) of this section, a certificate of origin shall not be required for any shipment eligible for informal entry under § 143.21 of this chapter or in any case where the port director is otherwise satisfied that the goods qualify for duty-free treatment under paragraph (a)(1) of this section.

(2) When goods in a shipment not eligible for informal entry under § 143.21 of this chapter are sought to be admitted free of duty as provided in paragraph (a)(2) of this section, the following declarations shall be filed with the entry/entry summary unless the port director is satisfied by reason of the nature of the goods or otherwise that the goods qualify for such duty-free entry:

(i) A declaration by the shipper in the insular possession in substantially the following form:

I, _____ (name) of _____ (organization) do hereby declare that to the best of my knowledge and belief the goods identified below were sent directly from the United States on _____, 19____, to _____ (name) of _____ (organization) on _____ (insular possession) via the _____ (name of carrier) and that the goods remained in said insular possession until shipped by me directly to the United States via the _____ (name of carrier) on _____, 19____.

Marks	Numbers	Quantity	Description	Value

Dated at _____, this _____ day of _____, 19____.
Signature: _____

(ii) A declaration by the importer in the United States in substantially the following form:

I, _____ (name), of _____ (organization) declare that the (above) (attached) declaration by the shipper in the insular possession is true and correct to the best of my knowledge and belief, that the goods in question were previously imported into the customs territory of the United States and were shipped to the insular possession from the United States without remission, refund or drawback of any duties or taxes paid in connection with that prior importation, and that the goods arrived in the United States directly from the insular possession via the _____ (name of carrier) on _____, 19____.

_____
(Date)

_____
(Signature)

(g) *Warehouse withdrawals; drawback.* Merchandise may be withdrawn from a bonded warehouse under section 557 of the Tariff Act of 1930, as amended (19 U.S.C. 1557), for shipment to any insular possession of the United States other than Puerto Rico without payment of duty, or with a refund of duty if the duties have been paid, in like manner as for exportation to foreign countries. No drawback may be allowed under section 313 of the Tariff Act of 1930, as amended (19 U.S.C. 1313), on goods manufactured or produced in the United States and shipped to any insular possession. No drawback of internal-revenue tax is allowable under 19 U.S.C. 1313 on goods manufactured or produced in the United States with the use of domestic tax-paid alcohol and shipped to Wake Island, Midway Islands or Johnston Atoll.

[T.D. 97–75, 62 FR 46439, Sept. 3, 1997]

§ 7.4 Watches and watch movements from U.S. insular possessions.

(a) The issuance of an International Trade Administration Form ITA–360, Certificate of Entitlement to Secure the Refund of Duties on Watches and Watch Movements, by the Department of Commerce, authorizes a producer of watches in the U.S. insular possessions to file requests with Customs for the refund of duties paid on imports of watches, watch movements (including solid state watches and watch movements), and watch parts (excepting separate watch cases and any articles containing any materials to which rates of duty set forth in Column 2, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) apply). The amount of the refund requested may be up to the value specified in the certificate, provided that the articles for which refunds are requested were entered during a 3-year period beginning 2 years before the date of issuance of the Form ITA–360 certificate from the Department of Commerce.

(b) The Form ITA–360 may not be used to secure refunds. To secure a refund, the party requesting the refund of duties (claimant) must present to Customs Form ITA–361, Request for Refund of Duties on Watches and Watch Movements, properly executed, and authenticated by the Department of Commerce.

(c) By completing Form ITA–361, the insular producer may either:

(1) Transfer its entitlement, in whole or in part, to any other party for any consideration agreed to by the insular producer and the transferee, or

(2) Request the refund of duties to itself.

(d) A claimant must file Form ITA–361 with Customs at the same port where the watch import entry was originally filed and duties paid. The documentation accompanying Form ITA–361 shall include a copy of the import entry, providing proof that duty was paid on the watches and watch movements.

(e) When requesting the refund of duties on Form ITA–361, the claimant also must complete and submit to Customs the declaration on the form which reads as follows:

I declare that the information given above is true and correct to the best of my knowledge and belief; that no notices of exportation of articles with benefit of drawback were filed upon exportation of this merchandise from the United States; that no liquidated refunds on the articles relating to the present claim have been paid; and that no protest or request for litigation for refund of duties paid and herewith claimed has been made.

(f) A fee of 1 percent will be deducted from each refund request as reimbursement to salaries and expenses of those Customs personnel processing the request.

(g) Form ITA–360 expires 1 year from its date of issuance. Any refund request on Form ITA–361 made by either the insular producer itself or any transferee named on Form ITA–360 must be filed within this 1-year period. This expiration date applies equally to all refund requests, whether a single request for the entire amount specified in the Form ITA–361 certificate or multiple requests for partial amounts. Refund requests will be accepted until either the amount specified in the certificate is depleted or until the certificate expires 1 year from its date of issuance.

(h) Customs will process only those refund requests made in accordance with the joint rules of the Departments of Commerce and the Interior governing the issuance and handling of certificates and the transfer of entitlements as contained in 15 CFR part 303.

[T.D. 84–16, 49 FR 1481, Jan. 12, 1984, as amended by T.D. 84–211, 49 FR 39044, Oct. 3, 1984; T.D. 89–1, 53 FR 51252, Dec. 21, 1988. Redesignated and amended by T.D. 97–75, 62 FR 46441, Sept. 3, 1997]

§ 7.11 Guantanamo Bay Naval Station.

Articles of foreign origin may enter the area (both land and water) of the Guantanamo Bay Naval Station free of duty, but such articles shall be subject to duty upon their subsequent entry into the United States.

[28 FR 14636, Dec. 31, 1963]

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AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

Section 10.17 also issued under 19 U.S.C. 1401a, 1402;

Sections 10.25 and 10.26 also issued under 19 U.S.C. 3592;

Sections 10.41, 10.41a, 10.107 also issued under 19 U.S.C. 1322;

Section 10.41b also issued under 19 U.S.C. 1202 (Chapter 98, Subchapter III, U.S. Note 3, HTSUS);

Section 10.53 also issued under 16 U.S.C. 1521, *et seq.;*

Section 10.59 also issued under 19 U.S.C. 1309, 1317;

Sections 10.61, 10.62, 10.63, 10.64, 10.64a also issued under 19 U.S.C. 1309;

Sections 10.62a, 10.65 also issued under 19 U.S.C. 1309, 1317, 1555, 1556, 1557, 1646a;

§ 10.62b also issued under 19 U.S.C. 1557;

Sections 10.70, 10.71 also issued under 19 U.S.C. 1486;

Sections 10.80, 10.81, 10.82, 10.83 also issued under 19 U.S.C. 1313 (e) and (i);

Section 10.91 also issued under Pub. L. 106–476 (114 Stat. 2101), sections 1434, 1435;

Sections 10.171 through 10.178a also issued under 19 U.S.C. 2461 *et seq.*;

Section 10.183 also issued under 19 U.S.C. 1202 (General Note 6, HTSUS);

Sections 10.191 through 10.199 also issued under 19 U.S.C. 2701 *et seq.*;

Sections 10.201 through 10.207 also issued under 19 U.S.C. 3203;

Sections 10.211 through 10.217 also issued under 19 U.S.C. 3721;

Sections 10.221 through 10.228 and §§ 10.231 through 10.237 also issued under 19 U.S.C. 2701 *et seq.*

Sections 10.241 through 10.248 and §§ 10.251 through 10.257 also issued under 19 U.S.C. 3203.

Sections 10.401 through 10.490 also issued under Pub. L. 108–77, 117 Stat. 909 (19 U.S.C. 3805 note).

SOURCE: 28 FR 14663, Dec. 31, 1963, unless otherwise noted.

Subpart A—General Provisions

ARTICLES EXPORTED AND RETURNED

§ 10.1 Domestic products; requirements on entry.

(a) Except as otherwise provided for in paragraph (g), (h), (i) or (j) of this section or elsewhere in this part or in § 145.35 of this chapter, the following documents shall be filed in connection with the entry of articles in a shipment valued over $2,000 and claimed to be free of duty under subheading 9801.00.10 or 9802.00.20, Harmonized Tariff Schedule of the United States (HTSUS):

(1) A declaration by the foreign shipper in substantially the following form:

I, _____,
declare that to the best of my knowledge and belief the articles herein specified were exported from the United States, from the port of _____ on or about _____, 19_____, and that they are returned without having been advanced in value or improved in condition by any process of manufacture or other means.

Marks	Number	Quantity	Description	Value, in U.S. coin
	.....	.....	.....	.....
	.....	.....	.....	.....
	.....	.....	.....	.....
	.....	.....	.....	.....
	.....	.....		.....
	(Date)			(Signature)
	.....	.....		.....
	(Address)			(Capacity)

(2) A declaration by the owner, importer, consignee, or agent having knowledge of the facts regarding the claim for free entry. If the owner or ultimate consignee is a corporation, such declaration may be signed by the president, vice president, secretary, or treasurer of the corporation, or may be signed by any employee or agent of the corporation who holds a power of attorney executed under the conditions outlined in subpart C, part 141 of this chapter and a certification by the corporation that such employee or other agent has or will have knowledge of the pertinent facts. This declaration shall be in substantially the following form:

I, _____,
declare that the (above) (attached) declaration by the foreign shipper is true and correct to the best of my knowledge and belief, that the articles were manufactured by _____ (name of manufacturer) located in _____ (city and state), that the articles were not manufactured or produced in the United States under subheading 9813.00.05, HTSUS, and that the articles were exported from the United States without benefit of drawback.

_____
(Date)

_____
(Address)

_____
(Signature)

_____
(Capacity)

(b) In any case in which the value of the returned articles exceeds $2,000 and the articles are not clearly marked with the name and address of the U.S. manufacturer, the port director may require, in addition to the declarations

required in paragraph (a) of this section, such other documentation or evidence as may be necessary to substantiate the claim for duty-free treatment. Such other documentation or evidence may include a statement from the U.S. manufacturer verifying that the articles were made in the United States, or a U.S. export invoice, bill of lading or airway bill evidencing the U.S. origin of the articles and/or the reason for the exportation of the articles.

(c) A certificate from the master of a vessel stating that products of the United States are returned without having been unladen from the exporting vessel may be accepted in lieu of the declaration of the foreign shipper required by paragraph (a)(1) of this section.

(d) If the port director is reasonably satisfied, because of the nature of the articles or production of other evidence, that the articles are imported in circumstances meeting the requirements of subheading 9801.00.10 or 9802.00.20, HTSUS, and related section and additional U.S. notes, he may waive the requirements for producing the documents specified in paragraph (a) of this section.

(e) No evidence relative to the conditions of subheading 9801.00.10, HTSUS, shall be required in the case of articles the product of the U.S. in use at the time of importation as the usual coverings or containers of merchandise not subject to an ad valorem rate of duty unless such articles would be dutiable if not products of the U.S. under General Rule of Interpretation 5, HTSUS.

(f) In the case of photographic films and dry plates manufactured in the United States (except motion picture films to be used for commercial purposes) exposed abroad and entered under subheading 9802.00.20, HTSUS, the requirements of paragraphs (a) and (c) of this section are applicable except that the declaration by the foreign shipper provided for in paragraph (a)(1) to the effect that the articles ''are returned without having been advanced in value or improved in condition by any process of manufacture or other means'' shall be crossed out, and the entrant shall show on the declaration provided for in paragraph (a)(2) that the subject articles when exported were of U.S. manufacture and are returned after having been exposed, or exposed and developed, and, in the case of motion picture films, that they will not be used for commercial purposes.

(g) *Aircraft and aircraft parts and equipment.* (1) In the case of aircraft and aircraft parts and equipment returned to the United States under subheading 9801.00.10, HTSUS, by or for the account of an aircraft owner or operator and intended for use in his own aircraft operations, within or outside the United States, the entry summary may be made on Customs Form 3311. The entry summary on Customs Form 3311 shall be executed by the entrant and supported by the entry documentation required by §142.3 of this chapter. If the Customs officer is satisfied that the articles are products of the United States, that they have not been improved in condition or advanced in value while abroad, and that no drawback has been or will be paid, the other documents described in this section shall not be required, and no bond need be filed for their production.

(2) The entrant shall show on Customs Form 3311:

(i) The name and address of the aircraft owner or operator by whom or for whose account the articles are returned to the United States, in the block headed ''Articles Returned To (Name and Address)'',

(ii) The name of the importing vessel or conveyance,

(iii) The date of its arrival,

(iv) A description of the articles,

(v) The value of the articles, and

(vi) That the articles are intended for use by the aircraft owner or operator in his own aircraft operations.

(3) If Customs Form 3311 is filed at time of entry, it shall serve as both the entry and the entry summary.

(h) *Nonconsumable vessel stores and equipment.* (1) In the case of nonconsumable vessel stores and equipment returned to the United States under subheading 9801.00.10, HTSUS, the entry summary may be made on Customs Form 3311. The entry summary on Customs Form 3311 shall be executed in duplicate by the entrant

and supported by the entry documentation required by § 142.3 of this chapter. Before an entry summary on Customs Form 3311 may be accepted for nonconsumable vessel stores and equipment, the Customs officer shall be satisfied that:

(i) The articles are products of the United States.

(ii) The articles have not been improved in condition or advanced in value while abroad.

(iii) No drawback has been or will be paid, and

(iv) No duty equal to an internal revenue tax is payable under subheading 9801.00.80, HTSUS.

(2) The documentation described in paragraph (a) of this section shall not be required in connection with an entry for nonconsumable vessel stores and equipment on Customs Form 3311.

(3) To satisfy the Customs officer that no drawback has been or will be paid on the articles in connection with their removal from the United States, the master of the vessel or other person having knowledge of the facts shall furnish a written declaration which may be made on the reverse side of Customs Form 3311 showing that the articles were:

(i) Exported as stores or equipment on a United States vessel or a vessel operated by the United States Government,

(ii) Not landed in a foreign country, except for any needed repairs, adjustments, or refilling and return to the vessel from which landed or,

(iii) For transshipment as stores or equipment to another vessel.

(4) The entrant also shall show:

(i) The name of the importing vessel,

(ii) The date of its arrival,

(iii) A description of the articles, and

(iv) The value of the articles.

(5) If Customs Form 3311 is filed at time of entry, it shall serve as both the entry and the entry summary.

(i) When the total value of articles of claimed American origin contained in any shipment does not exceed $250 and such articles are found to be unquestionably products of the United States and do not appear to have been advanced in value or improved in condition while abroad and no quota is involved, free entry thereof may be made under subheading 9801.00.10 on Customs Form 3311, executed by the owner, importer, consignee, or agent and filed in duplicate, without regard to the requirement of filing the documentation provided for in paragraph (a) of this section, unless the Customs officer has reason to believe that Customs drawback or exemption from internal revenue tax, or both, were probably allowed on exportation of the articles or that they are otherwise subject to duty. The entrant shall show on Customs Form 3311 the name of the importing conveyance, the date of its arrival, the name of the country from which the articles were returned to the United States, and the value of the articles. The entrant shall also produce evidence of his right to make entry (except as provided in § 141.11(b) of this chapter). If the Customs officer is not entirely certain that the articles to be entered under this paragraph by a nominal consignee are products of the United States, the actual owner or ultimate consignee thereof may be required to execute a Customs Form 3311.

(j) In the case of products of the United States, when the aggregate value of the shipment does not exceed $10,000 and the products are imported—

(1) For the purposes of repair or alteration, prior to reexportation, or

(2) After having been either rejected or returned by the foreign purchaser to the United States for credit, free entry thereof may be made under subheading 9801.00.10, HTSUS, on Customs Form 3311 (a Customs Form 7501 must be submitted as well for such articles as provided in § 143.23(h) of this chapter), executed by the owner, importer, consignee, or agent and filed in duplicate, without regard to the requirement of filing the documentation provided for in paragraph (a) of this section, unless the Customs officer has reason to believe that Customs drawback or exemption from internal revenue tax, or both, were probably allowed on exportation of the articles or that they are otherwise subject to duty. The person making entry shall show on Customs Form 3311 the name of the importing conveyance, the date of its arrival, the name of the country from which the articles were returned to the United States, and the value of the articles.

The person making entry shall also produce evidence of his right to make entry (except as provided in §141.11(b) of this chapter). If the Customs officer is not entirely certain that the articles to be entered under this paragraph by a nominal consignee are products of the United States, the actual owner or ultimate consignee thereof may be required to execute a Customs Form 3311.

[T.D. 72–119, 37 FR 8867, May 2, 1972 as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978; 43 FR 20003, May 10, 1978; T.D. 79–221, 44 FR 46812, Aug. 9, 1979; T.D. 83–82, 48 FR 14596, Apr. 5, 1983; T.D. 89–1, 53 FR 51246, Dec. 21, 1988; T.D. 94–47, 59 FR 25566, May 17, 1994; T.D. 97–82, 62 FR 51769, Oct. 3, 1997; T.D. 98–28, 63 FR 16416, Apr. 3, 1998]

§ 10.3 Drawback; internal-revenue tax.

(a) Except as prescribed in §10.1(f) or in paragraphs (c) and (f) of this section, no free entry shall be allowed under Chapter 98, Subchapter 1, Harmonized Tariff Schedule of the United States (HTSUS), in the final liquidation of an entry unless the port director is satisfied by the certificate of exportation or other evidence or information that no drawback was allowed in connection with the exportation from the United States, and unless no internal-revenue tax is imposed on the importation of like articles not previously exported from the United States or, if such tax is being imposed at the time of entry for consumption or withdrawal from warehouse for consumption, the port director is satisfied that an internal-revenue tax on production or importation was paid in respect of the imported article before it was exported from the United States and was not refunded. Except as provided for in §10.1(f), when it is impracticable, because of the destruction of Customs records or other circumstances, to determine whether drawback was allowed, or the amount of drawback allowed, with respect to an article established to be a returned product of the United States which has not been advanced in value or improved in condition while abroad, there shall be assessed on the returned article an amount of duty determined as follows:

(1) If there is any likelihood that drawback was allowable on the exportation of like articles at any time when the imported article may have been exported from the United States, the estimated amount of any drawback which would have been allowable if duty had been paid on any foreign merchandise likely to have been used in the manufacture of the returned article at the rate or rates applicable to such foreign merchandise on the date of importation of the returned article (see paragraph (b) of this section), and

(2) If there is any likelihood that a refund or remission of tax was allowed on the exportation of the returned article, the amount of any internal-revenue tax which would be payable at the time of importation if the returned article were wholly of foreign origin, but in no such case shall there be assessed more than an amount equal to the duty and tax that would apply if the returned article were wholly of foreign origin and originally imported. (See §10.7(a).) Except as provided for in §10.1(f), if the imported article is of a kind which would be subject to an internal-revenue tax if of foreign origin and payment of an internal-revenue tax before exportation without refund thereof is not established, duty shall be assessed on the imported article in an amount equal to the internal-revenue tax imposed at the time of entry for consumption or withdrawal from warehouse for consumption on like articles of foreign origin, plus the amount of any drawback allowed on the exportation of the article from the United States; but if no drawback was allowed, the duty equal to internal-revenue tax shall be the total duty to be assessed. If an allowance of drawback on the exportation from the United States of the imported article is established, duty shall be assessed in an amount equal to such drawback, plus an amount equal to any internal-revenue tax which may be assessable in accordance with this paragraph; but in no case shall duty equal to drawback, or to drawback and internal-revenue tax, be assessed in an amount in excess of the ordinary Customs duty and internal-revenue tax applicable to like articles of foreign origin. In any case, where payment of internal-revenue tax before exportation without refund thereof is established, no duty equal to an internal-revenue tax currently in force shall be assessed.

(b) In the absence of satisfactory evidence as to the nonallowance of drawback or the amount thereof allowed on the following articles of American manufacture or production, duty shall be assessed thereon in the amounts respectively indicated, the amount shown in each case being considered the fair average amount of drawback allowed on such articles:

Article	Duty assessment
Drums, metal (when not exempted from duty in accordance with sec. 10.3(c))	24 cents each.
Hosiery, nylon	45 cents per dozen.
Lead compound, tetraethyl	$0.003 per kilogram.
Lithopone	$0.00065 per kilogram.
Oxide, zinc	$0.0029 per kilogram.
Piece goods, cotton:	
Bleached	$0.03199 per square meter.
Dyed	$0.03454 per square meter.
Printed	$0.03226 per square meter.
Piece goods, nylon: Dyed	$0.29086 per square meter.
Piece goods, rayon:	
Printed	$0.04867 per square meter.
Other than printed (white, piece dyed or yarn dyed)	$0.08478 per square meter.
Tallow, refined, inedible	$0.003 per kilogram.

(c) The following articles shall be admitted free of duty, even though exported from the United States with benefit of drawback:

(1) Any article of a kind which would be admitted free of duty otherwise than under Chapter 98, Subchapter 1, HTSUS, if of foreign origin;

(2) Substantial containers or holders of domestic manufacture, including shooks and staves when returned as boxes or barrels, when in use at the time of importation as the usual containers of merchandise;

(3) Any article provided for in subheadings 9801.00.70 or 9801.00.80, HTSUS, with respect to which the port director has determined that the collection of duty under such subheadings 9801.00.70 or 9801.00.80, HTSUS, would involve an expense and inconvenience to the Government disproportionate to the probable amount of such duty; and

(4) Other articles of domestic manufacture which are in use at the time of importation as the usual coverings or containers of merchandise not subject to an ad valorem rate of duty, and which have not been advanced in value or improved in condition while abroad by any process of manufacture or other means.

(d) Articles manufactured or produced in the United States in a Customs bonded warehouse and exported shall be subject on reimportation to a duty equal to the total duty and internal-revenue tax, if any, imposed at the time of entry for consumption or withdrawal from warehouse for consumption with respect to the importation of like articles not previously exported from the United States.

(e) Animals straying across the border or driven across the border for pasturage purposes or for feeding to improve them for the market and not returned within 8 months are excluded from free entry as domestic products returned.

(f) Tobacco products and cigarette papers and tubes classifiable under subheading 9801.00.80, HTSUS, may be released from customs custody without the payment of that part of the duty attributable to the internal-revenue tax for return to internal-revenue bond as provided by section 5704(d) of the Internal Revenue Code of 1954.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 68–104, 33 FR 5616, Apr. 11, 1968; T.D. 83–240, 48 FR 53098, Nov. 25, 1983; T.D. 89–1, 53 FR 51246, Dec. 21, 1988; T.D. 93–66, 58 FR 44130, Aug. 19, 1993]

§ 10.4 Internal-revenue marks; erasure.

Internal-revenue brands or marks on casks or other containers previously exported from the United States must be erased at the importer's expense under Customs supervision before their delivery from Customs custody.

§ 10.5 Shooks and staves; cloth boards; port director's account.

(a) Shooks and staves produced in the United States and returned in the form of complete boxes or barrels in use as the usual containers of merchandise are exempt from any duties imposed by the tariff laws upon similar containers made of foreign shooks or staves, provided their identity is established under the regulations in this part.

(b) The term ''shook'' embraces only shooks which at the time of exportation from this country are ready to be assembled into boxes or barrels without further cutting to size; except that box shooks may be exported in double lengths and cut abroad. The number of boxes made from such shooks which may be imported into this country free of duty cannot exceed the number of complete sets of shooks exported.

(c) [Reserved]

(d) An exporter of shooks or staves in respect of which free entry is to be claimed when returned as boxes or barrels shall file in triplicate with the director of the port of exportation, at least 6 hours before the landing of the articles on the exporting vessel, a Certificate of Registration, Customs Form 4455.

(e) The Certificate of Registration, CF 4455, shall be completed in triplicate by the port director after verification from the manifest of the exporting vessel and the return of the lading officer. The original shall be forwarded by the port director to the consignee. The duplicate copy shall be given to the exporter and the triplicate copy shall be retained.

(f) Whenever boxes or barrels alleged to have been manufactured from American shooks or staves are shipped to the United States from a person abroad other than the one to whom they were exported from the United States, the importer shall be required to obtain from the foreign consignee to whom the shooks or staves were originally exported from this country the certificate or certificates, Customs Form 4455, covering the exportation of the shooks or staves from the United States, or an extract therefrom signed by such consignee, showing the number of shooks or staves covered by such certificate or certificates, together with the number of superficial feet of such shooks or staves. Such Form 4455, or extract therefrom, shall be filed by the importer in connection with the entry of the boxes or barrels.

(g) Accounts shall be kept by the director of the port of exportation of the shooks and staves as to each exportation thereof and as to the returns thereof in boxes, barrels, etc. Notifications of such returns shall be given to the port of exportation by the director of the port of importation. When returns in the form of boxes, barrels, etc., entirely account for the shooks and staves exported as shown on the appropriate Customs Form 4455, the port director maintaining the account shall so inform the port director making inquiry about the merchandise being imported and alleged to contain shooks or staves covered by the particular exportation.

(h) A record of cloth boards of domestic manufacture exported to be wrapped with foreign textiles shall be kept by the port director in a similar manner as for shooks and staves. Cloth boards of domestic manufacture are conditionally free of duty under Chapter 98, subchapter 1, Harmonized Tariff Schedule of the United States (HTSUS). If such boards are advanced in value or improved in condition while abroad, free entry shall be denied on importation.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978; T.D. 89–1, 53 FR 51247, Dec. 21, 1988; T.D. 98–52, 63 FR 29954, June 2, 1998]

§ 10.6 Shooks and staves; claim for duty exemption.

An importer, seeking an exemption from duty on account of boxes or barrels made from American shooks or staves, must make such a claim on Customs Form 4455 at the time of filing the entry. Upon receipt, from the director of the port of exportation of the shooks and staves, of corroboration that the records of exportation do not conflict materially with such a claim, the exemption may be allowed. If the claim for an exemption is disallowed in full or in part, the importer may file a request within 15 days of the date of the port director's notice to him of any

disallowance, for referral of the question to the Commissioner of Customs for review.

[T.D. 87–75, 52 FR 20066, May 29, 1987, as amended by T.D. 98–52, 63 FR 29954, June 2, 1998]

§ 10.7 Substantial containers or holders.

(a) Substantial containers or holders, which are products of the United States, which are of the usual and ordinary types used in the shipment or transportation of goods, which are reusable for such purposes, and which are imported containing or holding merchandise, shall be entered under the general regulations governing the free entry of domestic products exported and returned. When such containers or holders are imported not containing or holding merchandise they may be admitted without entry if readily identifiable as products of the United States.

(b) Substantial containers or holders, which are of foreign production and previously imported duty paid, which are of the usual or ordinary types used in the shipment or transportation of goods, which are reusable for such purpose, and which are imported containing or holding merchandise, shall be exempt from duty if (1) exported in accordance with the regulations contained in § 10.5 (d) and (e), and (2) there is filed in connection with the entry a certificate of the foreign shipper in the form prescribed by paragraph (c) of this section.

(c) The certificate to be furnished by the foreign shipper for the use of the director of the port of entry shall be in the following form:

I, _____, of _____, do hereby certify that to the best of my knowledge and belief the substantial containers and holders mentioned in (the annexed invoice) (invoice No. _____ of _____, 19__) * are of the manufacture of _____ and were exported from the United States at the port of _____, per S.S. _____ on _____, 19—, and that the same are being returned to the United States (empty) filled with _____) (holdings _____).*

_____

Shipper

*Cross out inapplicable words.

(d) The port director, after verification of the foreign shipper's certificate with the records of the director of the port of exportation in this country, shall allow free entry to the extent the basis for such allowance is verified. The procedure in the last two sentences of § 10.6 shall be applicable.

(e) If claim for exemption from duty for such containers or holders of foreign production previously imported duty paid is made at the time of entry, the certificate of the foreign shipper may be accepted if produced at any time prior to the liquidation of the entry.

(f) When such containers or holders of foreign production previously imported duty paid are reimported empty, they may be admitted without entry if readily identifiable as having been previously imported duty paid.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 82–145, 47 FR 35475, Aug. 16, 1982; T.D. 86–118, 51 FR 22515, June 20, 1986; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

§ 10.8 Articles exported for repairs or alterations.

(a) Except as otherwise provided for in this section and except in the case of goods covered by § 181.64 of this chapter, the following documents shall be filed in connection with the entry of articles which are returned after having been exported for repairs or alterations and which are claimed to be subject to duty only on the value of the repairs or alterations performed abroad under subheading 9802.00.40 or 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS):

(1) A declaration from the person who performed such repairs or alterations, in substantially the following form:

I,_____, declare that the articles herein specified are the articles which, in the condition in which they were exported from the United States, were received by me (us) on _____, 19_____, from_____ (name and address of owner or exporter in the United States); that they were received by me (us) for the sole purpose of being repaired or altered; that only the repairs or alterations described below were performed by me (us); that the full cost or (when no charge is made) value of such repairs or alterations are correctly

stated below; and that no substitution whatever has been made to replace any of the articles originally received by me (us) from the owner or exporter thereof mentioned above.

Marks and numbers	Description of articles and of repairs or alterations	Full cost or (when no charge is made) value of repairs or alterations (see subchapter II, chapter 98, HTSUS)	Total value of articles after repairs or alterations

(Date)

(Address)

(Signature)

(Capacity)

(2) A declaration by the owner, importer, consignee, or agent having knowledge of the pertinent facts in substantially the following form:

I, _____, declare that the (above) (attached) declaration by the person who performed the repairs or alterations abroad is true and correct to the best of my knowledge and belief; that the articles were not manufactured or produced in the United States under subheading 9813.00.05, HTSUS; that such articles were exported from the United States for repairs or alterations and without benefit of drawback from _____ (port) on _____, 19_____; and that the articles entered in their repaired or altered condition are the same articles that were exported on the above date and that are identified in the (above) (attached) declaration.

(Date)

(Address)

(Signature)

(Capacity)

(b) The port director may require such additional documentation as is deemed necessary to prove actual exportation of the articles from the United States for repairs or alterations, such as a foreign customs entry, foreign customs invoice, foreign landing certificate, bill of lading, or an airway bill.

(c) If the port director concerned is satisfied, because of the nature of the articles or production of other evidence, that the articles are imported under circumstances meeting the requirements of subheading 9802.00.40 or 9802.00.50, HTSUS, and related section and additional U.S. notes, he may waive submission of the declarations provided for in paragraph (a) of this section.

(d) The port director shall require at the time of entry a deposit of estimated duties based upon the full cost or value of the repairs or alterations. The cost or value of the repairs or alterations outside the United States, which is to be set forth in the invoice and entry papers as the basis for the assessment of duty under subheading 9802.00.40 or 9802.00.50, HTSUS, shall be limited to the cost or value of the repairs or alterations actually performed abroad, which will include all domestic and foreign articles furnished for the repairs or alterations but shall not include any of the expenses incurred in this country whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the repairs or alterations abroad, or otherwise.

[T.D. 94–47, 59 FR 25567, May 17, 1994, as amended by T.D. 95–68, 60 FR 46361, Sept. 6, 1995]

§ 10.8a Imported articles exported and reimported.

(a) In addition to regular entry procedures, supplementary documentation is required in connection with duty-free entries under subheading 9801.00.25, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), of articles which were originally entered duty paid, removed from Customs custody, and subsequently exported, if:

(1) The articles were exported within 3 years after the date of the previous importation.

(2) The articles were not advanced in value or improved in condition by any process of manufacture or other means while abroad.

(3) The articles did not conform to sample or specifications abroad.

(4) The articles are reimported by or for the account of the person who imported them into and exported them from the United States.

(b) The following supplementary documents shall be filed in connection with the entry of articles claimed to be free of duty under subheading 9801.00.25, Harmonized Tariff Schedule of the United States:

(1) A declaration by the person abroad who received and is returning the merchandise to the United States, in substantially the following form:

I declare that the_____(Description of articles) were received by me from _____ (Name and address of U.S. exporter), that they have not been advanced in value or improved in condition by any process of manufacture or other means and are being returned to _____(Name and address of consignee in the United States) because they do not conform to sample or specifications for the following reasons:

_____

_____

_____

_____

(Date) (Signature)

_____

(Address) (Title)

(2) A declaration by the owner, importer, consignee, or agent, in substantially the following form:

I declare that the _____ (Description of articles) were previously imported into the United States at the Port of _____ (Name of port), Entry No._____, on _____ (Date of entry) by _____ (Name and address of importer) at which time duty was paid; that they were exported from the United States at the Port of _____ (Name of port) on _____ (Date of exportation) by _____ (Name and address of exporter) without benefit of drawback; that the articles are being reimported by or for the account of _____, and, that the attached declaration from _____ (Name of foreign shipper) is correct in every respect.

_____

(Date) (Signature)

_____

(Address) (Title)

(c) If the port director concerned is reasonably satisfied because of the nature of the articles or production of other evidence that the requirements of subheading 9801.00.25, Harmonized Tariff Schedule of the United States, and the related section and additional U.S. notes have been met, he may waive the production of the documents provided for in paragraph (b) of this section.

[T.D. 72–221, 37 FR 17469, Aug. 29, 1972, as amended by T.D. 89–1, 53 FR 51247, Dec. 21, 1988]

§ 10.9 Articles exported for processing.

(a) Except as otherwise provided for in this section, the following documents shall be filed in connection with the entry of articles which are returned after having been exported for further processing and which are claimed to be subject to duty only on the value of the processing performed abroad under subheading 9802.00.60, Harmonized Tariff Schedule of the United States (HTSUS):

(1) A declaration by the person who performed the processing abroad, in substantially the following form:

I, _____, declare that the articles herein specified are the articles which, in the condition in which they were exported from the United States, were received by me (us) on _____, 19 _____, from _____ (name and address of owner or exporter in the United States); that they were received by me (us) for the sole purpose of being processed; that only the processing described below was effected by me (us); that the full cost or (when no charge is made) value of such processing and the value of the articles after processing are correctly stated below; and that no substitution whatever has been made to replace any of the articles originally received by me (us) from the owner or exporter thereof mentioned above.

Marks and numbers	Description of articles and of processing	Full cost or (when no charge is made) value of processing (see subchapter II, chapter 98, HTSUS)	Total value of articles after processing

_____

(Date)

_____

(Address)

_____

(Signature)

_____

(Capacity)

(2) A declaration by the owner, importer, consignee, or agent having knowledge of the pertinent facts in substantially the following form:

I, _____, declare that the (above) (attached) declaration by the person who performed the processing abroad is true and correct to the best of my knowledge and belief; that the articles were manufactured in the United States by _____ (name and address) or, if of foreign origin, were subjected to _____ (show processes of manufacture, such as molding, casting, machining) in the United States by _____ (name and address); that the articles were not manufactured or produced in the United States under subheading 9813.00.05, HTSUS; that the articles were exported for processing and without benefit of drawback from _____ (port) on _____, 19 _____; that the articles entered in their processed condition are otherwise the same articles that were exported on the above date and that are identified in the (above) (attached) declaration; and that the returned articles will be subjected to _____ (describe processing to be performed in the United States) by _____ (name and address of U.S. processor). _____

_____
(Date)

_____
(Address)

_____
(Signature)

_____
(Capacity)

(b) The port director may require such additional documentation as is deemed necessary to prove actual exportation of the articles from the United States for processing, such as a foreign customs entry, foreign customs invoice, foreign landing certificate, bill of lading, or an airway bill.

(c) If the port director concerned is satisfied, because of the nature of the articles or production of other evidence, that the articles are imported under circumstances meeting the requirements of subheading 9802.00.60, HTSUS, and related section and additional U.S. notes, he may waive submission of the declarations provided for in paragraph (a) of this section.

(d) The port director shall require at the time of entry a deposit of estimated duties based upon the full cost or value of the processing. The cost or value of the processing outside the United States, which is to be set forth in the invoice and entry papers as the basis for the assessment of duty under subheading 9802.00.60, HTSUS, shall be limited to the cost or value of the processing actually performed abroad, which will include all domestic and foreign articles used in the processing but shall not include the exported United States metal article or any of the expenses incurred in this country whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the processing abroad, or otherwise.

[T.D. 94–47, 59 FR 25568, May 17, 1994]

§ 10.10 [Reserved]

ARTICLES ASSEMBLED ABROAD WITH UNITED STATES COMPONENTS

§ 10.11 General.

(a) Sections 10.12 through 10.23 set forth definitions and interpretative regulations adopted by the Commissioner of Customs pertaining to the construction of subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) and related provisions of law. These provisions concern claims for the exemption from duty provided by subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), for American-made fabricated components which are returned to the United States as parts of articles assembled abroad. The examples included in these sections describe specific situations in which the exemption may or may not be applicable. The definitions and regulations that follow are promulgated to inform the public of the constructions and interpretations that the United States Customs Service shall give to relevant statutory terms and to assure the impartial and uniform assessment of duties upon merchandise claimed to be partially exempt from duty under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), at the various ports of entry. Nothing in these regulations purports or is intended to restrict the legal right of importers or others to a judicial review of the matters contained therein.

(b) Section 10.24 sets forth the documentary requirements applicable to the entry of assembled articles claimed to be subject to the exemption provided under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). Allowance of an importer's claim is dependent upon meeting the statutory requirements for the exemption under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) and his complying with the documentary requirements set forth in § 10.24.

[T.D. 75–230, 40 FR 43021, Sept. 18, 1975, as amended by T.D. 89–1, 53 FR 51247, Dec. 21, 1988; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

§ 10.12 Definitions.

As used in §§ 10.11 through 10.24, the following terms shall have the meanings indicated:

(a) *American-made*. The term ''American-made'' is used to refer to a product of the United States as defined in paragraph (e) of this section.

(b) *Assembly*. ''Assembly'' means the fitting or joining together of fabricated components.

(c) *Exemption*. ''Exemption'' means the deduction of the cost or value of products of the United States which were assembled abroad in accordance with the requirements of subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), from the full value of the assembled article.

(d) *Fabricated component*. ''Fabricated component'' means a manufactured article ready for assembly in the condition as exported except for operations incidental to the assembly.

(e) *Product of the United States*. A ''product of the United States'' is an article manufactured within the Customs territory of the United States and may consist wholly of United States components or materials, of United States and foreign components or materials, or wholly of foreign components or materials. If the article consists wholly or partially of foreign components or materials, the manufacturing process must be such that the foreign components or materials have been substantially transformed into a new and different article, or have been merged into a new and different article.

[T.D. 75–230, 40 FR 43021, Sept. 18, 1975, as amended by T.D. 89–1, 53 FR 51247, Dec. 21, 1988]

§ 10.13 Statutory provision: Subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

Subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS), (19 U.S.C. 1202), provides that articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting, are subject to a duty upon the full value of the imported article, less the cost or, if no charge is made, the value of such products of the United States. The rate of duty which is assessed upon the dutiable portion of the imported article is that which is applicable to the imported article as a whole under the appropriate provision of the HTSUS (19 U.S.C. 1202) for such article. If that provision requires a specific or compound rate of duty, the total duties assessed on the imported article are reduced in such proportion as the cost or value of the returned United States components which qualify for the exemption bears to the full value of the assembled article.

Example 1. A transistor radio is assembled abroad from foreign-made components and American-made transistors. Upon importation, the transistor radio is subject to the ad valorem rate of duty applicable to transistor radios upon the value of the radio less the cost or value of the American-made transistors assembled therein.

Example 2. A solid-state watch movement is assembled abroad from foreign-made components and an American-made integrated circuit. If the movement in question is subject to the specific rate of duty of 75 cents if the value of the assembled movement is $30, and if the value of the American-made integrated circuit is $10, then the value of the integrated circuit represents one third of the

total value of the assembled article and the duty on the assembled article will be reduced by one third ($.25). Therefore, the duty on the assembled movement is 50 cents.

[T.D. 75–230, 40 FR 43021, Sept. 18, 1975, as amended by T.D. 89–1, 53 FR 51247, Dec. 21, 1988]

§ 10.14 Fabricated components subject to the exemption.

(a) *Fabricated components, the product of the United States.* Except as provided in § 10.15, the exemption provided under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), applies to fabricated components, the product of the United States. The components must be in condition ready for assembly without further fabrication at the time of their exportation from the United States to qualify for the exemption. Components will not lose their entitlement to the exemption by being subjected to operations incidental to the assembly either before, during, or after their assembly with other components. Materials undefined in final dimensions and shapes, which are cut into specific shapes or patterns abroad are not considered fabricated components.

Example 1. Articles identifiable in their exported condition as components or parts of the article into which they will be assembled, such as transistors, diodes, integrated circuits, machinery parts, or precut parts of wearing apparel, are regarded as fabricated components.

Example 2. Prestamped metal lead frames for semiconductor devices exported in multiple unit strips in which the individual frame units are connected to each other, or integrated circuit wafers containing individual integrated circuit dice which have been scribed or scored in the United States, are regarded as fabricated components. The separation of the individual frames by cutting, or the segmentation of the wafer into individual dice by flexing and breaking along scribed or scored lines, is regarded as an operation incidental to the assembly process.

Example 3. Wires of various type, electrical conductors, metal foils, insulating tapes, ribbons, findings used in dressmaking, and similar products, which are in a finished state when exported from the United States, and are ready for use in the assembly of the imported article, are regarded as fabricated components if they are only cut to length or subjected to operations incidental to the assembly process while abroad.

Example 4. Uncut textile fabrics exported in bolts from which wearing apparel components will be cut according to a pattern are not regarded as fabricated components. Similarly, other materials, such as lumber, leather, sheet metal, plastic sheeting, exported in basic shapes and forms to be fabricated into components for assembly, are not eligible for treatment as fabricated components.

(b) *Substantial transformation of foreign-made articles or materials.* Foreign-made articles or materials may become products of the United States if they undergo a process of manufacture in the United States which results in their substantial transformation. Substantial transformation occurs when, as a result of manufacturing processes, a new and different article emerges, having a distinctive name, character, or use, which is different from that originally possessed by the article or material before being subject to the manufacturing process. The mere finishing or modification of a partially or nearly complete foreign product in the United States will not result in the substantial transformation of such product and it remains the product of a foreign country.

Example 1. A cast metal housing for a valve is made in the United States from imported copper ingots, the product of a foreign country. The housing is a product of the United States because the manufacturing operations performed in the United States to produce the housing resulted in a substantial transformation of the foreign copper ingots.

Example 2. An integrated circuit device is assembled in a foreign country and imported into the United States where its leads are formed by bending them to a specified angle. It is then tested and marked. The imported article does not become a product of the United States because the operations performed in the United States do not result in a substantial transformation of the foreign integrated circuit device.

Example 3. A circuit board assembly for a computer is assembled in the United States by soldering American-made and foreign-made components onto an American-made printed circuit board. The finished circuit board assembly has a distinct electronic function and is ready for incorporation into the computer. The foreign-made components have undergone a substantial transformation by becoming permanent parts of the circuit board assembly. The circuit board assembly, including all of its parts is regarded as a fabricated component, the product of the United

States, for purposes of subheading 9802.00.80, HTSUS (19 U.S.C. 1202).

[T.D. 75–230, 40 FR 43022, Sept. 18, 1975, as amended by T.D. 89–1, 53 FR 51247, Dec. 21, 1988]

§ 10.15 Fabricated components not subject to the exemption.

Fabricated components which are not products of the United States are excluded from the exemption. In addition, the exemption is not applicable to any component exported from the Customs territory of the United States:

(a) From continuous Customs custody with remission, abatement, or refund of duty;

(b) With benefit of drawback;

(c) To comply with any law of the United States or regulation of any Federal agency requiring exportation; or

(d) After manufacture or production in the United States under subheading 9813.00.05, HTSUS (19 U.S.C. 1202).

Example. Partially completed components of an electric motor are imported in several separate shipments and are entered under a temporary importation bond to be manufactured into finished motors under the provisions of subheading 9813.00.05, HTSUS (19 U.S.C. 1202). The components are completed and assembled into finished electric motors. The finished motors are exported and are assembled abroad into electric fans which are subsequently imported into the United States. Irrespective of the fact that the assembly of the motors might involve such a substantial change that the motor could be considered a product of the United States, no exemption may be given for the value of the electric motors, since they were exported after manufacture or production in the United States under the provision of subheading 9813.00.05, HTSUS (19 U.S.C. 1202).

[T.D. 75–230, 40 FR 43023, Sept. 18, 1975, as amended by T.D. 89–1, 53 FR 51247, Dec. 21, 1988]

§ 10.16 Assembly abroad.

(a) *Assembly operations.* The assembly operations performed abroad may consist of any method used to join or fit together solid components, such as welding, soldering, riveting, force fitting, gluing, laminating, sewing, or the use of fasteners, and may be preceded, accompanied, or followed by operations incidental to the assembly as illustrated in paragraph (b) of this section. The mixing or combining of liquids, gases, chemicals, food ingredients, and amorphous solids with each other or with solid components is not regarded as an assembly.

Example 1. A television yoke is assembled abroad from American-made magnet wire. In the foreign assembly plant the wire is despooled and wound into a coil, the wire cut from the spool, and the coil united with other components, including a terminal panel and housing which are also American-made. The completed article upon importation would be subject to the ad valorem rate of duty applicable to television parts upon the value of the yoke less the cost or value of the American-made wire, terminal panel and housing, assembled therein. The winding and cutting of the wire are either assembly steps or steps incidental to assembly.

Example 2. An aluminum electrolytic capacitor is assembled abroad from American-made aluminum foil, paper, tape, and Mylar film. In the foreign assembly plant the aluminum foil is trimmed to the desired width, cut to the desired length, interleaved with paper, which may or may not be cut to length or despooled from a continuous length, and rolled into a cylinder wherein the foil and paper are cut and a section of sealing tape fastened to the surface to prevent these components from unwinding. Wire or other electric connectors are bonded at appropriate intervals to the aluminum foil of the cylinder which is then inserted into a metal can, and the ends closed with a protective washer. As imported, the capacitor is subject to the ad valorem rate of duty applicable to capacitors upon the value less the cost or value of the American-made foil, paper, tape, and Mylar film. The operations performed on these components are all either assembly steps or steps incidental to assembly.

Example 3. The manufacture abroad of cloth on a loom using thread or yarn exported from the United States on spools, cops, or pirns is not considered an assembly but a weaving operation, and the thread or yarn does not qualify for the exemption. However, American-made thread used to sew buttons or garment components is qualified for the exemption because it is used in an operation involving the assembly of solid components.

(b) *Operations incidental to the assembly process.* Operations incidental to the assembly process whether performed before, during, or after assembly, do not constitute further fabrication, and shall not preclude the application of the exemption. The following are examples of operations which are incidental to the assembly process:

(1) Cleaning;

(2) Removal of rust, grease, paint, or other preservative coating;

(3) Application of preservative paint or coating, including preservative metallic coating, lubricants, or protective encapsulation;

(4) Trimming, filing, or cutting off of small amounts of excess materials;

(5) Adjustments in the shape or form of a component to the extent required by the assembly being performed abroad;

(6) Cutting to length of wire, thread, tape, foil, and similar products exported in continuous length; separation by cutting of finished components, such as prestamped integrated circuit lead frames exported in multiple unit strips; and

(7) Final calibration, testing, marking, sorting, pressing, and folding of assembled articles.

(c) *Operations not incidental to the assembly process.* Any significant process, operation, or treatment other than assembly whose primary purpose is the fabrication, completion, physical or chemical improvement of a component, or which is not related to the assembly process, whether or not it effects a substantial transformation of the article, shall not be regarded as incidental to the assembly and shall preclude the application of the exemption to such article. The following are examples of operations not considered incidental to the assembly as provided under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202):

(1) Melting of exported ingots and pouring of the metal into molds to produce cast metal parts;

(2) Cutting of garment parts according to pattern from exported material;

(3) Painting primarily intended to enhance the appearance of an article or to impart distinctive features or characteristics;

(4) Chemical treatment of components or assembled articles to impart new characteristics, such as showerproofing, permapressing, sanforizing, dying or bleaching of textiles;

(5) Machining, polishing, burnishing, peening, plating (other than plating incidental to the assembly), embossing, pressing, stamping, extruding, drawing, annealing, tempering, case hardening, and any other operation, treatment or process which imparts significant new characteristics or qualities to the article affected.

(d) *Joining of American-made and foreign-made components.* An assembly operation may involve the use of American-made components and foreign-made components. The various requirements for establishing entitlement to the exemption apply only to the American-made components of the assembly.

Example. Diodes are assembled abroad from American-made components. The process includes the encapsulation of the assembled components in a plastic shell. The plastic used for the encapsulation is in the form of a pellet, and is of foreign origin. After the prefabricated diode components are assembled, the assembled unit is placed in a transfer molding machine, where, by use of the pellet, molten epoxy is caused to flow around the perimeters of the assembled components, forming upon solidification a plastic body for the diode. Upon importation, exemption may be granted for the value of the American-made components, but not for the value of the plastic pellet. If the plastic pellet used for encapsulation was of United States origin, its value would still be a part of the dutiable value of the diode, because the plastic pellet is not a fabricated component of a type designed to be fitted together by assembly, but merely a premeasured quantity of material which was applied to the assembled unit by a process not constituting an assembly.

(e) *Subassembly.* An assembly operation may involve the joining or fitting of American-made components into a part or subassembly of an article, followed by the installation of the part or subassembly into the complete article.

Example. Rolls of foil and rolls of paper are exported and cut to specific length abroad and interleaved and rolled to form the electrodes and dielectric of a capacitor. Following this procedure, the rolls are assembled with cans and other parts to form a complete capacitor. The foil and paper are entitled to the exemption.

(f) *Packing.* The packing abroad of merchandise into containers does not in itself qualify either the containers or their contents for the exemption. However, assembled articles which otherwise qualify for the exemption and which are packaged abroad following their assembly will not be disqualified

from the exemption by reason of their having been so packaged, whether for retail sale or for bulk shipment. The tariff status of the packing materials or containers will be determined in accordance with General Rule of Interpretation 5, HTSUS (19 U.S.C. 1202).

[T.D. 75–230, 40 FR 43023, Sept. 18, 1975, as amended by T.D. 89–1, 53 FR 51248, Dec. 21, 1988]

§ 10.17 Valuation of exempted components.

The value of fabricated components to be subtracted from the full value of the assembled article is the cost of the components when last purchased, f.o.b. United States port of exportation or point of border crossing as set out in the invoice and entry papers, or, if no purchase was made, the value of the components at the time of their shipment for exportation, f.o.b. United States port of exportation or point of border crossing, as set out in the invoice and entry papers. However, if the appraising officer concludes that the cost or value of the fabricated components so ascertained does not represent a reasonable cost or value, then the value of the components shall be determined in accordance with section 402 or section 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402).

[T.D. 75–230, 40 FR 43024, Sept. 18, 1975]

§ 10.18 Valuation of assembled articles.

As in the case of the appraisement of any other import merchandise (see subpart C of part 152 of this chapter), the full value of assembled articles imported under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), is determined in accordance with 19 CFR 152.100 *et seq*.

[T.D. 87–89, 52 FR 24445, July 1, 1987, as amended by T.D. 89–1, 53 FR 51248, Dec. 21, 1988]

§§ 10.19–10.20 [Reserved]

§ 10.21 Updating cost data and other information.

When a claim for the exemption is predicated on estimated cost data furnished either in advance of or at the time of entry, this fact should be clearly stated in writing at the time of entry, and suspension of liquidation may be requested by the importer or his agent pending the furnishing of actual cost data. Actual cost data must be submitted as soon as accounting procedures permit. To insure that information used for Customs purposes is reasonably current, the importer shall ordinarily be required to furnish updated cost and assembly data at least every six months, regardless of whether he considers that significant changes have occurred. The 6-month period for the submission of updated cost or other data may be extended by the port director if such extension is appropriate for the type of merchandise involved, or because of the accounting period normally used in the trade, or because of other relevant circumstances.

[T.D. 75–230, 40 FR 43025, Sept. 18, 1975]

§ 10.23 Standards, quotas, and visas.

All requirements and restrictions applicable to imported merchandise, such as labeling, radiation standards, flame-retarding properties, quotas, and visas, apply to assembled articles eligible for the exemption in the same manner as they would apply to all other imported merchandise.

[T.D. 75–230, 40 FR 43025, Sept. 18, 1975]

§ 10.24 Documentation.

(a) *Documents required*. The following documents shall be filed in connection with the entry of assembled articles claimed to be subject to the exemption under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202).

(1) *Declaration by the assembler*. A declaration by the person who performed the assembly operations abroad shall be filed in substantially the following form:

I, _____, declare that to the best of my knowledge and belief the _____ were assembled in whole or in part from fabricated components listed and described below, which are products of the United States:

Marks of identification, numbers	Description of component	Quantity	Unit value at time and place of export from United States [1]	Port and date of export from United States	Name and address of manufacturer

[1] In accordance with U.S. Note 4 to Subchapter II of Chapter 98, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

Description of the operations performed abroad on the exported components (in sufficient detail to enable Customs officers to determine whether the operations performed are within the preview of subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) (attach supplemental sheet if more space is required)):

Date	Signature
Address	Capacity

(2) *Endorsement by the importer*. An endorsement, in substantially the following form, shall be signed by the importer:

I declare that to the best of my knowledge and belief the (above), (attached) declaration, and any other information submitted herewith, or otherwise supplied or referred to, is correct in every respect and there has been compliance with all pertinent legal notes to the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

Date	Signature
Address	Capacity

(b) *Revision of format*. In specific cases, the port director may revise the format of either of the documents specified in paragraph (a) of this section and may make such changes as conditions warrant, provided the data and information required to be supplied in these documents are presented. For example, if the components were furnished by the importer, the information on components may be supplied as part of the importer's endorsement, rather than as part of the assembler's declaration.

(c) *Reference to previously filed documents*. In lieu of filing duplicate lists of components and descriptions of assembly operations with each entry, the documents specified in paragraph (a) of this section may refer to assembly descriptions and lists of components previously filed with and approved by the port director, or to records showing costs, names of manufacturers, and other necessary data on components, provided the importer has arranged with the port director to maintain such records and keep them available for examination by authorized Customs officers.

(d) *Waiver of specific details for each entry*. There are cases where large quantities of United States components are purchased from various sources or exported at various ports and dates on a continuing basis, so that it is impractical to identify the exact source, port and date of export for each particular component included in an entry of merchandise claimed to be subject to the exemption under subheading 9802.00.80, HTSUS (19 U.S.C. 1202). In these cases, specific details such as the port and date of export and the name of the manufacturer of the United States components may be waived if the port director is satisfied that the importer and assembler have established reliable controls to insure that all components for which the exemption is claimed are in fact products of the United States. These controls shall include strict physical segregation of United States and foreign components, as well as records of United States components showing quantities, sources, costs, dates shipped abroad, and other necessary information. These records shall be maintained by the importer and assembler for 5 years from the date of the released entry in a manner so that they are readily available for audit, inspection, copying, reproduction or other official use by authorized Customs officers.

(e) *Waiver of documents*. When the port director is satisfied that unusual circumstances make the production of either or both of the documents specified in paragraph (a) of this section, or of any of the information set forth therein, impractical and is further satisfied that the requirements of subheading 9802.00.80, HTSUS, and related

legal notes have been met, he may waive the production of such document(s) or information.

(f) *Unavailability of documents at time of entry*. If either or both of the documents specified in paragraph (a) of this section are not available at the time of entry, a bond on Customs Form 301 containing the bond conditions set forth in § 113.62 of this chapter for the production of the document(s) may be given pursuant to §§ 113.41—113.46 and 141.66 of this chapter.

(g) *Responsibility of correctness*. Subject to the civil and criminal sanctions provided by law for false or fraudulent entries, the importer has the ultimate responsibility for supplying all information needed by the Customs Service to process an entry, and for the completeness and truthfulness of such information. If certain information cannot be supplied by the assembler, it must be provided by the importer.

[T.D. 75–230, 40 FR 43025, Sept. 18, 1975, as amended by T.D. 79–159, 44 FR 31967, June 4, 1979; T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 89–1, 53 FR 51248, Dec. 21, 1988]

§ 10.25 Textile components cut to shape in the United States and assembled abroad.

Where a textile component is cut to shape (but not to length, width, or both) in the United States from foreign fabric and exported to another country, territory, or insular possession for assembly into an article that is then returned to the United States and entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, the value of the textile component shall not be included in the dutiable value of the article. For purposes of determining whether a reduction in the dutiable value of an imported article may be allowed under this section:

(a) The terms ''textile component'' and ''fabric'' have reference only to goods covered by the definition of ''textile or apparel product'' set forth in § 102.21(b)(5) of this chapter;

(b) The operations performed abroad on the textile component shall conform to the requirements and examples set forth in § 10.16 insofar as they may be applicable to a textile component; and

(c) The valuation and documentation provisions of §§ 10.17, 10.18, 10.21 and 10.24 shall apply.

[T.D. 95–69, 60 FR 46196, Sept. 5, 1995; T.D. 95–69, 60 FR 55995, Nov. 6, 1995]

§ 10.26 Articles assembled or processed in a beneficiary country in whole of U.S. components or ingredients; articles assembled in a beneficiary country from textile components cut to shape in the United States.

(a) No article (except a textile article, apparel article, or petroleum, or any product derived from petroleum, provided for in heading 2709 or 2710, Harmonized Tariff Schedule of the United States (HTSUS)) shall be treated as a foreign article or as subject to duty:

(1) If the article is assembled or processed in a beneficiary country in whole of fabricated components that are a product of the United States; or

(2) If the article is processed in a beneficiary country in whole of ingredients (other than water) that are a product of the United States; and

(3) Neither the fabricated components, materials or ingredients after their exportation from the United States, nor the article before its importation into the United States, enters into the commerce of any foreign country other than a beneficiary country.

(b) No article (except a textile or apparel product) entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, shall be treated as a foreign article or as subject to duty:

(1) If the article is assembled in a beneficiary country in whole of textile components cut to shape (but not to length, width, or both) in the United States from foreign fabric; or

(2) If the article is assembled in a beneficiary country in whole of both textile components described in paragraph (b)(1) of this section and components that are products of the United States; and

(3) Neither the components after their exportation from the United States, nor the article before its importation into the United States, enters into the commerce of any foreign country other than a beneficiary country.

(c) For purposes of this section:

(1) The terms ''textile article'', ''apparel article'', and ''textile or apparel product'' cover all articles, other than footwear and parts of footwear, that are classifiable in an HTSUS subheading which carries a textile and apparel category number designation;

(2) The term ''beneficiary country'' has the meaning set forth in § 10.191(b)(1); and

(3) A component, material, ingredient, or article shall be deemed to have not entered into the commerce of any foreign country other than a beneficiary country if:

(i) The component, material, or ingredient was shipped directly from the United States to a beneficiary country, or the article was shipped directly to the United States from a beneficiary country, without passing through the territory of any non-beneficiary country; or

(ii) Where the component, material, ingredient, or article passed through the territory of a non-beneficiary country while en route to a beneficiary country or the United States:

(A) The invoices, bills of lading, and other shipping documents pertaining to the component, material, ingredient, or article show a beneficiary country or the United States as the final destination and the component, material, ingredient, or article was neither sold at wholesale or retail nor subjected to any processing or other operation in the non-beneficiary country; or

(B) The component, material, ingredient, or article remained under the control of the customs authority of the non-beneficiary country and was not subjected to operations in that non-beneficiary country other than loading and unloading and activities necessary to preserve the component, material, ingredient, or article in good condition.

[T.D. 95–69, 60 FR 46197, Sept. 5, 1995]

FREE ENTRY—ARTICLES FOR THE USE OF FOREIGN MILITARY PERSONNEL

§ 10.30c [Reserved]

TEMPORARY IMPORTATIONS UNDER BOND

§ 10.31 Entry; bond.

(a)(1) Entry of articles brought into the United States temporarily and claimed to be exempt from duty under Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS), unless covered by an A.T.A. carnet or a TECRO/AIT carnet as provided in part 114 of this chapter, shall be made on Customs Form 3461 or 7533, supported by the documentation required by § 142.3 of this chapter. However, when § 10.36 or § 10.36a is applicable, or the aggregate value of the article is not over $250, the form prescribed for the informal entry of importations by mail, in baggage, or by other means, may be used. When entry is made on Customs Form 3461 or 7533, an entry summary, Customs Form 7501, shall be filed within 10 days after time of entry, in accordance with subpart B, part 142 of this chapter.

(2) If Customs Form 7501 is filed at time of entry, it shall serve as both the entry and entry summary, and Customs Form 3461 or 7533 shall not be required. Customs Form 7501 shall be in original only, except for entries under subheading 9813.00.05, HTSUS, which require a duplicate copy for statistical purposes. When articles are entered under an A.T.A. carnet or a TECRO/AIT carnet, the importation voucher of the carnet shall serve as the entry.

(3) In addition to the data usually shown on a regular consumption entry summary, each temporary importation bond entry summary shall include:

(i) The HTSUS subheading number under which entry is claimed.

(ii) A statement of the use to be made of the articles in sufficient detail to enable the port director to determine whether they are entitled to entry as claimed, and

(iii) A declaration that the articles are not to be put to any other use and that they are not imported for sale or sale on approval.

(b) The port director, if he is satisfied as to the importer's identity and good faith, may admit a vehicle or craft brought in by a nonresident to take part in a race or other specific contest for which no money purse is awarded, under the provisions of subheading 9813.00.35, HTSUS, without formal entry or security for exportation. If at the time of arrival it appears that the article is likely to remain in the

United States beyond 90 days, formal entry and bond shall be taken.

(c) When any article has been admitted without formal entry or security for exportation and the importer thereafter desires to prolong his stay beyond 90 days, an entry covering the article and security for its exportation shall be accepted at any port where the article may be presented for entry. The time during which the imported article may remain in the United States under the entry shall be computed from the date of its original arrival in the United States. The estimated duties for the purpose of fixing the amount of any bond required by paragraph (f) of this section shall be the estimated duties which would have been required to be deposited had the article been entered under an ordinary consumption entry on the date of the original arrival.

(d) [Reserved]

(e) The entry or invoice shall: (1) Describe each article in detail; (2) set forth the value of each article; and (3) set forth any marks or numbers thereon or other distinguishing features thereof. In the case of a vehicle, aircraft, or pleasure boat entered under subheading 9813.00.05, HTSUS and §10.36a, the registration number, and engine or motor number, and the body number (if available) shall also be shown on the entry. Examination of the imported articles shall be made whenever the circumstances warrant, and occasionally in any event to an extent which will enable the Customs officer to determine that the importation is in agreement with the invoice or entry as to identity and quantity and for the purpose of accepting the entry under the applicable provisions of Chapter 98, Subchapter XIII, HTSUS. No examination for the purpose of appraisement and no appraisement of the articles shall be made.

(f) With the exceptions stated herein, a bond shall be given on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter, in an amount equal to double the duties, including fees, which it is estimated would accrue (or such larger amount as the port director shall state in writing or by the electronic equivalent to the entrant is necessary to protect the revenue) had all the articles covered by the entry been entered under an ordinary consumption entry. In the case of samples solely for use in taking orders entered under subheading 9813.00.20, HTSUS, motion-picture advertising films entered under subheading 9813.00.25, HTSUS, and professional equipment, tools of trade and repair components for such equipment or tools entered under subheading 9813.00.50, HTSUS, the bond required to be given shall be in an amount equal to 110 percent of the estimated duties, including fees, determined at the time of entry. If appropriate a carnet, under the provisions of part 114 of this chapter, may be filed in lieu of a bond on Customs Form 301 (containing the bond conditions set forth in §113.62 of this chapter). Cash deposits in the amount of the bond may be accepted in lieu of sureties. When the articles are entered under subheading 9813.00.05, 9813.00.20, or 9813.00.50, HTSUS without formal entry, as provided for in §§10.36 and 10.36a, or the amount of the bond taken under any subheading of Chapter 98, Subchapter XIII, HTSUS, is less than $25, the bond shall be without surety or cash deposit, and the bond shall be modified to so indicate. In addition, notwithstanding any other provision of this paragraph, in the case of professional equipment necessary for carrying out the business activity, trade or profession of a business person, equipment for the press or for sound or television broadcasting, cinematographic equipment, articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a resident of Canada, Mexico or Chile and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security will be required if the entered article is a good originating in Canada, Mexico or Chile within the meaning of General Note 12 or 26, HTSUS.

(g) Claim for free entry under Chapter 98, Subchapter XIII, HTSUS may be made for articles of any character described therein which have been previously entered under any other provision of law and the entry amended accordingly upon compliance with the requirements of this section, provided the articles have not been released from Customs custody, or even though

released from Customs custody if it is established that the original entry was made on the basis of a clerical error, mistake of fact, or other inadvertence within the meaning of section 520(c)(1), Tariff Act of 1930, as amended, and was brought to the attention of the Customs Service within the time limits of that section. If an entry is so amended, the period of time during which the merchandise may remain in the Customs territory of the United States under bond shall be computed from the date of importation. In the case of articles covered by an informal mail entry, such a claim may be made within a reasonable time either before or after the articles have been released from Customs custody.

(h) After the entry and bond have been accepted, the articles may be released to the importer. The entry shall not be liquidated as the transaction does not involve liquidated duties. However, a TIB importer may be required to file an entry for consumption and pay duties, or pay liquidated damages under its bond for a failure to do so, in the case of merchandise imported under subheading 9813.00.05, HTSUS, and subsequently exported to Canada or Mexico (see § 181.53 of this chapter).

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 66–39, 31 FR 2817, Feb. 17, 1966; T.D. 69–146, 34 FR 9798, June 25, 1969; T.D. 70–89, 35 FR 6002, Apr. 11, 1970; T.D. 79–221, 44 FR 46813, Aug. 9, 1979; 44 FR 51567, Sept. 4, 1979; T.D. 80–26, 45 FR 3901, Jan. 21, 1980; T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 89–1, 53 FR 51248, Dec. 21, 1988; T.D. 94–1, 58 FR 69470, Dec. 30, 1993; T.D. 95–22, 60 FR 14632, Mar. 20, 1995; T.D. 96–14, 61 FR 2910, Jan. 30, 1996; T.D. 98–10, 63 FR 4167, Jan. 28, 1998; T.D. 01–14, 66 FR 8767, Feb. 2, 2001; CBP Dec. 05–07, 70 FR 10872, Mar. 7, 2005]

§ 10.33 Theatrical effects.

For purposes of the entry of theatrical scenery, properties and apparel under subheading 9817.00.98, Harmonized Tariff Schedule of the United States:

(a) Animals imported for use or exhibition in theaters or menageries may be classified as theatrical properties; and

(b) The term ''theatrical scenery, properties and apparel'' shall not be construed to include motion-picture films.

For provisions relating to the return without formal entry of theatrical effects taken from the United States, see § 10.68 of this part.

[T.D. 92–85, 57 FR 40605, Sept. 4, 1992, as amended by CBP Dec. 04–28, 69 FR 52599, Aug. 27, 2004]

§ 10.35 Models of women's wearing apparel.

(a) Models of women's wearing apparel admitted under subheading 9813.00.10, Harmonized Tariff Schedule of the United States (HTSUS), shall not be removed from the importer's establishment for reproducing, copying, painting, sketching, or for any other use by others, nor be used in the importer's establishment for such purposes except by the importer or his employees.

(b) Invoices covering models of women's wearing apparel entered under subheading 9813.00.10 or 9813.00.25, HTSUS shall state the kind and color of the principal material from which the apparel is made, and shall contain a description of the lining and the trimming, stating whether composed of fur, lace, embroidery, or other material. Invoices shall also contain a statement as to how the trimming is applied, that is, whether on the cuffs, collar, sleeves, or elsewhere, and the total value of each completed garment or article.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 87–75, 52 FR 20066, May 29, 1987; T.D. 89–1, 53 FR 51248, Dec. 21, 1988]

§ 10.36 Commercial travelers' samples; professional equipment and tools of trade; theatrical effects and other articles.

(a) Samples accompanying a commercial traveler who presents an adequate descriptive list or a special Customs invoice, and professional equipment, tools of trade, and repair components for such equipment or tools imported in his baggage for his own use by a nonresident sojourning temporarily in the United States may be entered on the importer's baggage declaration in lieu of formal entry and examination and may be passed under subheadings 9813.00.20 or 9813.00.50, Harmonized Tariff Schedule of the United States, (HTSUS), at the place of arrival

in the same manner as other passengers' baggage. The examination may be made by an inspector who is qualified, in the opinion of the port director, to determine the amount of the bond required by § 10.31(c) to be filed in support of the entry. If the articles are a commercial traveler's samples and exceed $500 in value, a special Customs invoice or a descriptive list shall be furnished.

(b) When the proprietor or manager of a theatrical exhibition arriving from abroad who has entered his scenery, properties, and apparel under subheading 9813.00.65, HTSUS, contemplates side trips to a contiguous country with the exhibition within the period of time during which the merchandise may remain in the Customs territory of the United States under bond, including any lawful extension, a copy of the entry covering the effects and a copy of a descriptive list of such effects or invoice furnished by him may be certified by the examining officer and returned to the proprietor or manager for use in registering the effects with the Customs officers at the port of exit, and in clearing them through Customs on his return. Cancellation of the bond shall be effected by exportation in accordance with the provisions of § 10.38 at the time the theatrical effects are finally taken out of the United States before the expiration of the period of time during which the merchandise may remain in the Customs territory of the United States under bond, including any lawful extension. Similar treatment may be accorded articles entered under other subheadings in chapter 98, subchapter XIII, HTSUS, upon approval by Headquarters, U.S. Customs Service.

(c) When a commercial traveler contemplates side trips to a contiguous country within the period of time during which the merchandise may remain in the Customs territory of the United States under bond, including any lawful extension, a copy of his baggage declaration and a copy of the descriptive list or special Customs invoice furnished by him may be certified by the examining officer and returned to the traveler for use in registering the samples with Customs officers at the port of exit, and in clearing them through Customs upon his return. Cancellation of the bond shall be effected by exportation in accordance with the provisions of § 10.38 at the time the samples are finally taken out of the United States before the expiration of the period of time during which the merchandise may remain in the Customs territory of the United States under bond, including any lawful extension.

(d) The privilege of clearance of commercial travelers' samples or professional equipment, tools of trade, and repair components for such equipment or tools imported for his own use by a nonresident sojourning temporarily in the United States on a baggage declaration under bond without surety or cash deposit shall not be accorded to a commercial traveler or such nonresident who, through fraud or culpable negligence, has failed to comply with the provisions of such a bond in connection with a prior arrival.

Such a commercial traveler or nonresident shall be required to file a formal entry under subheading 9813.00.20 or subheading 9813.00.50, HTSUS with a bond supported by a surety or cash deposit in lieu of surety.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 69–146, 34 FR 9799, June 25, 1969; T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 89–1, 53 FR 51248, Dec. 21, 1988]

§ 10.36a Vehicles, pleasure boats and aircraft brought in for repair or alteration.

(a) A vehicle (such as an automobile, truck, bus, motorcycle, tractor, trailer), pleasure boat, or aircraft brought into the United States by an operator of such vehicle, pleasure boat, or aircraft for repair or alteration (as defined in §§ 10.8, 10.490 and 181.64 of this chapter) may be entered on the operator's baggage declaration, in lieu of formal entry and examination, and may be passed under subheading 9813.00.05, Harmonized Tariff Schedule of the United States (HTSUS), at the place of arrival in the same manner as passengers' baggage. When the vehicle, aircraft, or pleasure boat to be entered is being towed by or transported on another vehicle, the operator of the towing or transporting vehicle may make entry for the vehicle, aircraft or pleasure boat to be repaired or altered. The

bond, prescribed by § 10.31(f), filed to support entry under this section shall be without surety or cash deposit except as provided by this paragraph and paragraph (d) of this section. The examination may be made by an inspector who is qualified to determine the amount of such bond to be filed in support of the entry. The privilege accorded by this paragraph shall not apply when two or more vehicles, pleasure boats, or aircraft are to be entered by the same importer under subheading 9813.00.05, HTSUS, at the same time. In that event, the importer must file a formal entry supported by bond with surety or cash deposit in lieu of surety.

(b) Each vehicle, pleasure boat, or aircraft to which paragraph (a) of this section is applicable shall be identified on the operator's baggage declaration, which must include the data prescribed in paragraphs (a) and (e) of § 10.31.

(c) Exportation shall be effected in accordance with the provisions of § 10.38.

(d) The privilege of clearance of a vehicle, pleasure boat, or aircraft brought in by the operator of such vehicle, pleasure boat, or aircraft, for repair or alteration on his baggage declaration under bond without surety or cash deposit shall not be granted to an individual who has failed to comply with the provisions of such a bond in connection with any prior arrival. Such individual shall be required to file a formal entry under subheading 9813.00.05, HTSUS, with a bond supported by a surety or cash deposit in lieu of surety.

[T.D. 66–39, 31 FR 2817, Feb. 17, 1966, as amended by T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 89–1, 53 FR 51248, Dec. 21, 1988; T.D. 94–1, 58 FR 69470, Dec. 30, 1993; CBP Dec. 05–07, 70 FR 10872, Mar. 7, 2005]

§ 10.37 Extension of time for exportation.

The period of time during which merchandise entered under bond under chapter 98, subchapter XIII, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), may remain in the Customs territory of the United States, may be extended for not more than two further periods of 1 year each, or such shorter period as may be appropriate. Extensions may be granted by the director of the port where the entry was filed upon written application on Customs Form 3173, provided the articles have not been exported or destroyed before the receipt of the application, and liquidated damages have not been assessed under the bond before receipt of the application. Any untimely request for an extension of time for exportation shall be referred to the Director, Commercial Rulings Division, Customs Headquarters, for disposition. Any request for relief from a liquidated damage assessment in excess of a Fines, Penalties, and Forfeitures Officer's delegated authority shall be referred to the Director, International Trade Compliance Division, Customs Headquarters, for disposition. No extension of the period for which a carnet is valid shall be granted.

[T.D. 69–146, 34 FR 9799, June 25, 1969, as amended by T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 89–1, 53 FR 51249, Dec. 21, 1988; T.D. 91–77, 56 FR 46114, Sept. 10, 1991; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 10.38 Exportation.

(a) Articles entered under chapter 98, subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202) may be exported at the port of entry or at another port. An application on Customs Form 3495 shall be filed in duplicate with the port director a sufficient length of time in advance of exportation to permit the examination and identification of the articles if circumstances warrant such action and, in such event, the applicant shall be notified on a copy of Customs Form 3495 where the articles are to be sent for identification. If a carnet was used for entry purposes, the reexportation voucher of the carnet shall be filed, in addition to Customs Form 3495, and the carnet shall be presented for certification.

(b) All expenses in connection with the delivery of the articles for examination, the cording and sealing of such articles, and their transfer for exportation shall be paid by the parties in interest.

(c) If exportation is to be made at a port other than the one at which the merchandise was entered, the application on Customs Form 3495 shall be

filed in triplicate. There shall also be filed with the application a certified copy of the import entry or a certified copy of the invoice used on entry.

(d) If the goods are examined at one port and are to be exported from another port, they shall be forwarded to the port of exportation under a transportation and exportation entry. In such cases Customs Form 3495 shall be filed in triplicate. Articles entered under a carnet shall not be examined elsewhere than at the port from which they are to be exported.

(e) If the articles are to be exported by mail or parcel post, the package containing the articles must be mailed under Customs supervision after examination. Waiver of the right to withdraw the package from the mails shall be endorsed on each package to be so exported and signed by the exporter.

(f) Whenever the circumstances warrant, and occasionally in any event, port directors shall cause the fact of exportation to be verified by the Office of Enforcement in harmony with the procedures provided for in §§18.7 and 191.61 of this chapter.

(g) Upon the presentation of satisfactory evidence to the director of the port at which samples were entered under subheading 9813.00.20, HTSUS, or professional equipment or tools of trade were entered under subheading 9813.00.50, HTSUS, that such articles cannot be exported for the reason that they have been seized (other than by seizure at the suit of private persons), the requirement of exportation shall be suspended for the duration of the seizure. The articles shall be exported promptly after release from seizure.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 69–146, 34 FR 9799, June 25, 1969; T.D. 83–212, 48 FR 46771, Oct. 14, 1983; T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 89–1, 53 FR 51249, Dec. 21, 1988; T.D. 91–77, 56 FR 46114, Sept. 10, 1991; T.D. 98–16, 63 FR 11004, Mar. 5, 1998]

§10.39 Cancellation of bond charges.

(a) Charges against bonds taken pursuant to Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States, (HTSUS), may be canceled in the manner prescribed in §113.55 of this chapter. A completed reexportation counterfoil on a carnet establishes that the articles covered by the carnet have been exported, and no claim shall be brought against the guaranteeing association under the carnet for failure to export, except under the provisions of §114.26 of this chapter. In the case of articles entered under subheading 9813.00.30, HTSUS, which are destroyed because of their use for the purposes of importation, the bond charge shall not be canceled unless there is submitted to the port director a certificate of the importer that the articles were destroyed during the course of a specifically described use, and the port director is satisfied that the articles were so destroyed as articles of commerce within the period of time during which the articles may remain in the Customs territory of the United States under bond (including any lawful extension). Bonds covering articles entered under other provisions of law shall not be canceled upon proof of destruction, except as provided for in paragraph (c) of this section, unless the articles are destroyed under Customs supervision in accordance with section 557, Tariff Act of 1930, as amended, and §158.43 of this chapter.

(b) Where exportation has been made at a port other than the port of entry, the bond may be canceled upon the certificate of lading received from the port of exportation, showing that such exportation was made within the period of time during which the articles may remain in the Customs territory of the United States under bond. In addition, the port director may require the production of a landing certificate signed by a revenue officer of the country to which the merchandise is exported.

(c) When articles entered temporarily free of duty under bond are destroyed within the bond period by death, accidental fire, or other casualty, petition for relief from liability under the bond shall be made to the United States Customs Service. The petition shall be accompanied by a statement of the importer, or other person having knowledge of the facts, setting forth the circumstances of the destruction of the articles.

(d)(1) If any article entered under Chapter 98, subchapter XIII, HTSUS, except those entered under a carnet, has not been exported or destroyed in

accordance with the regulations in this part within the period of time during which the articles may remain in the Customs territory of the United States under bond (including any lawful extension), the Fines, Penalties, and Forfeitures Officer shall make a demand in writing under the bond for the payment of liquidated damages equal to double the estimated duties applicable to such entry, unless a different amount is prescribed by §10.31(f). The demand shall include a statement that a written petition for relief from the payment of the full liquidated damages may be filed with the Fines, Penalties, and Forfeitures Officer within 60 days after the date of the demand. For purposes of this section, the term estimated duties shall include any merchandise processing fees applicable to such entry.

(2) If articles entered under a carnet have not been exported or destroyed in accordance with the regulations in this part within the carnet period, the port director shall promptly after expiration of that period make demand in writing upon the importer and guaranteeing association for the payment of liquidated damages in the amount of 110 percent of the estimated duties on the articles not exported or destroyed. The guaranteeing association shall have a period of 6 months from the date of claim in which to furnish proof of the exportation or destruction of the articles under conditions set forth in the Convention or Agreement under which the carnet is issued. If such proof is not furnished within the 6–month period, the guaranteeing association shall forthwith pay the liquidated damages provided for above. The payment shall be refunded if the guaranteeing association within 3 months from the date of payment furnishes the proof referred to above. No claim for payment under a carnet covering a temporary importation may be made against the guaranteeing association more than 1 year after the expiration of the period for which the carnet was valid.

(3) Demand for return to Customs custody. When the demand for return to Customs custody is made in the case of merchandise entered under Chapter 98, subchapter XIII, HTSUS (19 U.S.C. 1202), liquidated damages in an amount equal to double the estimated duties on the merchandise not returned shall be demanded, except that in the case of samples solely for use in taking orders, motion-picture advertising films, professional equipment, tools of trade, and repair components for professional equipment and tools of trade, the liquidated damages demanded shall be in an amount equal to 110 percent of the estimated duties.

(e) If there has been a default with respect to any or all of the articles covered by the bond and a written petition for relief is filed as provided in part 172 of this chapter, it will be reviewed by the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the entry was filed. If the Fines, Penalties, and Forfeitures Officer is satisfied that the importation was properly entered under Chapter 98, subchapter XIII, and that there was no intent to defraud the revenue or delay the payment of duty, the Fines, Penalties, and Forfeitures Officer may cancel the liability for the payment of liquidated damages in any case in his or her delegated authority as follows:

(1) If evidence is furnished which satisfies the Fines, Penalties, and Forfeitures Officer that the article would have been entitled to free entry as domestic products exported and returned had the evidence been furnished at the time of entry, without the collection of liquidated damages.

(2) If the article has been exported or destroyed under Customs supervision but not within the period of time during which the articles may remain in the Customs territory of the United States under bond, upon the payment of such lesser amount as the port director may deem appropriate under the law and in view of the circumstances, or without the collection of liquidated damages if the Fines, Penalties, and Forfeitures Officer is satisfied that the delay in exportation or destruction was for the benefit of the United States or was occasioned wholly by circumstances reasonably beyond the control of the parties concerned and which could not have been anticipated by a reasonably prudent person.

(3) If the article was exported or destroyed within the period of time during which the articles may remain in the Customs territory of the United States under bond but not under Customs supervision and satisfactory documentary evidence of actual exportation, such as a foreign landing certificate, or of death or other complete destruction, such as a veterinarian's certificate or certificates of two disinterested witnesses, are furnished together with a complete explanation by the applicant of the failure to obtain Customs supervision, upon the payment of such lesser amount as the Fines, Penalties, and Forfeitures Officer may deem appropriate under the law and in view of the circumstances, or without the collection of liquidated damages if the port director is satisfied that the merchandise was destroyed under circumstances which precluded any arrangement to obtain Customs supervision. Satisfactory documentary evidence of exportation, in the case of carnets, would include the particulars regarding importation or reimportation entered in the carnet by the Customs authorities of another contracting party, or a certificate with respect to importation or reimportation issued by those authorities, based on the particulars shown on a voucher which was detached from the carnet on importation or reimportation into their territory, provided it is shown that the importation or reimportation took place after the exportation which it is intended to establish.

(4) Upon the payment of an amount equal to double the duty which would have accrued on the articles had they been entered under an ordinary consumption entry, or equal to 110 percent of such duties where that percentage is prescribed in § 10.31(f), if such amount is determined to be less than the full amount of the bond.

(f) *Anticipatory breach.* If an importer anticipates that the merchandise entered under a Temporary Importation Bond will not be exported or destroyed in accordance with the terms of the bond, the importer may indicate to Customs in writing before the bond period has expired of the anticipatory breach. At the time of written notification of the breach, the importer shall pay to Customs the full amount of liquidated damages that would be assessed at the time of breach of the bond, and the entry will be closed. The importer shall notify the surety in writing of the breach and payment. By this payment, the importer waives his right to receive a notice of claim for liquidated damages as required by § 172.1(a) of this chapter.

(g) If the petitioner is not satisfied with the port director's action under this section and submits a supplemental petition, both the original and the supplemental petitions shall be transmitted to the designated Headquarters official with a full report on the case.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 69–146, 34 FR 9799, June 25, 1969; T.D. 70–249, 35 FR 18265, Dec. 1, 1970; T.D. 71–70, 36 FR 4485, Mar. 6, 1971; T.D. 73–308, 38 FR 30549, Nov. 6, 1973; T.D. 74–227, 39 FR 32015, Sept. 4, 1974; T.D. 75–36, 40 FR 5146, Feb. 4, 1975; T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 89–1, 53 FR 51249, Dec. 21, 1988; T.D. 91–71, 56 FR 40779, Aug. 16, 1991; T.D. 95–22, 60 FR 14632, Mar. 20, 1995; T.D. 98–10, 63 FR 4167, Jan. 28, 1998; T.D. 99–27, 64 FR 13675, Mar. 22, 1999; T.D. 00–57, 65 FR 53574, Sept. 5, 2000]

§ 10.40 Refund of cash deposits.

(a) When a cash deposit is made in lieu of surety, it shall be refunded to the person in whose name the entry is made upon exportation in compliance with § 10.38.

(b) If any article entered under Chapter 98, subchapter XIII, Harmonized Tariff Schedule of the United States, is not exported or destroyed within the period of time during which articles may remain in the Customs territory of the United States under bond (including any lawful extension), the port director shall notify the importer in writing that the entire cash deposit will be transferred to the regular account as liquidated damages unless a written application for relief from the payment of the full liquidated damages is filed with the port director within 60 days after the date of the notice. If such an application is timely filed, the transfer of the cash deposit to the regular account as liquidated damages shall be deferred pending the decision of the Headquarters, U.S. Customs

Service or, in appropriate cases, the port director on the application.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 89–1, 53 FR 41249, Dec. 21, 1988]

INTERNATIONAL TRAFFIC

§ 10.41 Instruments; exceptions.

(a) Locomotives and other railroad equipment, trucks, buses, taxicabs, and other vehicles used in international traffic shall be subject to the treatment provided for in part 123 of this chapter.

(b) [Reserved]

(c) Foreign-owned aircraft arriving in the United States shall be subject to the treatment provided for in part 122 of this chapter, unless entered under the provisions of §§ 10.31, 10.183, or paragraph (d) of this section.

(d) Any foreign-owned locomotive or other railroad equipment, truck, bus, taxicab, or other vehicle, aircraft, or undocumented boat brought into the United States for the purpose of carrying merchandise or passengers between points in the United States for hire or as an element of a commercial transaction, except as provided at §§ 123.12 (a) and (b), 123.14(c), and 141.4(b)(4), is subject to treatment as an importation of merchandise from a foreign country and a regular entry for such vehicle, aircraft or boat will be made. The use of any such vehicle, aircraft, or boat without a proper entry having been made may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

(e) [Reserved]

(f) Material for the maintenance or repair of international cables under the high seas, if requiring storage in special tanks for preservation, may be placed in tanks specially bonded for the purpose and withdrawn therefrom for high-seas installation without the payment of duty and without limitation of the storage period to the usual 3-year warehousing period. International cables laid under the territorial waters of the United States but not brought on shore in the United States shall be admitted without entry or the payment of duty. With respect to international cables laid under the territorial waters of the United States but brought on shore in the United States, only that part of the cable in the United States between the point of entry into the territorial waters of the United States and the first point of support on land in the United States shall be admitted without the payment of duty.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 70–121, 35 FR 8222, May 26, 1970; T.D. 79–160, 44 FR 31956, June 4, 1979; T.D. 84–109, 49 FR 19450, May 8, 1984; T.D. 88–12, 53 FR 9315, Mar. 22, 1988; T.D. 93–66, 58 FR 44130, Aug. 19, 1993; T.D. 99–79, 64 FR 61205, Nov. 10, 1999]

§ 10.41a Lift vans, cargo vans, shipping tanks, skids, pallets, and similar instruments of international traffic; repair components.

(a)(1) Lift vans, cargo vans, shipping tanks, skids, pallets, caul boards, and cores for textile fabrics, arriving (whether loaded or empty) in use or to be used in the shipment of merchandise in international traffic are hereby designated as ''instruments of international traffic'' within the meaning of section 322(a), Tariff Act of 1930, as amended. The Commissioner of Customs is authorized to designate as instruments of international traffic, in decisions to be published in the weekly Customs Bulletin, such additional articles or classes of articles as he shall find should be so designated. Such instruments may be released without entry or the payment of duty, subject to the provisions of this section.

(2) Repair components, accessories, and equipment for any container of foreign production which is an instrument of international traffic may be entered or withdrawn from warehouse for consumption without the deposit of duty if the person making the entry or withdrawal from warehouse files a declaration that the repair component was imported to be used in the repair of a container of foreign production which is an instrument of international traffic, or that the accessory or equipment is for a container of foreign production which is an instrument of international traffic. The port director must be satisfied that the importer of the repair component, accessory, or equipment had the declared intention at the time of importation.

(3) As used in this section, ''instruments of international traffic'' includes the normal accessories and equipment imported with any such instrument which is a ''container'' as defined in Article 1 of the Customs Convention on Containers.

(b) The reexportation of a container, as defined in Article 1 of the Customs Convention on Containers, which has become badly damaged, shall not be required in the case of a duly authenticated accident if the container (1) is subjected to applicable import duties and import taxes, or (2) is abandoned free of all expense to the Government or destroyed under Customs supervision at the expense of the parties concerned, following the procedure outlined in §158.43(c) of this chapter. Any salvaged parts and materials shall be subjected to applicable import duties and import taxes. Replaced parts which are not reexported shall be subjected to import duties and import taxes except where abandoned free of expense to the Government or destroyed under Customs supervision at the expense of the parties concerned.

(c) The instruments of international traffic designated in paragraph (a) of this section may be released in accordance with the provisions of that paragraph only after the applicant for such release has filed a bond on Customs Form 301, containing the bond conditions set forth in §113.66 of this chapter. The required application may be filed at the port of arrival or at a subsequent port to which an instrument shall have been transported in bond or to which a container shall have been moved under cover of a TIR carnet (see part 114 of this chapter) showing the characteristics and value of the container on the Goods Manifest of the carnet. If the container is listed on the Goods Manifest of the carnet, the application may be filed at the port of arrival or at the subsequent port. If the container is not listed on the Goods Manifest, the application shall be filed at the port of arrival. When the application is filed at a port other than the port at which the bond is on file, the following procedure applies:

(1) When the application is filed before the fact of approval of the applicant's bond has been established, the applicant must submit with the application, or the Customs officer to whom the application is made must obtain, evidence that a current bond is on file at another port. That evidence may consist of a certified copy of the bond, or any other evidence which will satisfy the Customs officer to whom the application is made that a current bond is on file at another port.

(2) If the application is filed after the fact of approval of the applicant's bond has been established, a certified copy of that bond need not be filed at the port of release. Upon determination by the appropriate Customs officer that the fact of approval of the applicant's bond has been established, and the bond has not been subsequently discontinued, the instruments of international traffic will be released as provided for in paragraph (a) of this section.

(3) Upon the request of the applicant, the appropriate Customs officer at the port at which the instruments of international traffic are to be released will determine whether or not the fact of approval of the applicant's bond has been established. If the approval has not been established, the Customs officer with whom the application has been filed will advise the applicant of the nature of the evidence required to establish the fact that a current bond is on file at another port.

(d) If an instrument of foreign origin, or of United States origin which has been increased in value or improved in condition by a process of manufacture or other means while abroad, is released under this section and is subsequently diverted to point-to-point local traffic within the United States, or is otherwise withdrawn in the United States from its use as an instrument of international traffic, it becomes subject to entry and the payment of any applicable duties. An instrument of United States origin which has not been increased in value or improved in condition by a process of manufacture or other means while abroad and which is released under this section shall not be subject to entry or the payment of duty if it is so diverted or otherwise withdrawn.

(e) The person who filed the application for release under paragraph (a)(1)

of this section shall promptly notify a director of a port of entry in the United States as defined in Section 401(k), Tariff Act of 1930, as amended, (1) that the container is to be abandoned or destroyed, as described in paragraph (b) of this section, or (2) that the instrument is the subject of a diversion or withdrawal as described in paragraph (d) of this section, in which event he shall file with the port director a consumption entry for the instrument and pay all import duties and import taxes due on the container or instrument at the rate or rates in effect and in its condition on the date of such diversion or withdrawal.

(f)(1) Except as provided in paragraph (j) of this section, an instrument of international traffic (other than a container as defined in Article 1 of the Customs Convention on Containers that is governed by paragraphs (g) (1)–(3) of this section) may be used as follows in point-to-point traffic, provided such traffic is incidental to the efficient and economical utilization of the instrument in the course of its use in international traffic:

(i) Picking up and delivering loads at intervening points in the United States while en route between the port of arrival and the point of destination of its imported cargo; or

(ii) Picking up and delivering loads at intervening points in the United States while en route from the point of destination of imported cargo to a point where export cargo is to be loaded or to an exterior port of departure by a reasonably direct route to, or nearer to, the place of such loading or departure.

(2) Neither use as enumerated in paragraph (f)(1)(i) or (ii) of this section constitutes a diversion to unpermitted point-to-point local traffic within the United States or a withdrawal of an instrument in the United States from its use as an instrument of international traffic under this section.

(g)(1) Except as provided in paragraph (j) of this section, a container (as defined in Article 1 of the Customs Convention on Containers) that is designated as an instrument of international traffic is deemed to remain in international traffic provided that the container exits the U.S. within 365 days of the date on that it was admitted under this section. An exit from the U.S. in this context means a movement across the border of the United States into a foreign country where either:

(i) All merchandise is unladen from the container; or

(ii) Merchandise is laden aboard the container (if the container is empty).

(2) The person who filed the application for release under paragraph (a)(1) of this section is responsible for keeping and maintaining such records, otherwise generated and retained in the ordinary course of business, as may be necessary to establish the international movements of the containers. Such records shall be made available for inspection by Customs officials upon reasonable notice.

(3) If the container does not exit the U.S. within 365 days of the date on which it is admitted under this section, such container shall be considered to have been removed from international traffic, and entry for consumption must be made within 10 business days after the end of the month in which the container is deemed removed from international traffic. When entry is required under this section, any containers considered removed from international traffic in the same month may be listed on one entry. Such entry may be made at any port of entry. Under 19 U.S.C. 1484(a)(1)(B), the importer of record is required, using reasonable care, to complete the entry by filing with Customs the declared value, classification and rate of duty applicable to the merchandise. The importer of record must use the value of the container as determined in accordance with section 402, Tariff Act of 1930 (19 U.S.C. 1401a), as amended by the Trade Agreements Act of 1979 (TAA).

(h) For failure promptly to report the diversion or withdrawal or promptly to make the required entry and pay the duties due, the applicant shall be liable for the payment of liquidated damages equal to the domestic value of the instrument established in accordance with Section 606, Tariff Act of 1930.

(i) When an instrument of international traffic, as provided in paragraph (a) of this section, is returned to the United States and released in accordance with the provisions of that

paragraph, any repairs which may have been made to the instrument while it was abroad are not subject to entry or the payment of duty whether the instrument is of foreign or domestic manufacture, whether it left the United States empty or loaded, and whether or not the repairs made abroad were in contemplation when the instrument left the United States.

(j) Containers and other articles designated as instruments of international traffic in accordance with this section are nevertheless subject to the application of the coastwise laws of the United States, with particular reference to Section 883, Title 46, United States Code (see § 4.93 of this chapter).

[28 FR 14663, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 10.41a, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 10.41b Clearance of serially numbered substantial holders or outer containers.

(a) The holders and containers described in this section may be released without entry or the payment of duty, subject to the provisions of this section.

(b) Subject to the approval of a port director pursuant to the procedures described in this paragraph, certain foreign- or U.S.-made shipping devices arriving from Canada or Mexico, including racks, holders, pallets, totes, boxes and cans, need not be serially numbered or marked if they are always transported on or within either intermodal and similar containers or containers which are themselves vehicles or vehicle appurtenances and accessories such as twenty and forty foot containers of general use and ''igloo'' air freight containers. The following or similar notation shall appear on the vehicle or vessel manifest in relation to such shipping devices which are exempt from serial numbering or marking requirements pursuant to this paragraph: ''The shipping devices transported herein, which are not serially numbered or marked, have been exempted from such requirement pursuant to an application approved under 19 CFR 10.41b(b).'' Also, pallets and other solid wood shipping devices must be accompanied by an importer document, to the extent that this is required by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, attesting to the admissibility of such devices as regards plant pest risk, as provided for in 7 CFR 319.40–3.

(1) An importer or his agent, regardless of whether the importer is the owner of the foreign- or U.S.-manufactured shipping devices, may apply to a port director of Customs at one of the importer's chiefly utilized Customs ports or the port within which the importer's or agent's recordkeeping center is located for permission to have such shipping devices arriving from Canada or Mexico released without entry and payment of duty at the time of arrival and without the devices being serially numbered or marked. Application may be filed in only one port. Although no particular format is specified for the application, it must contain the information enumerated in paragraph (b)(2) of this section. Any duty which may be due on these shipping devices shall be tendered and paid cumulatively at the time specified in an approved application, which may be either before or after the arrival of the shipping devices in the U.S. (such as, at the time a contract, purchase order or lease agreement is issued).

(2) The application shall:

(i) Describe the types of shipping devices covered, their classification under the Harmonized Tariff Schedule of the U.S. (HTSUS), their countries of origin, and whether and to whom required duty was paid for them or when it will be paid for them, including duties for repair and modifications to such shipping devices while outside the U.S.;

(ii) Identify the intended ports where it is anticipated the shipping devices will be arriving and departing the U.S., as well as the particular movements and conveyances in which they are intended to be utilized;

(iii) Describe the applicant's proposed program for accounting for and reporting these shipping devices;

(iv) Identify the reporting period (which shall in no event be less frequent than annual), as well as the payment period within which applicable duty and fees must be tendered (which shall in no event exceed 90 days following the close of the related reporting period);

(v) Describe the type of inventory control and recordkeeping, including the specific records, to be maintained to support the reports of the shipping devices; and

(vi) Provide the location in the United States, including the name and address, where the records supporting the reports will be retained by law and will be made available for inspection and audit upon reasonable notice. (The records supporting the reports of the shipping devices must be kept for a period of at least 3 years from the date such reports are filed with the port director.)

(3) The application shall be filed along with a continuous bond containing the conditions set forth in § 113.66(c) of this chapter. If the application is approved by the port director and the conditions set forth in the application or of the bond are violated, the port director may issue a claim for liquidated damages equal to the domestic value of the container. If the domestic value exceeds the amount of the bond, the claim for liquidated damages will be equal to the amount of the bond.

(4) The port director receiving the application shall evaluate the program proposed to account for, report and maintain records of the shipping devices. The port director may suggest amendments to the applicant's proposal. The port director shall notify the applicant in writing of his decision on the application within 90 days of its receipt, unless this period is extended for good cause and the applicant is so informed in writing. Approval of the application by the port director with whom it is filed shall be binding on all Customs ports nationwide.

(5) If the decision is to deny the application, in whole or in part, the port director shall specify the reason for the denial in a written reply, and inform the applicant that such denial may be appealed to the Assistant Commissioner, Office of Field Operations, Customs Headquarters, within 21 days of its date. The Assistant Commissioner's decision shall be issued, in writing, within 30 days of the receipt of the appeal, and shall constitute the final Customs determination concerning the application.

(6) If the application is approved, an importer may later apply to amend his application to add or delete particular types of shipping devices listed in the application in which the procedures set forth in the application may be utilized. If a requested amendment to an approved application should be denied, or if an approved application should be revoked, in whole or in part, by the port director, the procedures described in paragraph (b)(5) of this section shall apply.

(7) Application for and approval of a reporting program shall not limit or restrict the use of other alternative means for obtaining the release of holders, containers and shipping devices.

(c) In the case of serially numbered holders or containers of United States manufacture for which free clearance under subheading 9801.00.10, Harmonized Tariff Schedule of the United States, is claimed, the owner shall place thereon the following markings:

(1) 9801.00.10, unless the holder or container has permanently attached thereto the manufacturer's metal tag or plate showing, among other things, the name and address of the manufacturer who is located in the United States.

(2) The name of the owner, either positioned as indicated in the example below, or elsewhere conspicuously shown on the holder or container.

(3) The serial number assigned by the owner, which shall be one of consecutive numbers and not to be duplicated. For example: 9801.00.10 * * * Zenda * * * 2468.

(d)(1) In the case of serially numbered holders or containers of foreign manufacture, other than those provided for in paragraph (d)(2) of this section, for which free clearance under the second provision in subheading 9803.00.50, HTSUS (19 U.S.C. 1202), is claimed, the owner shall place thereon the following markings:

(i) 9803.00.50.

(ii) The district and port code numbers of the port of entry, the entry number, and the last two digits of the fiscal year of entry covering the importation of the holders and containers on which duty was paid.

(iii) The name of the owner, either positioned as indicated in the example below, or elsewhere conspicuously shown on the holder or container.

(iv) The serial number assigned by the owner, which shall be one of consecutive numbers and not to be duplicated. For example: 9803.00.50 * * * 10–1–366–63 * * * Zenda * * * 2468.

(2) In the case of substantial holders or containers of either U.S. or foreign manufacture, specially designed and equipped to facilitate the carriage of goods by one or more modes of transport without intermediate reloading, each having a gross mass rating of at least 18,120 kilograms, for which duty-free entry is requested under either the first or the second proviso in subheading 9803.00.50, HTSUS (19 U.S.C. 1202), is claimed, only the following clear, conspicuous and durable markings are required to be on the container:

(i) The identity of the owner or operator of the container.

(ii) The serial number assigned by the owner or operator of the container, which shall be one of consecutive numbers and shall not be duplicated.

(e) The prescribed markings shall be clear and conspicuous, that is, they shall appear on an exposed side of the holder or container in letters and figures of such size as to be readily discernible. The markings will be stricken out or removed when the holders or containers are taken out of service or when ownership is transferred, except that appropriate changes may be made if a new owner wishes to use the holders and containers under this procedure.

(f) The owner shall keep adequate records open to inspection by Customs officers, which shall show the current status of the serially numbered holders and containers in service and the disposition made of such holders and containers taken out of service.

(g) Nothing in this procedure shall be deemed to affect:

(1) The requirements for outward or inward manifesting of such holders or containers. The manifests will show for each holder or container its markings as provided for herein.

(2) The requirements of the Department of Commerce on exportation with respect to the filing of ''Shipper's Export Declaration,'' Form 7525–V.

(3) The treatment of articles covered herein under the coastwise laws of the United States, with particular reference to section 883, Title 46, United States Code.

(h) If the holder or container and its contents are to move in bond or under cover of a TIR carnet (see part 114 of this chapter) from the port of arrival intact, the holder or container shall appear on the inward foreign manifest so as to be related to the cargo contained therein and will be released under this procedure at a subsequent port. If the holder or container is to move in bond or under cover of a TIR carnet from the port of arrival not intact with its contents, the holder or container may appear on the inward foreign manifest separate from and not related to the cargo contained therein and will be released under this procedure at the port of arrival before it moves forward and will not appear on the in-bond document.

(i) A continuous bond containing the conditions set forth in §113.66 of this chapter shall be filed with the port director. If the conditions are violated the port director shall issue a claim for liquidated damages equal to the domestic value of the holder or container established in accordance with section 606, Tariff Act of 1930, as amended (19 U.S.C. 1606). If the domestic value exceeds the amount of the bond the claim for liquidated damages will be equal to the amount of the bond.

[T.D. 56542, 30 FR 15143, Dec. 8, 1965, as amended by T.D. 71–70, 36 FR 4485, Mar. 6, 1971; T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 86–13, 51 FR 4164, Feb. 3, 1986; T.D. 89–1, 53 FR 51249, Dec. 21, 1988; T.D. 96–20, 61 FR 7989, Mar. 1, 1996; T.D. 97–82, 62 FR 51769, Oct. 3, 1997; T.D. 99–64, 64 FR 43265, Aug. 10, 1999]

ARTICLES FOR INSTITUTIONS

§ 10.43 Duty-free status.

(a) The port director may, at his discretion, require appropriate proof of

duty-free status for articles for institutions claimed to be exempt from duty under subheadings 9810.00.05, 9810.00.15, 9810.00.25, 9810.00.30, 9810.00.40, 9810.00.45, 9810.00.50, 9810.00.55, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(b) Appropriate proof may be a copy of the charter or other evidence of the character of the institution for the use of which the articles are imported.

[T.D. 85–123, 50 FR 29953, July 23, 1985, as amended by T.D. 89–1, 53 FR 51249, Dec. 21, 1988]

§ 10.46 Articles for the United States.

Pursuant to subheadings 9808.00.10 and 9808.00.20, books, engravings, and other articles therein enumerated, which are imported by authority or for the use of the United States or for the use of the Library of Congress, shall be admitted free of duty upon the written request of the head of the bureau or executive department concerned.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 67–108, 32 FR 6392, Apr. 25, 1967; T.D. 89–1, 53 FR 51249, Dec. 21, 1988; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

§ 10.47 [Reserved]

WORKS OF ART

§ 10.48 Engravings, sculptures, etc.

(a) Invoices covering works of art claimed to be free of duty under subheadings 9702.00.00 and 9703.00.00, HTSUS, shall show whether they are originals, replicas, reproductions, or copies, and also the name of the artist who produced them, unless upon examination the Customs officer is satisfied that such statement is not necessary to a proper determination of the facts.

(b) The following evidence shall be filed in connection with the entry: A declaration in the following form by the artist who produced the article, or by the seller, shipper or importer, showing whether it is original, or in the case of sculpture, the original work or model, or one of the first twelve castings, replicas, or reproductions made from the original work or model; and in the case of etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes, that they were printed by hand from hand-etched, hand-drawn, or hand-engraved plates, stones, or blocks:

I, _____, do hereby declare that I am the producer, seller, shipper or importer of certain works of art, namely _____ covered by the annexed invoice dated _____; that any sculptures or statuary included in that invoice are the original works or models or one of the first twelve castings, replicas, or reproductions made from the sculptor's original work or model; and that any etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes included in that invoice were printed by hand from hand-etched, hand-drawn, or hand-engraved plates, stones, or blocks.

(c) The port director may waive the declaration requirement set forth in paragraph (b) of this section.

(d) Artists' proof etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes should bear the genuine signature or mark of the artist as evidence of their authenticity. In the absence of such a signature or mark, other evidence shall be required which will establish the authenticity of the work to the satisfaction of the port director.

[T.D. 94–3, 58 FR 68742, Dec. 29, 1993]

§ 10.49 Articles for exhibition; requirements on entry.

(a) There shall be filed in connection with the entry of works of art and other articles claimed to be free of duty under Chapter 98, Subchapter XII, Harmonized Tariff Schedule of the United States (HTSUS), a declaration by a qualified officer of the institution in sufficient detail to demonstrate entitlement to entry as claimed, and a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. Claim for free entry under Chapter 98, Subchapter XII may be made for articles of the character described therein which have been previously entered under any other provision of law and the entry amended accordingly upon compliance with the requirements of this section, provided the articles have not been released from Customs custody.

(b) The port director may require a copy of the charter or other evidence of the character of the institution for which the articles are imported, and

may also require the production of the original of any order given by such society or institution to any importing agent or dealer for such articles. The society or institution shall file, within 6 months after the date of filing the entry, any document or proof demanded by the port director in connection with the entry.

(c) Articles entered under subheading 9812.00.20, HTSUS, may be transferred from one institution to another upon an application in writing in the case of each transfer describing the articles and stating the name of the institution to which transfer is to be made, provided the sureties to the bond assent in writing under seal or a new bond is filed. No entry or withdrawal shall be required for such a transfer.

(d) If any of the articles accorded free entry under Chapter 98, Subchapter XII shall be sold, offered or exposed for sale, transferred, or used in any manner contrary to the provisions of the regulations in this part, within 5 years after the date of entry under such part, the amount of the duties shall be collected immediately by the director of the port of entry and deposited as duties. If the articles are exported or destroyed under Customs supervision within such 5-year period, the liability under the bond shall be treated as terminated.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 89–1, 53 FR 51249, Dec. 21, 1988; T.D. 92–85, 57 FR 40605, Sept. 4, 1992]

§ 10.50 [Reserved]

§ 10.52 Painted, colored or stained glass windows for religious institutions.

When painted, colored, or stained glass windows or parts thereof, are claimed free of duty under subheading 9810.00.10, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), the port director may, at his discretion, require appropriate proof that the importation was designed by, and produced by or under the direction of, a professional artist, and that it is for the use of an institution established solely for religious purposes.

[T.D. 85–123, 50 FR 29953, July 23, 1985, as amended by T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

§ 10.53 Antiques.

(a) Articles accompanying a passenger and entitled to entry under the passenger's declaration and entry, or articles entered under an informal entry which are claimed to be free of duty under subheading 9706.00.00, Harmonized Tariff Schedule of the United States (HTSUS), may be admitted free of duty upon the execution of a declaration on the face of the entry provided that the passenger or person filing the informal entry is the owner of the articles and that they are for his personal use and not for sale or other commercial use and provided the Customs officer concerned is satisfied that the articles are of the requisite age.

(b) Antiques of the age prescribed by subheading 9706.00.00, HTSUS, or admitted under the provisions of paragraph (e) of this section, shall be admitted free of duty though repaired or renovated. If, however, an antique has been repaired with a substantial amount of additional material, without changing the original form or shape, the original and added portions shall be appraised and reported as separate entities and the basis for such report shall be plainly indicated on the invoice by the appraiser. In such cases duty shall be assessed on the portion added. If the repairs consist of an addition to an article of a feature which changes it substantially from the article originally produced, or if the antique portion has otherwise been so changed as to lose its identity as the article which was in existence prior to the time prescribed in subheading 9706.00.00, HTSUS, the entire article shall be excluded from free entry under subheading 9706.00.00, HTSUS.

(c) Except for furniture admitted under the provisions of paragraph (e) of this section, furniture claimed to be free of duty under subheading 9706.00.00, Harmonized Tariff Schedule of the United States (HTSUS) may be entered for consumption at any port of entry within the customs territory of the United States. Furniture as used in

this section of the regulations is defined as 'movable articles of convenience or decoration for use in furnishing a house, apartment, place of business or accommodation'. This definition embraces most articles claimed to be free of duty as antiques.

(d) A claim for the free entry of an article under subheading 9706.00.00, HTSUS on the basis of antiquity may be made on the entry, or filed after entry at any time prior to liquidation of the entry, provided the article has not been released from Customs custody or it has been found upon examination before such release to be described in subheading 9706.00.00, HTSUS.

(e) Antique articles otherwise prohibited entry by the Endangered Species Act of 1973 (16 U.S.C. 1521, *et seq.*) may be entered if:

(1) The article is composed in whole or in part of any endangered or threatened species listed in 50 CFR 17.11 or 17.12,

(2) The article is not less than 100 years of age,

(3) The article has not been repaired or modified with any part of any such endangered or threatened species, on or after December 28, 1973,

(4) The article is entered at a port designated in § 12.26 of this chapter,

(5) A Declaration for Importation or Exportation of Fish or Wildlife (USFWS Form 3–177) is filed at the time of entry with the port director who will forward the form to the U.S. Fish and Wildlife Service, and

(6) The importer meets the requirements of paragraph (a) of this section.

(f) The additional duty imposed by additional U.S. Note 2, Chapter 97, HTSUS, shall apply to any article which is imported for sale and claimed, either at the time of entry or at a later date, to be free of duty under subheading 9706.00.00, HTSUS, if such article is later found to be unauthentic in respect of the antiquity claimed as a basis for such free entry, unless the claim under subheading 9706.00.00, HTSUS, is withdrawn in writing before the examination of the article for the purpose of appraisement or classification has begun.

(g) The additional duty provided for in additional U.S. Note 2, Chapter 97, HTSUS shall not be assessed if the importer established by evidence satisfactory to the port director that the article was not imported for sale. In the case of any article imported in a passenger's baggage or entered under an informal entry, the Customs officer concerned may accept the statement of the owner that the article was not imported for sale if he is satisfied of the truth of such statement.

[28 FR 14663, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 10.53, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 10.54 Gobelin and other hand-woven tapestries.

Pursuant to subheading 5805.00.10, Harmonized Tariff Schedule of the United States, Gobelin tapestries produced in the Manufacture Nationale des Gobelins factories at Paris and Beauvais under the direction and control of the French Government, and other hand-woven tapestries, shall be accorded free entry if of a kind fit only for use as wall hangings, and valued over $215 per square meter.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 87–75, 52 FR 20066, May 29, 1987; T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

VEGETABLE OILS

§ 10.56 Vegetable oils, denaturing; release.

(a) Olive, palm-kernel, rapeseed, sunflower, and sesame oil shall be classifiable under subheadings 1509.10.20, 1509.10.40, 1509.90.20, 1509.90.40, 1510.00.20, 1512.19.20, 1513.29.00, 1514.90.10, 1514.90.50, 1515.50.00, Harmonized Tariff Schedule of the United States, if denatured abroad or under Customs supervision after importation but before release from Customs custody, at the request and expense of the importer, by a formula prescribed by Headquarters, U.S. Customs Service, or if by their method of production abroad they are rendered unfit for use as food or for any but mechanical or manufacturing purposes.

(b) Each cask or package of oil claimed to have been before importation denatured or otherwise rendered

unfit for use as food or for any but mechanical or manufacturing purposes shall be sampled and tested by an appraising officer.

(c) Formulas prescribed by Headquarters, U.S. Customs Service, except proprietary mixtures, will be circulated to all Customs officers and will appear as abstracts of United States Customs Service decisions published in the weekly Customs Bulletins. Proprietary mixtures approved by the Commissioner of Customs will not be published but appropriate notice of their approval will be given to all Customs officers.

(d) The Headquarters, U.S. Customs Service, will from time to time prescribe additional formulas, and will consider any formula for special denaturing that may be submitted.

(e) The port director may, if he deems it advisable, require an importer requesting permission to use any authorized denaturant to submit to the appraiser an adequate sample of such denaturant, in order that the appraiser may report to the port director whether or not such denaturant is suitable for rendering the oil unfit for use as food or for any but mechanical or manufacturing purposes.

(f) No such oil shall be released free of duty until the appraiser shall have made a special report that it has been properly denatured.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 66–182, 31 FR 11416, Aug. 30, 1966; T.D. 87–75, 52 FR 20066, May 29, 1987; T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

POTATOES, CORN, OR MAIZE

§ 10.57 Certified seed potatoes, and seed corn or maize.

Claim for classification as seed potatoes under subheading 0701.10.00, as seed corn (maize) under subheading 1005.10., HTSUS, shall be made at the time of entry. Such classification shall be allowed only if the articles are white or Irish potatoes, or maize or corn, imported in containers and if, at the time of importation, there is firmly affixed to each container an official tag supplied by the government of the country in which the contents were grown, or an agency of such government. The tag shall bear a certificate to the effect that the specified contents of the container were grown, and have been approved, especially for use as seed. The tag shall also bear a number or other symbol identifying the potatoes or corn in the container with an inspection record of the foreign government or its agency on the basis of which the certificate was issued.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

BOLTING CLOTHS

§ 10.58 Bolting cloths; marking.

(a) As a prerequisite to the free entry of bolting cloth for milling purposes under subheading 5911.20.20, Harmonized Tariff Schedule of the United States, the cloth shall be indelibly marked from selvage to selvage at intervals of not more then 10.16 centimeters with ''bolting cloth expressly for milling purposes'' in block letters 7.62 centimeters in height. Bolting cloths composed of silk imported expressly for milling purposes shall be considered only such cloths as are suitable for and are used in the act or process of grading, screening, bolting, separating, classifying, or sifting dry materials, or dry materials mixed with water, if the water is merely a carrying medium.

(b) Bolting cloths not marked in the manner above indicated at the time of importation may be so marked by the importers in public stores under the supervision of customs officers.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 87–75, 52 FR 20066, May 29, 1987; T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

WITHDRAWAL OF SUPPLIES AND EQUIPMENT FOR VESSELS

§ 10.59 Exemption from customs duties and internal-revenue tax.

(a) A vessel shall not be considered to be actually engaged in the foreign trade, or in trade between the Atlantic and Pacific ports of the United States, or between the United States and its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States, as the case may be, for the purpose of withdrawing supplies free of duty and internal-revenue tax

pursuant to section 309(a), Tariff Act of 1930, as amended, unless it is—

(1) Operating on a regular schedule in a class of trade which entitles it to the privilege;

(2) Actually transporting passengers or merchandise to or from a foreign port, a port on the opposite coast of the United States, or between a port in a possession of the United States and a port in the United States or in another of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States;

(3) Departing in ballast (without cargo or passengers) from one port for another, domestic or foreign, for the purpose of lading passengers or cargo at the port of destination for carriage in a class of trade specified in section 309(a), Tariff Act of 1930, as amended, for which class of trade the vessel is suitable and substantially ready for service with necessary fittings, outfit, and equipment already installed on its departure in ballast, and from which it is not diverted prior to carriage of passengers or cargo in such trade. A written declaration of the owner or agent of the vessel may be required in connection with the withdrawal, certifying to the vessel's suitableness and substantial readiness with necessary fittings, outfit, and equipment already installed on its departure in ballast for service in a class of trade specified in section 309 and agreeing to notify the port director if it is laid up or diverted from such class of trade prior to the carriage of cargo or passengers in such trade.

(b) A withdrawal of articles may not be made under section 309, Tariff Act of 1930, as amended, for use on a trial or test trip of a vessel preparatory to its actually engaging in trades.

(c) The classes of articles which may be withdrawn as provided for by section 309, Tariff Act of 1930, as amended, include the containers in which the articles are withdrawn and laden even though for tariff purposes the containers are classifiable separately from their contents, except unusual containers within the purview of General Rule of Interpretation 5, Harmonized Tariff Schedule of the United States (HTSUS).

(d) For the purpose of allowing the privileges of section 309, Tariff Act of 1930, as amended, to aircraft as provided for therein, an aircraft shall be deemed to be a vessel within the meaning of each provision of this section and of §§ 10.60 through 10.64 which may be applied to aircraft.

(e) A documented vessel with a fisheries license endorsement and foreign fishing vessels of 5 net tons or over may be allowed to withdraw distilled spirits (including alcohol), wines, and beer conditionally free under section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309), if the port director is satisfied from the quantity requested, in the light of (1) whether the vessel is employed in substantially continuous fishing activities, and (2) the vessel's complement, that none of the withdrawn articles is intended to be removed from the vessel in, or otherwise returned to, the United States without the payment of duty or tax. Such withdrawal shall be permitted only after the approval by the port director of a special written application, in triplicate, on Customs Form 5125, of the withdrawer, supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter executed by the withdrawer. Such application shall be filed with Customs Form 7501 or 7512, as the case may be. The original and the triplicate copy of the application, after approval, shall be stamped with the withdrawal number and date thereof and shall be returned to the withdrawer for use as prescribed below. Approval of each such application shall be subject to the condition that the original and the triplicate copy shall be presented thereafter by the withdrawer or the vessel's master to the port director within 24 hours (excluding Saturday, Sunday, and holidays) after each subsequent arrival of the vessel at a Customs port or station and that an accounting shall be made at the time of such presentation of the disposition of the articles until the port director is satisfied that all of them have been consumed on board, or landed under Custom's supervision, and takes up the original application. (The withdrawer

shall retain the triplicate copy as evidence of consumption on board or landing under Customs supervision.) The approval shall be subject to the further conditions that any such withdrawn article remaining on board while the vessel is in port shall be safeguarded in the manner and to such extent as the district director for the port or place of arrival shall deem necessary and that failure to comply with the conditions upon which a conditionally free withdrawal is approved shall subject the total quantity of withdrawn articles to the assessment and collection of an amount equal to the duties and taxes that would have been assessed on the entire quantity of supplies withdrawn had such supplies been regularly entered, or withdrawn, for consumption.

Exemption from internal-revenue tax on distilled spirits, alcohol, wines, and beer removed from any internal-revenue bonded warehouse, industrial alcohol premises, bonded wine cellar, or brewery; and drawback on taxpaid distilled spirits or wines removed from an export storage room, or on taxpaid beer removed from a brewery (or place of storage elsewhere), for use as supplies on vessels under section 309, Tariff Act of 1930, as amended, are governed by regulations of the Internal Revenue Service.

(f) Pursuant to section 309(d) of the Tariff Act of 1930, as amended, the Department of Commerce has found and advised the Secretary of the Treasury of the foreign countries which allow privileges to aircraft registered in the United States substantially reciprocal to those described in sections 309 and 317 of the Tariff Act of 1930, as amended. Advices also have been received of changes and limitations of privileges allowed. In accordance with these advices, Treasury decisions are issued extending to the aircraft of foreign countries free withdrawal privileges reciprocal to those found by the Secretary of Commerce to be extended by those countries to aircraft registered in the United States or making changes in such privileges on the basis of new findings. Listed below by countries are the Treasury decisions issued pursuant to such findings which are currently in effect:

Country	Treasury Decision(s)	Exceptions if any, as noted—
Abu Dhabi	95–45	
Argentina	54925 (1) 92–20	Applicable only as to aircraft equipment, spare parts, and supplies.
Australia	54747 (1)	Not applicable to ground equipment.
Austria	80–68	
Bahamas	52798 (3)	
Bahrain	95–45	
Belgium	52846 (2)	
Benin	71–215,93-	
Bermuda	49944 (4)	
Brazil	53281 (2)	
Canada	69–149 69–245	Not applicable to ground equipment during period May 1 to September 16, 1969, inclusive.
Chile	66–128 (2)	
China*	82–91	
Colombia	70–107 (1)	
Costa Rica	53658 (1)	
Cuba	81–198	Applicable only as to aircraft supplies.
Czechoslovakia	70–107 (1)	
Denmark	51966 (3)	
Dominican Republic.	54522 (1)	
Ecuador	52510 (4)	
Egypt	74–3 85–141	
El Salvador	54675 (1)	
Finland	69–120 (2)	
France	67–96 (1)	Not applicable to tobacco products under section 317 of the tariff act. Not applicable to ground equipment.
Federal Republic of Germany.	69–150	Not applicable to ground equipment.
Greece	54847 (1)	
Guyana	78–28	
Honduras	71–154	
Iceland	67–265 (1)	
India	55155 (1)	
Indonesia	90–61	Applicable only as to aviation fuels and lubricants.
Iran	75–254	
Ireland	55291 (1)	
Israel	52831 (3)	
Italy	69–223	Not applicable to ground equipment.
Ivory Coast	71–215	
Jamaica	70–250	
Japan	53550 (1), 88–45	Not applicable to ground support equipment as of August 1, 1986
Jordan	74–102	
Kenya	71–102	Applicable only as to aircraft fuels and lubricants.
Lebanon	53902 (1)	
Luxembourg	89–77	Applicable only as to aviation fuels.
Mexico	54506 (5)	
Morocco	75–254	
Netherlands	52494 (2)	
Netherlands Antilles.	71–211	
New Zealand	73–52	Not applicable to ground equipment.
Nicaragua	54640 (1)	
Norway	51966 (3)	
Oman	95–45	
Pakistan	55416 (1)	

Country	Treasury Decision(s)	Exceptions if any, as noted—
Panama	55453 (1)	
Peru	52911 (2)	
Poland	72–153	
Portugal	68–107 (1)	Not applicable to ground equipment.
Qatar	95–45	
Republic of Korea	71–140	
Republic of the Philippines.	71–197	
Romania	75–35	
Saudi Arabia	73–307, 92–68	
Senegal	71–215	
Singapore	93–25	
South Africa	69–162	Not applicable to ground equipment.
Spain	54522 (2)	
Sweden	51966 (3)	
Switzerland	56047	
Taiwan	70–107 (1), 82–91	Not applicable to ground equipment.
Tanzania	71–102	Applicable only as to aircraft fuels and lubricants.
Thailand	71–138, 89–6	
Trinidad and Tobago.	56441 (1)	
Turkey	89–7	
Uganda	71–102	Applicable only as to aircraft fuels and lubricants.
Union of Soviet Socialist Republics.	67–123 (1)	
United Kingdom	69–176	Not applicable to ground equipment.
Venezuela	55425 (1)	
Yugoslavia	71–138	
Zambia	89–5	

*See also Taiwan

[28 FR 14663, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 10.59, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 10.60 Forms of withdrawals; bond.

(a) Withdrawals from warehouse shall be made on Customs Form 7501. Each withdrawal shall contain the statement prescribed for withdrawals in § 144.32 of this chapter and all of the statistical information as provided in § 141.61(e) of this chapter. Withdrawals from continuous Customs custody elsewhere than in a bonded warehouse shall be made on Customs Form 7512, except as provided for by paragraph (h) of this section. When a withdrawal of supplies or other articles is made which may be used on a vessel while it is proceeding in ballast to another port as provided for by § 10.59(a)(3), a notation of this fact shall be made on the withdrawal and the name of the other port given if known.

(b) If the withdrawal is made by other than the principal on the warehouse or rewarehouse entry, as the case may be, the assent of such principal shall be endorsed on the withdrawal, unless the principal has otherwise authorized such withdrawal in writing.

(c) A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be taken when the withdrawal from warehouse is made by a person other than the principal on the warehouse or rewarehouse entry, as provided for in paragraph (b) of this section.

(d) Except as otherwise provided in § 10.62b, relating to withdrawals from warehouse of aircraft turbine fuel to be used within 30 days of such withdrawal as supplies on aircraft under § 309, Tariff Act of 1930, as amended, when the supplies are to be laden at a port other than the port of withdrawal from warehouse, they shall be withdrawn for transportation in bond to the port of lading. Three copies of the manifest on Customs Form 7512, in addition to six copies of the withdrawal on Customs Form 7501, shall be required. The procedure shall be the same as that prescribed in § 144.37 of this chapter (the six copies of Customs Form 7501 taking the place of the entry copies of Customs Form 7512).

(e) No bond shall be required in the case of war vessels.

(f) Unless transfer is permitted under the provisions of paragraph (h) of this section, when articles are withdrawn from continuous Customs custody elsewhere than in a bonded warehouse for lading at the port of withdrawal, the procedure provided for in § 18.25 of this chapter shall be followed, except that the bond required shall be on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. Unless transfer is permitted under the provisions of paragraph (h) of this section, when articles are withdrawn from continuous Customs custody elsewhere than in a bonded warehouse for lading at another port, the procedure set forth in § 18.26 of this chapter shall be followed, except that the withdrawal when filed shall be supported by a bond

on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. There shall be such examination of the articles as may be necessary to satisfy the port director that they are subject to the privileges of section 309, Tariff Act of 1930, as amended, and that the value and quantity declared for them are correct.

(g) A withdrawal under § 10.59(e) shall be supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter.

(h) If a request is made for permission to transfer supplies or stores from one vessel to another which would be entitled to withdraw them free of duty and tax under section 309 or 317, Tariff Act of 1930, as amended, the port director in his discretion may permit the articles to be so transferred under Customs supervision under a permit on Customs Form 3171 in lieu of a formal withdrawal under the pertinent statute. In such a case, the pertinent statute shall be indicated by an endorsement made on the permit by the port director.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 73–175, 38 FR 17445, July 2, 1973; T.D. 73–312, 38 FR 30882, Nov. 8, 1973; T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 95–81, 60 FR 52295, Oct. 6, 1995; T.D. 96–18, 61 FR 6777, Feb. 22, 1996]

§ 10.61 Withdrawal permit.

Upon the filing of the withdrawal and the execution of the bond, when required, the port director shall issue a permit on Customs Form 7501 or 7512.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 95–81, 60 FR 52295, Oct. 6, 1995]

§ 10.62 Bunker fuel oil.

(a) *Withdrawal under section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309).* Except as otherwise provided in § 10.62b, relating to withdrawals from warehouse of aircraft turbine fuel to be used within 30 days of such withdrawal as supplies on aircraft under section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309), when all the bunker fuel oil in a Customs bonded tank is intended only for lading duty free as supplies on vessels under section 309 at the port where the tank is located, delivery of the oil, by Customs bonded carrier, cartman, or lighterman (including bonded pipelines), under withdrawals on Customs Form 7501, either single or blanket, may be made without the presence of a Customs officer. When a blanket withdrawal is filed and a partial release takes place, the partial release procedure set forth in § 19.6(d) of this chapter shall be followed for each partial release. However, each abstract copy of Customs Form 7501 shall include the following additional information:

(1) Type of oil withdrawn.

(2) Number or other identification of sales order therefor.

(3) Name of bonded carrier, date it received oil.

(4) Receipt signed by master or other person in charge of delivering conveyance identified by number, or name, and if Customs bonded lighterman or cartman, by the carrier's license number.

(5) Name and location of vessel obtaining oil.

(6) Quantity and identification of each type of oil received with date, and signature and title of receiving officer. If all the oil is laden on the receiving vessel at the port of withdrawal via pipeline from the bonded storage tank, paragraphs (a) (3) and (4) of this section shall be deemed to be inapplicable.

(b) If a blanket free withdrawal of bunker fuel oil is filed, to comply with Bureau of the Census requirements the withdrawal on Customs Form 7501 shall be endorsed ''Estimated Withdrawals'' and limited to the aggregate quantity and value of fuel oil which it is estimated will be physically removed from Customs bond during the calendar month in which the withdrawal is filed for lading on vessels entitled to duty-free vessel supplies under section 309 of the Tariff Act of 1930, as amended.

(c)(1) As an incident of the delivery of fuel oils classifiable at different rates of duty to a vessel or vessels under section 309 of the tariff act, the port director may, when necessary to enable a supplier to meet fuel specifications, permit the blending of the oils in the delivering conveyance or in other suitable facilities after withdrawal from the bonded tanks, upon the condition that, to the extent of the amount of oil withdrawn classifiable at the higher

rate, duty at the higher rate will be paid on any portion of the blended fuel oil not delivered within a reasonable time to a qualified vessel. The withdrawer shall be required to file a withdrawal for consumption for the excess quantity withdrawn. For example, if the quantity withdrawn consists of 1,500 barrels of bunker C fuel oil classifiable at the rate of one-eighth cent per gallon and 500 barrels of diesel oil classifiable at the rate of one-fourth cent per gallon but only 1,400 barrels of the blended oil are actually laden as fuel supplies on qualified vessels, withdrawals for consumption are required for 500 barrels of diesel oil at the higher rate and for 100 barrels of bunker C fuel oil at the lower rate.

(2) *Delivering transferer receipt*. The receipt of the delivering carrier on a copy of Customs Form 7501 for fuel oil which has been blended under paragraph (c)(1) of this section with components classifiable at different rates of duty shall show, for each warehouse entry number and withdrawal number involved, the types and quantity of oil received.

(d) Fuel oil withdrawn as vessel supplies at one port may be laden at another port on a vessel or vessels entitled to the free withdrawal privileges of section 309 of the tariff act, under procedures prescribed in this section, provided the movement to the receiving vessel or vessels is under the bond of a qualified carrier as described in § 18.1(a) of this chapter. In such cases, the provisions of § 10.60(d) of this chapter shall be deemed inapplicable.

(e) If a vessel not entitled to duty-free withdrawal of supplies from Customs bonded warehouses under section 309 of the Tariff Act of 1930, as amended, should be supplied with fuel oil from a Customs bonded tank described in paragraph (a) of this section because of an emergency, a duty paid withdrawal therefor shall be filed on the first day that the customhouse is open for the general transaction of business after the day on which the oil is laden on the using vessel. If there should be willful or repeated instances of late filing of a duty-paid withdrawal in such cases, the port director shall require a duty-paid withdrawal to be filed prior to the removal of fuel oil from the bonded tank.

(f) When the procedures prescribed in this section are followed, representatives of the port director will from time to time verify various withdrawals against all pertinent records, including financial records, of the withdrawers, deliverers, and receivers of the oil. The withdrawer shall maintain all pertinent records relating to the withdrawal, delivery, or receipt of the fuel oil for 5 years from the date of liquidation of the related fuel oil entry.

[T.D. 69–99, 34 FR 6520, Apr. 16, 1969, as amended by T.D. 79–159, 44 FR 31967, June 4, 1979; T.D. 82–204, 47 FR 49367, Nov. 1, 1982; T.D. 95–81, 60 FR 52295, Oct. 6, 1995; T.D. 96–18, 61 FR 6777, Feb. 22, 1996; T.D. 96–51, 61 FR 31395, June 20, 1996; T.D. 99–33, 64 FR 16347, Apr. 5, 1999]

§ 10.62a Blanket withdrawals for certain merchandise.

(a) *Generally*. Under this section, a blanket withdrawal on Customs Form 7501 may be filed for all or part of any merchandise withdrawn from warehouse except fuel oil covered under § 10.62, for use on qualified vessels. Such a withdrawal shall be made only for lading on board vessels at the port where the warehouse is located. The procedure for the blanket withdrawal and partial releases after the initial release are the same as those provided in § 19.6(d) of this chapter, except as noted in paragraph (b).

(b) *Partial release*. A partial release on Customs Form 7501, in duplicate, or in triplicate if an extra copy is required by the port director, shall be presented to the warehouse proprietor and placed in the proprietor's permit file folder under the partial release procedure set forth in § 19.6(d) of this chapter, as merchandise is needed for delivery to a using vessel. The original of the partial release document shall accompany the merchandise for delivery to the Customs officer who will supervise lading, or if a Customs officer does not physically supervise lading, to the master of the vessel. The original shall be returned to the proprietor for record purposes after the Customs officer or master of the vessel, as appropriate, has

certified lading of the goods described in the document.

[T.D. 82–204, 47 FR 49367, Nov. 1, 1982, as amended by T.D. 95–81, 60 FR 52295, Oct. 6, 1995]

§ 10.62b Aircraft turbine fuel.

(a) *General*. Unless otherwise provided, aircraft turbine fuel withdrawn from a Customs bonded warehouse for use under section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309), may be commingled with domestic or other aircraft turbine fuel after such withdrawal only if such commingling is approved by the appropriate Customs official for the port where the commingling occurs. The appropriate Customs official may approve such commingling if the fueling system in which the commingling will occur contains adequate physical safeguards to prevent the possible unauthorized entry into the Customs territory of the bonded fuel. Such commingled fuel must be accounted for in the same 24-hour period in which it was commingled and must be—

(1) Exported within that 24-hour period;

(2) Used under section 309 within that 24-hour period; or

(3) Entered or withdrawn for consumption, with duty deposited, as required under the applicable regulations (see part 144 of this chapter).

(b) *Duty-free withdrawal from warehouse of aircraft turbine fuel under section 557(a), Tariff Act of 1930, as amended (19 U.S.C. 1557(a))*. Turbine fuel intended for use as supplies on aircraft under section 309, Tariff Act of 1930, as amended, and withdrawn from a Customs bonded warehouse shall be entitled to the privileges provided for in section 309 if an amount equal to or exceeding the quantity of such fuel is established, as provided for in paragraph (c) of this section, to have been used on aircraft qualifying for the privileges provided for in section 309 within 30 days after the withdrawal of the fuel from the Customs bonded warehouse. Withdrawal of aircraft turbine fuel under this paragraph shall be in accordance with the procedures in §§ 10.59 through 10.64, unless otherwise provided in this section. Withdrawals under this paragraph shall be annotated with the term ''Withdrawal under 19 CFR 10.62b(b)''.

(c) *Establishment of use of fuel by qualifying aircraft*. (1) The person withdrawing aircraft turbine fuel under paragraph (b) of this section must establish that an aircraft qualifying for the privileges provided for in section 309, Tariff Act of 1930, as amended, used fuel in an amount equal to or exceeding the quantity of the fuel withdrawn that is not entered and upon which duties are not paid by submitting to Customs, at the port where the bonded warehouse entry was filed, within the time provided in paragraph (d) of this section, either—

(i) Records prepared in the normal course of business effecting the transfer to identified (*e.g.*, by aircraft company name, flight number, flight origin and destination, and date of flight) aircraft of fuel in an amount equal to or exceeding the quantity of the fuel withdrawn which is not entered and on which duties are not paid and objective evidence that the aircraft to which the fuel was transferred were actually used in trade qualifying for the privileges provided in section 309, Tariff Act of 1930, as amended; or

(ii) A certification (documentary or electronic) that:

(A) All of the fuel withdrawn was intended for use on aircraft entitled to the privileges provided for in section 309;

(B) Within 30 days of the date of withdrawal from warehouse, an amount of fuel equal to or exceeding the quantity of the fuel withdrawn which is not entered and on which duties are not paid was transferred as supplies to aircraft entitled to the privileges provided for in section 309;

(C) All of the aircraft into which fuel is loaded hereunder were used in a trade provided for in section 309; and

(D) The person making the certification possesses evidence (documentary or electronic) available for Customs inspection at a named place which supports each of the above statements.

(2) Upon request by Customs, the person who submits the certification provided for in paragraph (c)(1) of this section shall promptly provide the evidence required to support the claim for

treatment under this section (including the records described in § 10.62b(c)(1)(i)) and §§ 10.62 and 19.6(d) and each of the statements in the certification.

(d) *Time for establishment of use of fuel by qualifying aircraft.* The person withdrawing aircraft turbine fuel under paragraph (b) of this section shall submit the records or certification provided for in paragraph (c) of this section by the 40th day after the date of withdrawal of the fuel unless the fuel was withdrawn under a blanket withdrawal under paragraph (g) of this section. If the fuel was withdrawn under a blanket withdrawal, the person withdrawing aircraft turbine fuel under this section shall submit the records or certification provided for in paragraph (c) of this section by the 40th day after all of the fuel covered by the blanket permit to withdraw has been withdrawn.

(e) *Treatment of turbine fuel withdrawn but not used on qualifying aircraft within 30 days.* If turbine fuel is withdrawn from a Customs bonded warehouse under paragraph (b) of this section but fuel in an amount less than the quantity withdrawn is established to have been used within 30 days of the date of withdrawal from warehouse on aircraft qualifying for the privileges provided for in section 309, Tariff Act of 1930, as amended, a withdrawal for consumption shall be filed and duties shall be deposited for the excess of fuel so withdrawn over that used on aircraft so qualifying. Such withdrawal shall be filed and such duties shall be deposited by the 40th day after the date of withdrawal of the fuel in accordance with the procedures in § 144.38 of this chapter. Interest shall be payable and deposited with such duties, calculated from the date of withdrawal at the rate of interest established under 26 U.S.C. 6621.

(f) *Liquidated damages.* Failure to account for turbine fuel withdrawn under paragraphs (b) through (h) of this section shall result in liquidated damages against the person withdrawing the turbine fuel, as provided for under § 113.62 of this chapter. Such failure to account for turbine fuel includes:

(1) The failure to timely file the withdrawal for consumption and payment of duty, with interest, on the quantity of fuel so withdrawn in excess of the quantity of fuel established to have been used on qualifying aircraft within 30 days of withdrawal, as provided for in paragraph (e) of this section;

(2) The failure to timely file the evidence or certification establishing such use of the fuel which is not entered and on which duties are not paid, as provided for in paragraph (c) of this section; or

(3) The failure to promptly provide the evidence required to support the claim for treatment under paragraph (b) of this section, upon request by Customs, as provided for in paragraph (c)(2) of this section.

(g) *Blanket withdrawals.* Blanket withdrawals, as provided for in §§ 10.62 and 19.6(d), may be used for withdrawals from warehouse under section 557(a), Tariff Act of 1930, as amended, and paragraphs (b) through (h) of this section, under the procedures provided in §§ 10.62 and 19.6(d) except that—

(1) Application by the withdrawer for a blanket permit to withdraw shall be on the warehouse entry, or on the warehouse entry/entry summary when used as an entry, annotated with the words ''Some or all of the merchandise will be withdrawn under blanket permit per §§ 10.62, 10.62b, and 19.6(d).'';

(2) Turbine fuel withdrawn under a blanket permit as authorized in this paragraph may be delivered at a port other than the port of withdrawal;

(3) Customs acceptance of a properly completed application for a blanket permit to withdraw, on the warehouse entry or warehouse entry/entry summary, will constitute approval of the blanket permit to withdraw;

(4) A copy of the approved blanket permit to withdraw will be delivered to the warehouse proprietor, whereupon fuel may be withdrawn under the terms of the blanket permit;

(5) The withdrawal document to be placed in the proprietor's permit file folder (see § 19.6(d)(2)) will be a commercially acceptable document of receipt (such as a ''withdrawal ticket'') issued by the warehouse proprietor, identified with a unique alpha-numeric code and containing the following information:

(i) Identity of withdrawer;

(ii) Identity of warehouse and tank from which fuel is withdrawn;

(iii) Date of withdrawal;

(iv) Type of merchandise withdrawn; and

(v) Quantity of merchandise withdrawn.

(6) The date of withdrawal, for purposes of calculating the 30-day period in which fuel must be used on qualifying aircraft under this section, shall be the date on which physical removal of the fuel from the warehouse commences;

(7) The blanket permit summary prepared by the proprietor as provided for in § 19.6(d)(4) shall be prepared when all of the fuel covered by the blanket permit has been withdrawn and shall account for all merchandise withdrawn under the blanket permit, as required by § 19.6(d)(4), by stating, in summary form, the unique alpha-numeric codes and information required in paragraph (g)(5) of this section, as well as the identity of the warehouse entry to which the withdrawal is attributed;

(8) The certification on the blanket permit summary (see § 19.6(d)(4)) shall be that the merchandise listed thereunder was withdrawn in compliance with §§ 10.62, 10.62b, and 19.6(d); and

(9) The person withdrawing aircraft turbine fuel under these blanket procedures shall submit the records or certification provided for in § 10.62b(c) by the 40th day after all of the fuel covered by the blanket permit has been withdrawn (see § 10.62b(d)). At the discretion of the port director for the port where blanket withdrawal was approved, submission of the records and evidence required to establish use of the fuel on qualifying aircraft may be required to be submitted electronically, in a format compatible with Customs electronic record-keeping systems.

(h) *Recordkeeping*. The person withdrawing aircraft turbine fuel from warehouse under this section is subject to the recordkeeping requirements in 19 U.S.C. 1508 and 1509, as provided for in part 162 of this chapter.

[T.D. 96–18, 61 FR 6778, Feb. 22, 1996, as amended by T.D. 99–33, 64 FR 16347, Apr. 5, 1999]

§ 10.63 Landing of supplies and stores from receiving vessel in the United States.

Supplies or stores laden on a vessel duty and tax free under section 309, Tariff Act of 1930, as amended, may be landed under Customs supervision under proper permit, the same as if they had been laden in a foreign country. See § 4.39 of this chapter. Except when transfer to another vessel entitled to the free withdrawal privilege is permitted under the original withdrawal under section 309, Tariff Act of 1930, as amended, the landed articles shall be treated as an importation from a foreign country.

[28 FR 14663, Dec. 31, 12963, as amended by T.D. 89–1, 53 FR 51250, Dec. 21, 1988; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

§ 10.64 Crediting or cancellation of bonds.

(a) Except as stated below, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter may be credited or canceled in respect of such articles upon the vessel's departure from the port of lading in a class of trade or business entitling the articles to exemption from duty and tax under the statute. The withdrawer shall cause the merchandise to be delivered to the lading vessel, and shall provide such evidence of lading as required by the port director within 30 days after lading, except as provided in this section. If the vessel is not operated by the United States and proceeds in ballast from the port where the articles are laden to another port to lade passengers or cargo for carriage in a class of trade specified in section 309, Tariff Act of 1930, as amended, the bond may be credited or canceled upon the filing with the director of the port of withdrawal within 3 months after the date of withdrawal of a proper declaration as prescribed below. The declaration shall be executed by one of the following who has knowledge of the facts:

(1) The operations manager or port captain for the vessel on which the articles are laden but not a representative of the supplier.

(2) The master or other officer of the vessel on which the articles are laden. The declaration shall be in substantially the following form:

I, _____ (Operations manager, port captain, master, or other officer) of the vessel _____ declare that I have knowledge of the facts set forth herein, and that upon the lading of the articles described below covered by withdrawal No. _____, filed at _____(Name of port), the vessel then proceeded in ballast to _____(Name of port) to lade cargo or passengers; that the vessel was suitable for service in the class of trade checked below with fittings, outfit, and equipment for such trade already installed when it so departed in ballast; and that upon arrival it proceeded to engage in the carriage of cargo or passengers in such trade, except as stated below:

_____
(If no exception, note ''None'')

1. Foreign Trade.
2. Trade between Atlantic and Pacific ports of the United States, when such trade is not prohibited by coastwise laws.
3. Trade between the United States and any of its possessions, when such trade is not prohibited by coastwise laws.
4. Trade between Alaska or Hawaii and any other part of the United States, when such trade is not prohibited by coastwise laws.

Description of articles:

_____
_____
_____
_____

_____
(Name and title)

(b) A declaration as to the intended business or trade of a vessel may, in the discretion of the port director, be accepted in lieu of a declaration prescribed in paragraph (a) of this section when the amount of duty or tax, or both, involved in a single lading is less than $100.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 84–213, 49 FR 41166, Oct. 19, 1984]

§ 10.64a [Reserved]

§ 10.65 Cigars and cigarettes.

(a) Imported cigars and cigarettes in bonded warehouse or otherwise in Customs custody, and such articles manufactured with the use of imported materials in a bonded manufacturing warehouse of class 6, may be withdrawn under section 317, Tariff Act of 1930, as amended, for consumption beginning beyond the 3-mile limit or international boundary, as the case may be, (1) on vessels actually engaged in the foreign, intercoastal, or noncontiguous territory trade within the purview of § 10.59(a); (2) on vessels departing from the port where the withdrawal is made directly for a foreign port, a port on the opposite coast, or a port in one of the possessions of the United States; or (3) on vessels of war or other governmental activity.

(b) The privilege shall not be granted to vessels stationed in American waters for an indefinite period without sailing schedules, nor shall it be granted to aircraft of foreign registry of a country for which there is not in effect a finding and advice by the Department of Commerce under section 309(d), Tariff Act of 1930, as amended, that such country allows privileges to aircraft registered in the United States substantially reciprocal to those described in section 317, Tariff Act of 1930, as amended. See section 10.59(f).

(c) With the following additions and exceptions, the same procedure shall be followed as in the case of withdrawals under section 309(a), Tariff Act of 1930, as amended.

(1) No bond shall be required in the case of vessels operated by the United States Government.

(2) When a shipping case containing cigars and cigarettes is made up of a number of units, each in a separate package, such units may be withdrawn separately, provided each unit is marked and numbered for identification and contains not less than 250 cigars or 1,000 cigarettes. In the case of imported cigars and cigarettes so packed, only one unit from each shipping case shall be opened for examination, unless the port director shall deem it necessary for the protection of the revenue to examine a greater quantity. Imported tobacco products on which the duty or internal-revenue tax has been paid may not be withdrawn under section 317, Tariff Act of 1930, as amended, with a drawback of such duty or internal-revenue tax.

(3) When all the units in such shipping case are not to be withdrawn at the same time or for use on the same vessel, a blanket withdrawal may be filed for the entire case in lieu of a separate withdrawal for each unit. In such event, the withdrawal shall be retained

by the warehouse proprietor until delivery receipts are obtained for the entire quantity covered by the withdrawal, provided the total period of time prior to delivery to the using vessel or aircraft does not exceed 5 years. A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, when required, shall be filed at the time of or prior to the removal of any of the merchandise from the warehouse for delivery to the vessel on which it is to be used.

(4) Merchandise for which blanket withdrawals are filed shall be stored in a separate room or enclosure in a bonded warehouse under separate locks, and the merchandise clearly marked to show that it has been withdrawn. If, at the time of any such inventory, any merchandise is missing and not properly accounted for, duties shall be paid thereon before any further withdrawals are permitted.

(5) The declaration of use, when required, shall include a statement that consumption of the articles covered by the withdrawal did not begin until the withdrawing vessel or aircraft had proceeded beyond the 3 mile limit or the international boundary.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 67–193, 32 FR 11764, Aug. 16, 1967; T.D. 70–73, 35 FR 5400, Apr. 1, 1970; T.D. 82–204, 47 FR 49368, Nov. 1, 1982; T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

ARTICLES EXPORTED FOR EXHIBITION, ETC.

§ 10.66 Articles exported for temporary exhibition and returned; horses exported for horse racing and returned; procedure on entry.

(a) In connection with the entry of articles, including livestock or other animals, exported for temporary exhibition and returned and claimed to be exempt from duty under subheading 9801.00.50 or 9801.00.60, Harmonized Tariff Schedule of the United States (HTSUS), there shall be filed:

(1) A certificate of exportation on Customs Form 3311;

(2) A declaration of the importer on Customs Form 4455 for articles of either domestic or foreign origin; and

(3) In the case of animals of foreign origin taken abroad for exhibition in connection with a circus or menagerie, a copy of an inventory of these animals filed prior to their leaving the country with the director of the port of their departure.

(b) If it is shown to be impracticable to produce the certificate of exportation required under paragraph (a)(1) of this section, the port director may accept other satisfactory evidence of exportation, or may take a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter to secure the production of such certificate or other evidence.

(c) Articles claimed to be exempt from duty under subheading 9801.00.50 or 9801.00.60, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), may be returned free of duty without formal entry and without regard to the requirements of paragraph (a) or (b) of this section if:

(1) Prior to the exportation of such articles, an application on Customs Form 4455 (accompanied by an appropriate inventory, when required by law or by the port director) is filed with a declaration thereon that:

(i) Any right to drawback of Customs duties with respect to that shipment was waived;

(ii) Any internal revenue tax due has been paid and no refund thereof will be sought; and

(iii) The merchandise was identified, registered, and exported in accordance with the regulations set forth in §§ 10.8(e), (g), (h), and (i), governing the exportation of articles sent abroad for repairs, and

(2) Upon return, a duplicate Customs Form 4455 (with accompanying inventory where one was required) is filed.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 74–242, 39 FR 33794, Sept. 20, 1974; T.D. 75–235, 40 FR 44319, Sept. 26, 1975; T.D. 78–153, 43 FR 23709, June 1, 1978; T.D. 82–224, 47 FR 53727, Nov. 29, 1982; T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 87–75, 52 FR 20066, May 29, 1987; T.D. 89–1, 53 FR 51250, Dec. 21, 1988; T.D. 94–1, 58 FR 69470, Dec. 30, 1993]

§ 10.67 Articles exported for scientific or educational purposes and returned; procedure on entry.

(a) In connection with each entry of articles exported for scientific or educational purposes and returned under

subheading 9801.00.40, Harmonized Tariff Schedule of the United States (HTSUS), the following shall be required, irrespective of the value of the shipment:

(1) A certificate of exportation on Customs Form 3311;

(2) A declaration by the foreign shipper in the same form as that prescribed in § 10.66(a)(2) but stating that such articles were sent from the United States solely for temporary scientific or educational use and describing the specific use to which they were put while abroad.

(3) A declaration of the ultimate consignee in substantially the following form:

Port of _____, Port Director's Office, _____, 19____.

I, _____, declare that the several articles described in the annexed entry are, to the best of my knowledge and belief, the identical articles exported from the United States on the _____ day of _____, 19___, by _____ (Actual shipper) address _____, for the account of _____, address _____that they are returned to _____, address _____, for the account of _____, address _____ that the said articles were exported solely for temporary scientific or educational purposes and for no other use abroad than for exhibition, examination, or experimentation; that they are being returned without having been changed in condition in any manner, except by reason of their bona fide use as follows:

_____

(Describe change in condition)

_____

_____

(Ultimate consignee)

(b) If it is shown to be impracticable to produce the certificate of exportation required by paragraph (a)(1) of this section, the port director may accept other satisfactory evidence of exportation. The port director may take a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter to secure the subsequent production of any of the evidence or documents required by paragraph (a) of this section which are not available at the time of entry.

(c) If, prior to the exportation of articles claimed to be exempt from duty under subheading 9801.00.40, Harmonized Tariff Schedule of the United States (HTSUS), an application on Customs Form 4455 (accompanied by an appropriate inventory when, in the discretion of the port director, such inventory is deemed necessary) was filed, such articles may be returned for the account of the exporter free of duty without formal entry, without regard to the requirements of paragraphs (a) and (b) of this section, upon the filing of the duplicate Customs Form 4455 (with accompanying inventory, if one was required), and a declaration of the ultimate consignee in substantially the form set forth in paragraph (a)(3) of this section.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 74–242, 39 FR 33794, Sept. 20, 1974; T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 89–1, 53 FR 51250, Dec. 21, 1988; T.D. 94–1, 58 FR 69470, Dec. 30, 1993; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

THEATRICAL EFFECTS, MOTION-PICTURE FILMS, COMMERCIAL TRAVELERS' SAMPLES, AND TOOLS OF TRADE

§ 10.68 Procedure.

(a) Theatrical scenery, properties, and effects, motion-picture films (including motion-picture films taken aboard a vessel for exhibition only during an outward voyage and returned for the same purpose during an inward voyage on the same or another vessel), commercial travelers' samples, and professional books, implements, instruments, and tools of trade, occupation, or employment (see § 148.53 of this chapter), of domestic or foreign origin, taken abroad may be returned without formal entry and without payment of duty if an exportation voucher from a carnet, when applicable, or an application on Customs Form 4455 was filed, and the merchandise was identified as set forth in § 10.8, before exportation of the articles. Articles exported under cover of an A.T.A. carnet (where the carnet serves as the control document) may, in accordance with this paragraph, be returned without entry or the payment of duty. If Customs Form 4455 is utilized, commercial travelers' samples, professional books, implements, instruments, and tools of trade, occupation, or employment may be returned with either an informal entry or a declaration on Customs Form 3299;

theatrical scenery, properties, and effects and motion-picture films may be returned only with an informal entry. When articles other than those exported by mail or parcel post are examined and registered at one port and exported through another port, the port director may require proof of exportation in those cases where the carnet or Customs Form 4455 does not reflect that these articles were exported under Customs supervision. In the case of commercial travelers' samples taken abroad for temporary use, except where exportation involves certification of a carnet, port directors may waive examination of the samples at the time of exportation. When motion-picture films are to be taken aboard a vessel for exhibition only during an outward voyage and are to be returned for the same purpose during an inward voyage on the same or another vessel, port directors may waive examination and supervision at the time of exportation. When theatrical scenery, properties, and effects are taken abroad in sealed carload lots by rail for temporary use, the cars must be sealed by U.S. Customs officers for entry at any Canadian or Mexican port where U.S. Customs officers are stationed. Application and examination before the time of exportation is waived if a Customs Form 4455 is filed with the U.S. Customs officer in the appropriate Canadian or Mexican port, and that officer examines the articles before they are released from foreign customs custody by the foreign customs officer.

(b) When any such articles are to be returned to the United States from a contiguous foreign country in which a United States Customs officer is stationed, the articles may be presented to such officer with the duplicate copy of the application for examination and comparison with the descriptive list. Upon completion of such examination, the packages containing the articles shall be corded and sealed or forwarded in cars sealed by Customs officers and shall be manifested in the same manner as personal baggage. Articles so treated shall be released upon arrival in the United States and removal of the seals by Customs officers.

(c) When commercial travelers' samples consisting of raw cotton are taken to and returned from Canada, the application on Customs Form 4455 shall be executed in triplicate, two copies thereof to be returned to the traveler for surrender to the Customs officer on the return of the samples from Canada.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 69–146, 34 FR 9801, June 25, 1969; T.D. 75–41, 40 FR 6646, Feb. 13, 1975; T.D. 82–49, 47 FR 12160, Mar. 22, 1980; T.D. 82–116, 47 FR 27261, June 24, 1982]

§ 10.69 Samples to Great Britain and Ireland under reciprocal agreement.

Descriptive lists of samples taken to Great Britain and Ireland by commercial travelers of the United States under the joint declarations of December 3 and 8, 1910 (State Department treaty series 552), shall be required in triplicate, verified by the affidavit of the commercial traveler before a Customs officer, and shall show that the samples are for use as models or patterns for the purpose of obtaining orders and not for sale and that the lists contain a full description of the articles. One copy shall be retained and the others shall be delivered to the commercial traveler—one for the identification of the samples on their return to the United States and one for the use of the foreign customs authorities. The latter copy must have been attested by a consular officer of the country concerned in the United States.

ANIMALS AND BIRDS

CROSS REFERENCE: For regulations with respect to recognition of breeds and purebred animals, see 9 CFR part 151.

§ 10.70 Purebred animals for breeding purposes; certificate.

(a) In connection with the entry of purebred animals for breeding purposes under subheading 0101.11.00, Harmonized Tariff Schedule of the United States (HTSUS), no claim for free entry shall be allowed in liquidation of the entry until the port director has received from the Department of Agriculture a certificate that the animal is purebred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for that breed. Importers are required

by regulation of the Department of Agriculture to make application for a certificate of pure breeding to the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, on ANH Form 17–338 before the animal will be examined as required by 9 CFR 151.7. Application for the certificate must be executed by the owner agent, or importer and filed at a port of entry designated in the regulations of the Department of Agriculture for the importation of animals (9 CFR 92.3). However, applications for certificates for dogs (other than dogs for handling livestock regulated under 9 CFR 92.18) and cats may be filed either at a designated port of entry or at any other port where Customs entry is made. The regulations of the Department of Agriculture prescribing the requirements for the issuance of certificates of pure breeding provide that all animals imported under such regulations must be accompanied to the port at which examination is to be made by certificates of pedigree and transfer of ownership in order that identification may be accomplished, and that, if such animals are moved from such port prior to the presentation of such certificates and transfers, such action shall constitute a waiver of any further claim to certification under such regulations.

(b) In the cases of cats and dogs arriving at Canadian border ports, Customs officers and employees are hereby authorized and directed to make the examination required by such regulations of the Department of Agriculture. Customs officers and employees are also authorized and directed to make such examinations at the ports of New York and Boston, provided the dog or cat is brought into the United States by a passenger. At all airports, Customs officers shall make the examination of dogs and cats, whether or not accompanied by the owners, if there is no inspector of the Department of Agriculture stationed there or on duty at the time of arrival.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 68–154, 33 FR 8730, June 14, 1968; T.D. 78–99, 43 FR 13060, Mar. 29, 1978; T.D. 87–75, 52 FR 20066, May 29, 1987; T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

§ 10.71 Purebred animals; bond for production of evidence; deposit of estimated duties; stipulation.

(a) The animal may be released from Customs custody upon the furnishing by the importer of a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production within 6 months of (1) a certificate of pure breeding issued by the Department of Agriculture, and (2) the declaration required by § 10.70(a) submitted in letter form if such declaration was not filed at the time of entry. The release of the animal from customs custody requires the presentation of the pedigree certificate and evidence of transfer of ownership in accordance with the regulations of the Department of Agriculture mentioned in § 10.70(b).

(b) Charges against the bond shall be canceled only upon the production of the required evidence or on payment of duties.

(c) In cases where the pedigree certificate and evidence of transfer of ownership have been presented in accordance with the regulations of the Department of Agriculture, the importer, if he so elects, may, in lieu of giving a bond, deposit estimated duties and file a stipulation with the port director within 10 days after the date of entry to produce the declaration and certificate of pure breeding within 6 months from the date of entry, whereupon the liquidation of the entry shall be suspended. (See § 113.42 of this chapter.)

(d) If the pedigree certificate and evidence of transfer of ownership were not presented in accordance with such regulations of the Department of Agriculture, a deposit of estimated duties, in addition to the regular entry bond, shall be required.

(e) When a passenger arriving in the United States with one or more dogs or cats and with the required certificates of pedigree and transfers of ownership in his possession furnishes a properly executed declaration as required by § 10.70(a) along with an application to the Department of Agriculture on ANH Form 17–338 for a certificate of pure breeding, the entry of the animal(s) as duty-free under subheading 0106.00.50, Harmonized Tariff Schedule of the

United States (HTSUS), may be made on the passenger's baggage declaration if the value of the animals does not exceed $500. In such case the entry shall be supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production within 6 months of a certificate of pure breeding. The bond shall be without surety or cash deposit unless the port director on the basis of information before him finds that a bond with surety or a cash deposit is necessary to protect the revenue.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 68–79, 33 FR 4461, Mar. 13, 1968; T.D. 68–154, 33 FR 8731, June 14, 1968; T.D. 74–227, 39 FR 32015, Sept. 4, 1974; T.D. 78–99 43 FR 13060, Mar. 29, 1978; T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 87–75, 52 FR 26142, July 13, 1987; T.D. 89–1, 53 FR 51250, Dec. 21, 1988; T.D. 93–66, 58 FR 44130, Aug. 19, 1993]

§§ 10.72–10.73 [Reserved]

§ 10.74 Animals straying across boundary for pasturage; offspring.

When domestic animals for which free entry is to be claimed under subheading 9801.00.90, Harmonized Tariff Schedule of the United States, have strayed across the boundary line, they may be returned, together with their offspring, without entry if brought back within 30 days; otherwise entry shall be required. The owner of any such animal shall report its return to the nearest Customs office and hold it for such inspection and treatment as may be deemed necessary by a representative of the Animal and Plant Health Inspection Service of the Department of Agriculture. Any such arrival found not to have been so reported or held shall be subject to seizure and forfeiture pursuant to 18 U.S.C. 545.

[T.D. 87–75, 52 FR 20067, May 29, 1987, as amended by T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

§ 10.75 Wild animals and birds; zoological collections.

When wild animals or birds are claimed to be free of duty under subheading 9810.00.70, Harmonized Tariff Schedule of the United States (HTSUS), (19 U.S.C. 1202), the port director may, at his discretion, require appropriate proof that the animals or birds were specially imported pursuant to negotiations conducted prior to importation for the delivery of animals or birds of a named species meeting agreed specifications of reasonable particularity and that they are intended at the time of importation for public exhibition in a collection maintained for scientific or educational purposes and not for sale or for use in connection with any enterprise conducted for profit. The fact that an animal or bird may have been sent on approval shall not preclude free entry under subheading 9810.00.70, HTSUS, when it is actually accepted as a part of the zoological collection and so exhibited.

[T.D. 85–123, 50 FR 29953, July 23, 1985, as amended by T.D. 89–1, 53 FR 51250, Dec. 21, 1988; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

§ 10.76 Game animals and birds.

(a) The following classes of live game animals and birds may be admitted free of duty for stocking purposes under the provisions of subheading 9817.00.70 without reference to the United States Customs Service, if the requirements of the Fish and Wildlife Service, Department of the Interior, have been complied with.

ANIMALS

1. Cervidae, commonly known as deer and elk.
2. Leporidae, commonly known as rabbits.
3. Sciuridae, commonly known as squirrels.

BIRDS

1. Anatidae, commonly known as ducks and geese.
2. Gallinae, commonly known as turkeys, grouse, pheasants, partridges, and quail.
3. Otididae, commonly known as bustards.
4. Tinamidae, commonly known as tinamous.

(b) Application for the free entry of other live animals or birds under subheading 9817.00.70, Harmonized Tariff Schedule of the United States shall be referred to the United States Customs Service for consideration. Animals imported for fur-farming purposes shall not be admitted free of duty under that paragraph.

(c) [Reserved]

(d) Game animals and birds killed in foreign countries by residents of the United States, if not imported for sale or other commercial purposes, may be

admitted free of duty without entry, if the person has no merchandise requiring a written declaration upon the filing of a declaration on U.S. Fish and Wildlife Service Form 3–177, Declaration for Importation or Exportation of Fish or Wildlife. No bond or cash deposit to insure the destruction or exportation of the plumage of such birds shall be required.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 82–145, 47 FR 35475, Aug. 16, 1982; T.D. 86–118, 51 FR 22515, June 20, 1986; T.D. 89–1, 53 FR 51250, Dec. 21, 1988; T.D. 90–78, 55 FR 40166, Oct. 2, 1990]

§ 10.77 [Reserved]

PRODUCTS OF AMERICAN FISHERIES

§ 10.78 Entry.

(a) No entry shall be required for fish or other marine products taken on the high seas by vessels of the U.S. or by residents of the U.S. in undocumented vessels owned in the U.S. when such fish or other products are brought into port by the taking vessel or are transferred at sea to another fishing vessel of the same fleet and brought into port.

(b) An American fishery, within the meaning of Subchapter XV of Chapter 98, Harmonized Tariff Schedule of the United States, is defined as a fishing enterprise conducted under the American flag by vessels of the United States on the high seas or in foreign waters in which such vessels have the right by treaty or otherwise, to take fish or other marine products and may include a shore station operated in conjunction with such vessels by the owner or master thereof.

(c) The employment of citizens of a foreign country by an American fishery is permissible but the purchase by an American fishery of fish or other marine products taken by citizens of a foreign country on the high seas or in foreign waters will subject such fish or other marine products to treatment as foreign merchandise.

(d) Products of an American fishery shall be entitled to free entry although prepared, preserved, or otherwise changed in condition, provided the work is done at sea by the master or crew of the fishery or by persons employed by and under the supervision of the master or owner of the fishery. Fish (except cod, haddock, hake, pollock, cusk, mackerel, and swordfish) the product of an American fishery landed in a foreign country and there not further advanced than beheaded, eviscerated, packed in ice, frozen and with fins removed, shall be entitled to free entry, whether or not such processing is done by the American fishery. Products of an American fishery prepared or preserved on the treaty coasts of Newfoundland, Magdalen Islands, or Labrador, as such coasts are defined in the Convention of 1818 between the United States and Great Britain, shall be entitled to free entry only if the preparation or preservation is done by an American fishery.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 87–75, 52 FR 20067, May 29, 1987; T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

§ 10.79 [Reserved]

SALT FOR CURING FISH

§ 10.80 Remission of duty; withdrawal; bond.

Imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries, and in curing fish in the shores of the navigable waters of the U.S., whether such fish are taken by licensed or unlicensed vessels, and upon proof that the sale has been used for either of such purposes, the duties on the same shall be remitted. (Section 313(e), Tariff Act of 1930, 19 U.S.C. 1313(e)). Imported salt entered for warehouse may be withdrawn under bond for use in curing fish. Upon proof that the salt has been so used, the duties thereon shall be remitted. In no case shall the quantity of salt withdrawn exceed the reasonable requirements of the case. Withdrawal shall be made on Customs Form 7501. Each withdrawal shall contain the statement prescribed for withdrawals in § 144.32 of this chapter. When the withdrawal is made by a person other than the importer of record, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production of proof of

proper use shall be filed. Upon acceptance of the bond, a withdrawal permit shall be issued on Customs Form 7501.

[T.D. 89–1, 53 FR 51251, Dec. 21, 1988, as amended by T.D 95–81, 60 FR 52295, Oct. 6, 1995]

§ 10.81 Use in any port.

(a) Salt withdrawn under bond for use in curing fish on the shores of navigable waters may be used for such purpose at any port, but the evidence of use in such cases shall be submitted through the director of the port where the salt was used.

(b) If desired, salt to be used in curing fish on shore at another port than that in which it is warehoused in bond may be withdrawn under a transportation entry and shipped in bond to the other port at which it is to be used, where it may be entered on Customs Form 7501 which shall show withdrawal of the salt for use in curing fish. Thereupon, and upon the filing of a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, such salt may be used without being sent to a bonded warehouse or public store. In such a case the proof of use shall be filed at the latter port.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 87–75, 52 FR 20067, May 29, 1987; T.D 95–81, 60 FR 52295, Oct. 6, 1995]

§ 10.82 [Reserved]

§ 10.83 Bond; cancellation; extension.

(a) If it shall appear to the satisfaction of the port director holding the bond referred to in § 10.80, that the entire quantity of salt covered by the bond has been duly accounted for, either by having been used in curing fish or by the payment of duty, the port director may cancel the charges against the bond. The port director may require additional evidence in corroboration of the proof of use produced.

(b) On application of the person making the withdrawal, the period of the bond may be extended 1 year so as to allow the salt to be used during the time of extension in curing fish with the same privileges as if used during the original period.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 87–75, 52 FR 20067, May 29, 1987]

AUTOMOTIVE PRODUCTS

§ 10.84 Automotive vehicles and articles for use as original equipment in the manufacture of automotive vehicles.

(a)(1) Certain motor vehicles and motor vehicle equipment are eligible for duty-free entry as proclaimed by the President under the Automotive Products Trade Act of 1965. The articles designated for such duty-free treatment are defined in General Note 3(c)(iii), HTSUS (19 U.S.C. 1202). Specifically, such articles are those designated [as ''Free (B)''] in the ''Special'' subcolumn in Chapter 87, HTSUS, and must qualify as ''Canadian articles'' as defined in General Note 3(c)(iii)(A)(1), HTSUS. To claim exemption from duty under the Automotive Products Trade Act of 1965, an importer must establish, to the satisfaction of the appropriate Customs officer, that the article in question qualifies as a ''Canadian article'' for purposes of General Note 3(c)(iii)A)(1), HTSUS. The Customs officer may accept as satisfactory evidence a certificate executed by the exporter as set forth in paragraph (b) of this section, subject to any verification he may deem necessary. Alternatively, the Customs officer may determine that under the circumstances of the importation a certificate is unnecessary.

(2) Under the United States-Canada Free-Trade Agreement and implementing legislation (Pub. L. 100–449, 102 Stat. 1851) a manufacturer of motor vehicles may elect to average, over its 12-month financial year, its calculation of the value-content requirement for vehicles in establishing its eligibility for tariff preference. Requirements for averaging are set forth in § 10.310 and 10.311.

(b)(1) When all materials used at any stage in the production of the imported article are wholly obtained or produced in Canada or the United States, or both, a certificate in the following form may be accepted as evidence that the commodity is a ''Canadian article'':

All materials contained in the product covered by the _____ (Describe the invoice, bill of lading, or other document or statement identifying the shipment) annexed or

appended to this certificate of Canadian origin at the time it was subscribed were wholly obtained or produced in Canada or the United States, or both. No materials other than those which were wholly obtained or produced in Canada or the United States, or both, were incorporated into this product or any of its components at any stage of production or in the production of any intermediate product used at any stage in the chain of production in Canada or the United States, or both.

(2) When any material used at any stage in the production of an imported article or any of its components is not wholly obtained or produced in Canada or the United States, or both, a certificate in the following form may be accepted as evidence that the commodity is nevertheless a ''Canadian article'':

The product covered by the _____ (Describe the invoice, bill of lading, or other document or statement identifying the shipment) annexed or appended to this certificate of Canadian origin at the time it was subscribed is an originating good so as to be a Canadian article. There were used in its production in Canada _____ (Description sufficient for tariff classification of the materials, and number of units) of third country materials of which the price paid was _____ per unit of quantity, plus _____ which represents all costs incurred in transporting the materials to the location of the producer and the duties, taxes, and brokerage fees on the materials, if such costs were not included in the price paid.

(3) If such Customs officer is satisfied that the revenue will be protected adequately thereby, he may accept in lieu of the certificate specified in paragraph (b)(2) of this section a certificate in the following form when the merchandise covered thereby has been produced with third country material but is an originating good under a specific rule of origin for the merchandise:

The product covered by the _____ (Describe the invoice, bill of lading, or other document or statement identifying the shipment) annexed or appended to this certificate of Canadian origin at the time it was subscribed is an originating good so as to be a Canadian article. There were or may have been used in its production in Canada or the United States, or both, materials of a third country.

It is impractical to ascertain the exact number of units of third country material, if any, used in its production or the price paid (and other costs required to be included in the price paid) of such materials but to the best of (my) (our) (its) knowledge the materials are described (sufficient for tariff classification purposes) as follows: _____.

(4) The certificates described in paragraphs (b)(2) and (b)(3) of this section shall not be accepted if the statements therein make it evident that the importation is not a ''Canadian article'' within the meaning of General Note 3(c), HTSUS.

(5) If more than one kind of article is covered by a certificate provided for in paragraph (b) (1), (2), or (3) of this section, the information required by the certificate shall be shown with respect to each kind. When more than one kind of material, other than originating material, is used in the production of an article covered by such a certificate, the certificate shall state the number of units, a description sufficient for tariff classification purposes, the price paid, and, if not included in the price paid, the costs incurred in transporting the materials to the location of the producer and duties, taxes and brokerage fees paid in Canada and/or the United States on the material, per unit of each kind of materials.

(6) A certificate conforming to paragraph (b) (1), (2), or (3) of this section shall be accepted as evidence of the facts alleged therein only if:

(i) There is annexed thereto a copy of the commercial invoice or bill of lading covering the articles or other documentary evidence which identifies the article to which the certificate pertains,

(ii) The certificate is signed by the manufacturer or producer of the article to which it pertains, or by the person who exported the articles from Canada, and

(iii) It clearly appears that such copy or other documentary evidence was annexed to the certificate when it was signed.

(c) In lieu of the certification in paragraph (b) (1), (2), or (3) of this section, a manufacturer of motor vehicles who claims a preference under the United States-Canada Free-Trade Agreement and elects to average pursuant to § 10.310(a), shall be subject to the requirements of §§ 10.301 to 10.311 of this part.

(d) When an importer makes an entry, or withdrawal from warehouse, for consumption of articles for use as

''original motor-vehicle equipment'' as that term is defined in General Note 3(c)(iii), HTSUS, he shall file in connection therewith his declaration that the articles are being imported for use as original equipment in the manufacture in the United States of the kinds of motor vehicles specified in the General Note and furnish the name and address of the motor vehicle manufacturer. A copy of the written order, contract, or letter of intent shall be attached to the importer's declaration except that if the port director is satisfied that a copy of the written order, contract, or letter of intent will be made available by the importer or ultimate consignee for inspection by customs officials upon request during a period of 3 years from the date of such entry or withdrawal from warehouse, the production of such documents will not be required. Proof of use need not be furnished.

(e) If, after a Canadian article has been accorded the status of original motor-vehicle equipment, it is decided to divert the article from its intended use in the manufacture in the United States of motor vehicles, the importer or other person deciding to divert the article from such intended use shall give notice in writing of the decision to the director of the port where entry was made or where the offices of the importer are located and either make arrangements for its destruction or exportation under Customs supervision or pay duties in accordance with General Note 3(c)(iii)(B)(2), HTSUS. If such article is not destroyed or exported under Customs supervision or the duties paid, the article, or its value, shall be subject to forfeiture.

[T.D. 89–3, 53 FR 51765, Dec. 23, 1988, as amended by T.D. 92–8, 57 FR 2453, Jan. 22, 1992; T.D. 93–66, 58 FR 44130, Aug. 19, 1993]

MASTER RECORDS, AND METAL MATRICES

§ 10.90 Master records and metal matrices.

(a) Consumption entries covering importations under subheading 8524.99.20, HTSUS, shall be filed at a port in the Customs district in which the factory where the articles will be used is located.

(b) The invoice filed with the entry shall contain or be supported by a detailed statement of the cost of production, in the country where made, of each master record or metal matrix covered thereby.

(c) A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be filed for importations under this section.

(d) Entries already filed and future entries shall be liquidated in due course without the assessment of duty, but liability on bonds given with the entries shall be discontinued with respect to any article covered thereby only upon payment of liquidated damages in an amount equal to the duties which would have accrued had the master records or metal matrices been imported for use otherwise than in the manufacture of sound records for export purposes, or upon satisfactory proof that the master records or metal matrices obtained therefrom have been exported or destroyed under Customs supervision, and that all sound records made with the use of such articles have been exported.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 87–75, 52 FR 20067, May 29, 1987; T.D. 89–1, 53 FR 51251, Dec. 21, 1988; T.D. 90–78, 55 FR 40166, Oct. 2, 1990; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

PROTOTYPES

§ 10.91 Prototypes used exclusively for product development and testing.

(a) *Duty-free entry; declaration of use; extension of liquidation*—(1) *Entry or withdrawal for consumption.* Articles defined as ''prototypes'' and meeting the other requirements prescribed in paragraph (b) of this section may be entered or withdrawn from warehouse for consumption, duty-free, under subheading 9817.85.01, Harmonized Tariff Schedule of the United States (HTSUS), on CBP Form 7501 or an electronic equivalent. A separate entry or withdrawal must be made for a qualifying prototype article each time the article is imported/reimported to the United States.

(2) *Importer declaration.* (i) *Entry accepted as declaration.* Entry or withdrawal from warehouse for consumption under HTSUS subheading 9817.85.01

may be accepted by the port director as an effective declaration that the articles will be used solely for the purposes stated in the subheading.

(ii) *Proof (declaration) of actual use.* If it is believed the circumstances so warrant, the port director may request the submission of proof of actual use, executed and dated by the importer. The title of the party executing the proof of actual use must be set forth. If proof of actual use is requested, the importer must provide it within three years after the date the article is entered or withdrawn from warehouse for consumption. Liquidation of the related entry may be extended until the requested proof or declaration of actual use is received or until the three-year period from the date of entry allowed for the receipt of such proof has expired. While requested proof of use must be given to CBP within three years of the date of entry, the prototype may continue to be used thereafter for the purposes enumerated in HTSUS subheading 9817.85.01. If requested proof of use is not timely received, the entry will be liquidated as dutiable under the tariff provision that would otherwise apply to the imported article. While there is no particular form for this declaration, it may either be submitted in writing, or electronically as authorized by CBP, and must include the following:

(A) A description of the use that is being and/or that has been made of the articles set forth in sufficient detail so as to enable the port director to determine whether the articles have been entitled to entry as claimed;

(B) A statement that the articles have not and are not to be put to any other use after the articles have been entered or withdrawn from warehouse for consumption and prior to the completion of their use under HTSUS 9817.85.01 (also see paragraphs (c) and (d) of this section concerning the disposition(s) to which the articles may be put following their use under HTSUS subheading 9817.85.01); and

(C) A statement that the articles or any parts of the articles have not been and are not intended to be sold, or incorporated into other products that are sold, after the articles have been entered or withdrawn from warehouse for consumption and prior to the completion of their use as provided in HTSUS subheading 9817.85.01 (*see* paragraph (b)(2)(ii) of this section).

(b) *Articles classifiable as prototypes*—(1) *Prototypes defined.* In accordance with U.S. Note 6(a) to subchapter XVII of chapter 98, HTSUS, applicable to subheading 9817.85.01, the term ''prototypes'' means originals or models of articles pertaining to any industry that:

(i) Are either in the preproduction, production or postproduction stage and are to be used exclusively for development, testing, product evaluation, or quality control purposes (not including automobile racing for purse, prize or commercial competition); and

(ii) In the case of originals or models of articles that are either in the production or postproduction stage, are associated with a design change from current production (including a refinement, advancement, improvement, development or quality control in either the product itself or the means of producing the product).

(2) *Additional requirements.* In accordance with U.S. Note 6(b) and (c) to subchapter XVII of chapter 98, HTSUS, applicable to subheading 9817.85.01, the following additional restrictions apply to articles that may be classified as prototypes:

(i) *Importations limited.* Prototypes may be imported pursuant to this section only in limited noncommercial quantities in accordance with industry practice.

(ii) *Sale prohibited after entry and prior to use.* Prototypes or parts of prototypes may not be sold, or be incorporated into other products that are sold into the commerce of the United States, after the prototypes have been entered or withdrawn from warehouse for consumption under HTSUS subheading 9817.85.01, except that, after having been used for the purposes for which they were entered or withdrawn from warehouse under HTSUS subheading 9817.85.01, such prototypes or any part(s) of the prototypes may be sold as scrap, waste, or for recycling, as prescribed in paragraph (c) of this section.

(iii) *Articles subject to laws of another agency.* Articles that are subject to licensing requirements, or that must

comply with laws, rules or regulations administered by an agency other than CBP before being imported, may be entered as prototypes pursuant to this section if they meet all applicable provisions of law and otherwise meet the definition of prototypes in paragraph (b)(1) of this section.

(iv) *Articles excluded from being prototypes.* Articles that are in fact subject at the time of entry to quantitative restrictions, antidumping orders or countervailing duty orders are excluded from being classified as prototypes under this section.

(c) *Sale of prototype following use.* (1) *Sale.* Prototypes or any part(s) of prototypes, after having been used for the purposes for which they were entered or withdrawn under HTSUS subheading 9817.85.01, may only be sold as scrap, waste, or for recycling. This includes a prototype or any part thereof that is incorporated into another product, as scrap, waste, or recycled material. If sold as scrap, waste, or for recycling, applicable duty must be paid on the prototypes or parts as provided in paragraph (c)(3) of this section, at the rate of duty in effect for such scrap, waste, or recycled materials at the time the prototypes were entered or withdrawn for consumption.

(2) *Notice of sale required.* If, after a prototype has been used for the purposes contemplated in HTSUS subheading 9817.85.01, the prototype or any part(s) of the prototype (including a prototype or any part that is incorporated into another product) is sold as scrap, waste, or for recycling, the importer must provide notice of such sale to the port director where the entry or withdrawal of the prototype was made. A notice, in the manner authorized in paragraph (c)(3) of this section, must be submitted in connection with the sale, whether or not duty is payable. The notice should not be submitted prior to the submission of proof of actual use, should such proof of actual use be requested by the port director (*see* paragraph (a)(2)(ii) of this section).

(3) *Form and content of notice; tender of duty.* While no particular form is required for the notice of sale, a consumption entry (CBP Form 7501), appropriately modified, or an electronic equivalent as authorized by CBP, may be used for this purpose. The notice may be a blanket notice covering all those sales described in paragraph (c)(2) of this section that occur over a quarterly (3-month) calendar period. Such notice must be filed within 10 business days of the end of the related quarterly period in which the sale(s) occurred. If an article sold is dutiable, the payment of any duty due must be forwarded together with the notice (*see* paragraph (c)(1) of this section). If the notice is filed electronically, payment of any duty owed will be handled through the Automated Clearinghouse (*see* § 24.25 of this chapter). The notice of sale must be executed by the importer, or other person having knowledge of the facts surrounding the sale, and must include the following:

(i) The identity of the prototype; the consumption entry number under which it was imported; a copy of the declaration of actual use, if proof of actual use was requested under paragraph (a)(2)(ii) of this section; and a detailed description of the condition of the prototype following use for the intended permissible purposes, including any damage, degradation or deterioration to the article resulting from such use and/or otherwise resulting to the article from any other cause prior to its sale for scrap, waste, or recycling;

(ii) The name and address of the party to whom the article was sold, and (if known) the use to which the party intends to put the article;

(iii) The HTSUS subheading number for scrap, waste, or recycled material, as applicable, claimed in connection with the sale of the prototype, together with the corresponding rate of duty in effect at the time the prototype was originally imported for consumption;

(iv) The value of the prototype article (if dutiable and the duty owed is based upon value) (*see* paragraph (e)(2) of this section); and

(v) The title of the party executing the declaration and the date of execution.

(d) *Prototypes not sold following use.* As to those prototypes or parts of prototypes that, after having been used as prescribed under HTSUS subheading 9817.85.01, are disposed of otherwise than by sale (*see* paragraph (c)(1) of this section), there is no requirement

that the importer notify CBP of any such alternative disposition. Nor are there any dutiable consequences that ensue from any disposition of the merchandise after the merchandise's use under HTSUS subheading 9817.85.01 other than sale to the extent authorized under paragraph (c)(1) of this section.

(e) *Recordkeeping; retention and production*—(1) *Recordkeeping*. The importer must be prepared to submit to the CBP officer, if requested, any information, including any supporting documents, reports and records, as was necessary for the preparation of the declaration of use, if the declaration of use was requested under paragraph (a)(2)(ii) of this section, and the notice of sale, if applicable under paragraph (c)(3) of this section. The notices, together with any related supporting evidence, may be subject to such verification as the port director reasonably deems necessary. Supporting documentary evidence must be made available to the CBP officer, upon request, for a period of five years (*see* §163.4(a) of this chapter) from the date of filing in complete and proper form, the declaration of use, if requested, and, if applicable, the notice of sale. The supporting records must be made available to the CBP officer upon request in accordance with §163.6 of this chapter.

(i) Documents supporting the proof (declaration) of actual use must:

(A) Establish that the identity and description of the prototype article is the same article that the consumption entry was made for under subheading 9817.85.01, HTSUS; and

(B) Describe the circumstances of the use of the article; the operations, testing, review, manipulation, experimentation, and/or other exercises that are being and/or that have been conducted in connection with the prototype; and the location, such as the plant or production facility, where these activities occurred, sufficient to demonstrate that the purposes enumerated in HTSUS subheading 9817.85.01 are taking and/or have actually taken place.

(ii) Documents supporting the notice of sale must establish that:

(A) The identity of the prototype sold is the same article for which a consumption entry was made under subheading 9817.85.01 HTSUS when it was imported, and that the article was in the condition described in the notice of sale;

(B) The article was sold to the party identified in the notice of sale;

(C) The HTSUS subheading number for scrap, waste, or recycled material, as applicable, claimed in connection with the sale of the prototype is accurate;

(D) The date that the prototype was originally imported for consumption, and the corresponding rate of duty in effect at the time for the applicable HTSUS subheading; and

(E) The value of the prototype article (if dutiable and the duty owed is based upon value) (*see* paragraph (e)(2) of this section) as claimed in the notice of sale is accurate.

(2) *Relevant value for used prototype or parts sold*. For purposes of this section, with respect to any duty owed on prototypes or parts of prototypes that are sold as scrap, or waste, or for recycling, where the duty owed is based upon value, the relevant value is the market value of the prototypes or parts, based upon their character and condition following use for the purposes prescribed in HTSUS subheading 9817.85.01. The relevant value should take into consideration any damage, degradation or deterioration to the prototypes or parts resulting from their use as a prototype and/or otherwise resulting to the articles from any other cause prior to their sale as scrap, waste, or for recycling. The market value will generally be measured by the selling price. Should a prototype or part of a prototype become a component of another product that is sold as scrap, waste, or recycled material, the relevant market value would be that portion of the selling price attributable to the component (prototype or part) as provided in this paragraph.

(f) *Articles admitted under TIB*—(1) *Duty-free entry available*. Under the procedure presented in paragraph (f)(2) of this section, an entry of an article made under a temporary importation bond (TIB) solely for testing, experimental or review purposes under HTSUS subheading 9813.00.30 may be converted into a duty-free entry under

HTSUS subheading 9817.85.01, if the following conditions exist:

(i) The article meets the definition for ''prototypes'' in paragraph (b) of this section (U.S. Note 6(a) to subchapter XVII, chapter 98, HTSUS); and

(ii) The TIB entry for the article was in effect and had not been closed, and the TIB period for the article had not expired, as of November 9, 2000.

(2) *Procedure for converting TIB entry to duty-free entry*—(i) *Importer request.* The importer must submit a written request, or an electronic equivalent as authorized by CBP, that a TIB entry made under HTSUS subheading 9813.00.30, which was in effect and had not been closed, and for which the TIB period had not expired, as of November 9, 2000, be converted instead into a duty-free consumption entry under HTSUS subheading 9817.85.01.

(ii) *Action by CBP.* CBP will convert the TIB entry under HTSUS subheading 9813.00.30 to a duty-free entry under HTSUS subheading 9817.85.01, provided that the port director is satisfied that the conditions set forth in paragraphs (f)(1)(i) and (f)(1)(ii) of this section have been met. When the TIB entry is converted, the bond will be cancelled and the entry closed. Once the conversion is complete, the port director will provide a courtesy acknowledgment to this effect to the importer in writing or electronically.

[CBP Dec. 04–36, 69 FR 63449, Nov. 2, 2004]

§§ 10.92–10.97 [Reserved]

FLUXING MATERIAL

§ 10.98 Copper-bearing fluxing material.

(a) For the purpose of this section, ores usable as a flux or sulphur reagent, mentioned in the provision for such ores in subheading 2603.00.00, Harmonized Tariff Schedule of the United States, shall include only ores which contain by weight not over 15 percent copper.

(b) [Reserved]

(c) There shall be filed in connection with the entry of such copper-bearing ores, either for consumption or warehouse, a declaration of the importer that the material is to be used for fluxing purposes only. In the case of a consumption entry, the estimated tax shall be deposited at the time of entry. Liquidation of entries shall be suspended pending proof of use for fluxing purposes as hereinafter provided.

(d) Samples of the material shall be taken in accordance with the commercial method in effect at the plant if to be used in a bonded smelting warehouse, or in accordance with §§ 151.52 through 151.55 of this chapter if entered for consumption, and the copper content thereof shall be determined by the Government chemist in accordance with the assay.

(e) The management of the smelting or converting plant shall file with the appropriate Customs officer at the port or ports where the entries are to be liquidated, a statement based on its records of operation for each quarterly period showing for each furnace or converter the total quantity of material charged during each month or part thereof of each quarter, the total quantity of material used for fluxing purposes, and the quantity of imported ores used for fluxing purposes for which free entry was claimed under the above-mentioned provision, together with the copper content of such imported ores computed in accordance with the Government assay. If the quantity of ores used for fluxing purposes in any furnace or converter during any month or part thereof of any quarter is in excess of 25 percent of the charge of such furnace or converter, the quarterly statement shall be accompanied by an explanation of the necessity for using such quantity for fluxing purposes.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 73–175, 38 FR 17445, July 2, 1973; T.D. 87–75, 52 FR 20067, May 29, 1987; T.D. 89–1, 53 FR 51251, Dec. 21, 1988]

ETHYL ALCOHOL

§ 10.99 Importation of ethyl alcohol for nonbeverage purposes.

(a) If claim is made by an importer other than the United States or a governmental agency thereof for the classification of ethyl alcohol of an alcoholic strength by volume of 80 percent volume or higher under subheading 2207.10.60, Harmonized Tariff Schedules of the United States, the importer or

his agent shall file in connection with the entry a declaration that the alcohol is to be used for nonbeverage purposes only and whether the alcohol is to be used for fuel purposes. Customs shall release the alcohol for transfer, under internal revenue bond, to a distilled spirits plant upon deposit of estimated duty, if any, and without the payment of the internal revenue tax upon receipt of a transfer record for bulk spirits. In addition, a package gauge record must be submitted to Customs if the alcohol is in packages, as specified in subpart I of part 251, Bureau of Alcohol, Tobacco and Firearms (BATF) Regulations (27 CFR part 251, subpart I). The transfer shall be accomplished in accordance with subpart L of Part 251, Bureau of Alcohol, Tobacco and Firearms Regulations (27 CFR part 251, subpart L).

(b) An appropriate BATF permit shall be filed with Customs in connection with the withdrawal of ethyl alcohol from Customs custody by the United States or any governmental agency thereof for its own use for nonbeverage purposes. Such permit shall be filed before release under the entry without the deposit of estimated duties, if any, and internal revenue tax, or before release in accordance with the provisions of § 141.102(d) of this chapter. (See subpart M of part 251, Bureau of Alcohol, Tobacco and Firearms Regulations (27 CFR part 251, subpart M)).

(c) The procedures for the withdrawal free of tax on the entry of ethyl alcohol for nonbeverage purposes from the Virgin Islands are found in subpart O of part 250, Bureau of Alcohol, Tobacco and Firearms Regulations (27 CFR part 250, subpart O).

[T.D. 89–65, 54 FR 28413, July 6, 1989]

UNITED STATES GOVERNMENT IMPORTATIONS

§ 10.100 Entry, examination, and tariff status.

Except as otherwise provided for in §§ 10.101, 10.102, 10.104, 141.83(d)(8), 141.102(d), or elsewhere in this chapter, importations made by or for the account of any agency or office of the United States Government are subject to the usual Customs entry and examination requirements. In the absence of express exemptions from duty, such as are contained in subheadings 9808.00.10, 9808.00.20, 9808.00.30, 9808.00.40, 9808.00.50, 9808.00.60, 9808.00.70, or other subheadings in the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) providing for free entry, such importations are also subject to duty.

[T.D. 77–23, 42 FR 2310, Jan. 11, 1977, as amended by T.D. 89–1, 53 FR 51251, Dec. 21, 1988; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

§ 10.101 Immediate delivery.

(a) *Shipments entitled to immediate delivery.* Shipments consigned to or for the account of any agency or office of the United States Government, or to an officer or official of any such agency in his official capacity, shall be regarded for purposes of these regulations as shipments the immediate delivery of which is necessary within the purview of section 448(b), Tariff Act of 1930, as amended (19 U.S.C. 1448(b)).

(b) *Immediate delivery applications.* The shipments described in the preceding paragraph may be released upon the filing of immediate delivery applications on Customs Form 3461 as set forth in subpart A of part 142 of this chapter. Such applications may be limited to particular shipments or may cover all shipments imported by the Government agency making the application. They may be approved for specific periods of time or for indefinite periods of time, provided in either case they are supported by carrier's certificates and stipulations as provided for in paragraph (c) of this section.

(c) *Carrier's certificates and stipulations.* Before the release of a shipment under an immediate delivery permit, evidence of the right of the applicant to make entry for the articles shall be furnished the port director in accordance with the provisions of §§ 141.11 and 141.12 of this chapter.

(d) *Bond.* No bond shall be required in support of an immediate delivery application provided for in this section if a stipulation in the form as set forth below is filed with the port director in connection with the application:

I, _____, _____ (Title), a duly authorized representative of the _____

(Name of United States Government department or agency) stipulate and agree on behalf of such department or agency that all applicable provisions of the Tariff Act of 1930, as amended, and the regulations thereunder, and all other laws and regulations, relating to the release and entry of merchandise will be observed and complied with in all respects.

(Signature)

(e) *Timely entries required.* If proper entries for consumption for importations released under these regulations are not filed within a reasonable time, appropriate steps shall be taken to insure the prompt filing of such entries.

[T.D. 77–23, 42 FR 2310, Jan. 11, 1977, as amended by T.D. 87–75, 52 FR 20067, May 29, 1987]

§ 10.102 Duty-free entries.

(a) *Invoice or declaration.* No invoice or other declaration of the shipper shall be required for shipments expressly exempt from duty as provided in subheadings 9808.00.10, 9808.00.20, 9808.00.30, 9808.00.40, 9808.00.50, 9808.00.60, 9808.00.70, or other subheadings in the Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202) providing for free entry. However, the importing Government agency or office shall present any invoice, memorandum invoice, or bill pertaining to the merchandise in its possession or available to it, or, if no such invoice or bill is available, a pro forma invoice prepared in accordance with § 141.85 of this chapter, setting forth adequate information for examination and determination of the dutiable status of the merchandise. In addition, the port director shall only admit articles free of duty under subheadings 9808.00.30, 9808.00.40, 9808.00.50, HTSUS (19 U.S.C. 1202), upon the receipt of a certificate executed in the manner and form described in paragraph (b) of this section.

(b) *Certification.* One of the following certificates executed by a duly authorized officer or official of the appropriate Government agency or office is required for free entry of articles under subheadings 9808.00.30, 9808.00.40, or 9808.00.50, HTSUS (19 U.S.C. 1202). The certificates may be printed, stamped, or typewritten on the Customs entry or withdrawal form, Customs Form 7501, or on a separate paper attached to the entry or withdrawal form filed by the Government agency or office, provided the certification is clearly and unmistakably identified with the articles covered by the entry or withdrawal.

(1) *Articles for military departments, subheading 9808.00.30, HTSUS.* I certify that the procurement of this material constituted an emergency purchase of war material abroad by the Department of the (name of military department), and it is accordingly requested that such material be admitted free of duty pursuant to subheading 9808.00.30, HTSUS.

(Name)

(Title), who has been designated to execute free-entry certificates for the above-named department.

(Grade or Rank) (Organization)

(2) *Articles for the Defense Logistics Agency, subheading 9808.00.40, HTSUS.* Pursuant to subheading 9808.00.40, HTSUS, I hereby certify that the above-described materials are strategic and critical materials procured under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98e).

(Name)

(Title), Defense Logistics Agency, who has been duly authorized to execute the above certificate.

(3) *Articles for the Department of Energy, subheading 9808.00.50, HTSUS.* I certify to the Secretary of the Treasury that the above-described materials are source materials purchased abroad, the admittance of which is necessary in the interest of the common defense and security, in accordance with subheading 9808.00.50, HTSUS.

(Name)

(Title), who has been authorized to execute free-entry certificates for the Department of Energy.

(c) *Release of shipments.* Shipments for which free entry has been or will be claimed under subheading 9808.00.30, 9808.00.40, 9808.00.50, HTSUS (19 U.S.C. 1202), shall be released after only such examination as is necessary to identify them.

(d) *Entry in Government name.* All materials for which free entry is claimed under subheading 9808.00.30, 9808.00.40, 9808.00.50, HTSUS (19 U.S.C. 1202), shall be entered, or withdrawn from warehouse, for consumption in the name of the Government department whose representative executes the certificate set forth in §10.102(b) unless exemption from this requirement is specifically authorized by the port director.

[T.D. 77–23, 42 FR 2311, Jan. 11, 1977, as amended by T.D. 85–123, 50 FR 29953, July 23, 1985; T.D. 89–1, 53 FR 51251, Dec. 21, 1988; T.D. 93–44, 58 FR 34523, June 28, 1993; T.D 95–81, 60 FR 52295, Oct. 6, 1995]

§ 10.103 American goods returned.

(a) *Certificate required.* Articles entered, or withdrawn from warehouse, for consumption in the name of an agency or office of the United States Government (with the exception of military scrap belonging to the Department of Defense) may be admitted free of duty under subheading 9801.00.10, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), upon the filing of a certificate on the letterhead of the agency or office in the following form in lieu of other entry documentation:

I hereby certify:

1. That the following articles imported in the _____ (Name of Carrier) at the port of _____ (Port) on _____ (Date) consist of returned products which are the growth, produce, or manufacture of the United States, and have been returned to the United States without having been advanced in value or improved in condition by any process of manufacture or other means, and that no drawback has been or will be claimed on such articles, and that the articles currently belonging to and are for the further use of _____ (Agency or Office)

Number of containers	Bill of lading No.[1]	General description of articles
.		
.		
.		

[1] If shipment arrives in the United States on a commercial carrier.

2. That the shipment does not contain military scrap.

3. That the shipment is entitled to entry under subheading 9801.00.10, Harmonized Tariff Schedule of the United States (HTSUS) free of duty.

4. That I am a military installation transportation officer having knowledge of the facts involved in this certificate.

or

I am an officer or official authorized by _____ (Agency or Office) (Whichever is applicable) to execute this certificate.

_____
(Name)

_____
(Rank and branch of service or Agency or Office)

(b) *Combined certificate when articles are intermingled.* When articles claimed to be free under subheading 9801.00.10 and other articles claimed to be free under subheadings 9808.00.30, 9808.00.40, 9808.00.50, HTSUS (19 U.S.C. 1202), are intermingled in a single shipment in a manner which precludes separation for the purpose of making claims for free entry under the separate categories, all the articles may be covered by a combined certificate which follows the requirements of §10.102(b) and paragraph (a) of this section.

(c) *Execution of certificate.* The certificate required by paragraph (a) of this section may be executed by any military installation transportation officer having knowledge of the facts or by any other officer or official specifically designated or authorized to execute such certificates by the importing Government agency or office. If the merchandise arrived on a commercial carrier, the entry shall be supported by evidence of the right to make it.

[T.D. 77–23, 42 FR 2311, Jan. 11, 1977, as amended by T.D. 89–1, 53 FR 51251, Dec. 21, 1988]

§ 10.104 Temporary importation entries for United States Government agencies.

The entry of articles brought into the United States temporarily by an agency or office of the United States Government and claimed to be exempt from duty under Chapter 98, Subchapter XIII, Heading 9813, Harmonized Tariff Schedule of the United States (HTSUS), shall be made on Customs Form 7501. No bond shall be required if the agency or office files a stipulation in the form set forth in §141.102(d) of this chapter. In those cases in which

the provisions of Chapter 98, Subchapter XIII, HTSUS (19 U.S.C. 1202), are not met, however, the port director will proceed as if a bond had been filed to cover the particular importation. Articles temporarily imported by a Government agency or office under this section are entitled to immediate delivery under the procedures set forth in § 10.101.

[T.D. 77–23, 42 FR 2311, Jan. 11, 1977, as amended by T.D. 89–1, 53 FR 51251, Dec. 21, 1988]

WHEAT

§ 10.106 [Reserved]

RESCUE AND RELIEF WORK

§ 10.107 Equipment and supplies; admission.

(a) There shall be admitted without entry and without the payment of duty or any tax imposed upon or by reason of importation of any article described in section 322(b), Tariff Act of 1930, as amended, subject to compliance with the following conditions:

(1) Before importation or as soon thereafter as possible, and in every case before the expiration of 10 days after importation, a report shall be made to the nearest Customs officer by the person in charge of sending the article from the foreign country, or by the person for whose account it was brought into the United States, stating the character, quantity, destination, and use to be made of the article.

(2) If practicable, the article shall be exported under Customs supervision. In any other case a report shall be made by the person in charge of the exportation as soon as possible after exportation to the Customs officer to whom the arrival was reported, stating the character, quantity, and circumstances of the exportation.

(b) In the case of each article admitted under paragraph (a) of this section, the port director shall satisfy himself as to whether the article was exported within a reasonable time, or that it has been properly expended or destroyed. If an article is so far destroyed, in connection with a use contemplated for it by section 322 (b) that it has only a salvage value, it shall not be required to be exported.

(c) Any article admitted under paragraph (a) of this section which is used in the United States otherwise than for a purpose contemplated for it by section 322(b), or which is not exported within 90 days after its arrival in the United States, or within such longer time as may be specially authorized by the port director or Headquarters, U.S. Customs Service, shall be seized and forfeited to the United States.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988]

PRODUCTS EXPORTED UNDER LEASE AND REIMPORTED

§ 10.108 Entry of reimported articles exported under lease.

Free entry shall be accorded under subheading 9801.00.20, Harmonized Tariff Schedule of the United States (HTSUS), whenever it is established to the satisfaction of the port director that the article for which free entry is claimed was duty paid on a previous importation or was previously entered free of duty pursuant to the Caribbean Basin Economic Recovery Act or Title V of the Trade Act of 1974, is being reimported without having been advanced in value or improved in condition by any process of manufacture or other means, was exported from the United States under a lease or similar use agreement, and is being reimported by or for the account of the person who imported it into, and exported it from, the United States.

[T.D. 94–40, 59 FR 17474, Apr. 13, 1994]

STRATEGIC MATERIALS OBTAINED BY BARTER OR EXCHANGE

§ 10.110 [Reserved]

LATE FILING OF FREE ENTRY AND REDUCED DUTY DOCUMENTS

§ 10.112 Filing free entry documents or reduced duty documents after entry.

Whenever a free entry or a reduced duty document, form, or statement required to be filed in connection with the entry is not filed at the time of the entry or within the period for which a bond was filed for its production, but failure to file it was not due to willful

negligence or fraudulent intent, such document, form, or statement may be filed at any time prior to liquidation of the entry or, if the entry was liquidated, before the liquidation becomes final. See § 113.43(c) of this chapter for satisfaction of the bond and cancellation of the bond charge.

[T.D. 74–227, 39 FR 32015, Sept. 4, 1974]

INSTRUMENTS AND APPARATUS FOR EDUCATIONAL AND SCIENTIFIC INSTITUTIONS

§ 10.114 General provisions.

The consolidated regulations of the Commerce and Treasury Departments relating to the entry of instruments and apparatus for educational and scientific institutions are contained in 15 CFR part 301.

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

§§ 10.115–10.119 [Reserved]

VISUAL OR AUDITORY MATERIALS

§ 10.121 Visual or auditory materials of an educational, scientific, or cultural character.

(a) Where photographic film and other articles described in subheading 9817.00.40, Harmonized Tariff Schedule of the United States (HTSUS), are claimed to be free of duty under subheading 9817.00.40, HTSUS, there shall be filed in connection with the entry covering such articles a document issued by the U.S. Information Agency certifying that it has determined that the articles are visual or auditory materials of an educational, scientific, or cultural character within the meaning of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character as required by U.S. Note 1, Subchapter XVII, chapter 98, HTSUS.

(b) Articles entered under subheading 9817.00.40, Harmonized Tariff Schedule of the United States (HTSUS), shall be released from Customs custody prior to submission of the document required in paragraph (a) of this section only upon the deposit of estimated duties with the port director. Liquidation of an entry covering merchandise which has been released under this procedure shall be suspended for a period of 90 days from the date of entry or until the required document is submitted, whichever occurs first. In the event that the director of the port of entry does not receive the required document within the 90-day period, the merchandise shall be immediately classified and liquidated in the ordinary course, without regard to subheading 9817.00.40, HTSUS.

[T.D. 67–185, 32 FR 11641, Aug. 11, 1967, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988; T.D. 90–78, 55 FR 40166, Oct. 2, 1990]

RATE OF DUTY DEPENDENT UPON ACTUAL USE

§ 10.131 Circumstances in which applicable.

The provisions of §§ 10.131 through 10.139 are applicable in those circumstances in which the rate of duty applicable to merchandise is dependent upon actual use, unless there is a specific provision in this part which governs the treatment of the merchandise. However, specific marking or certification requirements, such as those for bolting cloths in section 10.58, may be applicable to merchandise subject to the provisions of sections 10.131–10.139.

[T.D. 71–139, 36 FR 10726, June 2, 1971, as amended by T.D. 86–118, 51 FR 22515, June 20, 1986]

§ 10.132 [Reserved]

§ 10.133 Conditions required to be met.

When the tariff classification of any article is controlled by its actual use in the United States, three conditions must be met in order to qualify for free entry or a lower rate of duty unless the language of the particular subheading of the Harmonized Tariff Schedule of the United States applicable to the merchandise specifies other conditions. The conditions are that:

(a) Such use is intended at the time of importation.

(b) The article is so used.

(c) Proof of use is furnished within 3 years after the date the article is entered or withdrawn from warehouse for consumption.

[T.D. 71–139, 36 FR 10726, June 2, 1971, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988]

§ 10.134 Declaration of intent.

A showing of intent by the importer as to the actual use of imported merchandise shall be made by filing with the entry for consumption or for warehouse a declaration as to the intended use of the merchandise, or by entering the proper subheading of an actual use provision of the Harmonized Tariff Schedule of the United States (HTSUS) and the reduced or free rate of duty on the entry form. Entry made under an actual use provision of the HTSUS may be construed as a declaration that the merchandise is entered to be used for the purpose stated in the HTSUS, provided the port director is satisfied the merchandise will be so used. However, the port director shall require a written declaration to be filed if he is not satisfied that merchandise entered under an actual use provision will be used for the purposes stated in the HTSUS.

[T.D. 71–139, 36 FR 10726, June 2, 1971, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988]

§ 10.135 Deposit of duties.

When the requirement of § 10.134 has been met the merchandise may be entered or withdrawn from warehouse for consumption without deposit of duty when proof of use will result in free entry, or with deposit of duty at the lower rate when proof of use will result in a lower rate of duty.

[T.D. 71–139, 36 FR 10726, June 2, 1971, as amended by T.D. 84–213, 49 FR 41166, Oct. 19, 1984]

§ 10.136 Suspension of liquidation.

Liquidation of an entry covering merchandise for which a declaration of intent has been made pursuant to § 10.134 and any required deposit of duties made, shall be suspended until proof of use is furnished or the 3-year period allowed for production thereof has expired.

[T.D. 71–139, 36 FR 10726, June 2, 1971]

§ 10.137 Records of use.

(a) *Maintenance by importer*. The importer shall maintain accurate and detailed records showing the use or other disposition of the imported merchandise. The burden shall be on the importer to keep records so that the claim of actual use can be readily established.

(b) *Retention of records*. The importer shall retain records of use or disposition for a period of 3 years from the date of liquidation of the entry.

(c) *Examination of records*. The records required to be kept by paragraph (a) of this section shall be available at all times for examination and inspection by an authorized Customs officer.

[T.D. 71–139, 36 FR 10726, June 2, 1971]

§ 10.138 Proof of use.

Within 3 years from the date of entry or withdrawal from warehouse for consumption, the importer shall submit in duplicate in support of his claim for free entry or for a reduced rate of duty a certificate executed by (1) the superintendent or manager of the manufacturing plant, or (2) the individual end-user or other person having knowledge of the actual use of the imported article. The certificate shall include a description of the processing in sufficient detail to show that the use contemplated by the law has actually taken place. A blanket certificate covering all purchases of a given type of merchandise from a particular importer during a given period, or all such purchases with specified exceptions, may be accepted for this purpose, provided the importer shall furnish a statement showing in detail, in such manner as to be readily identified with each entry, the merchandise which he sold to such manufacturer or end-user during such period.

[T.D. 71–139, 36 FR 10727, June 2, 1971]

§ 10.139 Liquidation.

(a) *In general*. Upon satisfactory proof of timely use of the merchandise for the purpose specified by law, the entry shall be liquidated free of duty or at the lower rate of duty specified by law. When such proof is not filed within 3 years from the date of entry or withdrawal from warehouse for consumption, the entry shall be liquidated dutiable under the appropriate subheading of the Harmonized Tariff Schedule of the United States.

(b) *Exception for blackstrap molasses*. An entry covering blackstrap molasses,

as hereinafter defined, may be accepted and liquidated with duty at the lower rate after the filing of the declaration of intent required by § 10.134 and the deposit of estimated duties required by § 10.135 without compliance with §§ 10.136, 10.137, and 10.138. Blackstrap molasses is ''final'' molasses practically free from sugar crystals, containing not over 58 percent total sugars and having a ratio of

total sugars×100/Brix

not in excess of 71. In the event of doubt, an ash determination may be made. An ash content of not less than 7 percent indicates a blackstrap molasses within the meaning of this paragraph.

[T.D. 71–139, 36 FR 10727, June 2, 1971, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988]

IMPORTATIONS NOT OVER $200 AND BONA FIDE GIFTS

§ 10.151 Importations not over $200.

Subject to the conditions in § 10.153 of this part, the port director shall pass free of duty and tax any shipment of merchandise, as defined in § 101.1 of this chapter, imported by one person on one day having a fair retail value, as evidenced by an oral declaration or the bill of lading (or other document filed as the entry) or manifest listing each bill of lading, in the country of shipment not exceeding $200, unless he has reason to believe that the shipment is one of several lots covered by a single order or contract and that it was sent separately for the express purpose of securing free entry therefor or of avoiding compliance with any pertinent law or regulation. Merchandise subject to this exemption shall be entered under the informal entry procedures (see subpart C, part 143, and §§ 128.24, 145.31, 148.12, and 148.62, of this chapter).

[T.D. 94–51, 59 FR 30293, June 13, 1994, as amended by T.D. 95–31, 60 FR 18990, Apr. 14, 1995; T.D. 95–31, 60 FR 37875, July 24, 1995; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

§ 10.152 Bona-fide gifts.

Subject to the conditions in § 10.153 of this part, the port director shall pass free of duty and tax any article sent as a bona-fide gift from a person in a foreign country to a person in the United States, provided that the aggregate fair retail value in the country of shipment of such articles received by one person on one day does not exceed $100 or, in the case of articles sent from a person in the Virgin Islands, Guam, and American Samoa, $200. Articles subject to this exemption shall be entered under the informal entry procedures (see subpart C, part 143, and §§ 145.32, 148.12, 148.51, and 148.64, of this chapter). An article is ''sent'' for purposes of this section if it is conveyed in any manner other than on the person or in the accompanied or unaccompanied baggage of the donor or donee.

[T.D. 94–51, 59 FR 30293, June 13, 1994]

§ 10.153 Conditions for exemption.

Customs officers shall be further guided as follows in determining whether an article or parcel shall be exempted from duty and tax under § 10.151 or § 10.152:

(a) A ''bona fide gift'' for purposes of § 10.152 is an article formerly owned by a donor (may be a commercial firm) who gave it outright in its entirety to a donee without compensation or promise of compensation. It does not include articles acquired by purchase, barter, promissory exchange, or similar transaction, nor does it include articles said to be ''given'' in conjunction with a purchase, barter, promissory exchange, or similar transaction, such as a so-called bonus article.

(b) A parcel addressed to a person in the United States from an individual in a foreign country which contains a gift should be clearly marked on the outside to indicate that it contains a gift. Such marking is not conclusive evidence of a gift nor is the absence of such marking conclusive evidence that an article is not a gift. Ordinarily an article not exceeding $100 in fair retail value in the country of shipment sent from a person in a foreign country to a person in the United States ($200, in the case of an article sent from a person in the Virgin Islands, Guam, and American Samoa) will be recognizable as a gift from the nature of the article and obvious facts surrounding the shipment.

(c) A parcel addressed to a person in the United States from a business firm in a foreign country would ordinarily not contain a gift from a donor in the foreign country. When such a parcel in fact contains an article entitled to free entry under § 10.152, the parcel should be clearly marked to indicate that it contains such a gift and a statement to this effect should be enclosed in the parcel.

(d) Consolidated shipments addressed to one consignee shall be treated for purposes of §§ 10.151 and 10.152 as one importation. The foregoing shall not apply to shipments of bona fide gifts consolidated abroad for shipment to the United States when:

(1) The consolidation for shipment to the United States is in a cargo van or similar containerization which is consigned to a common carrier, freight forwarder, freight handler, or other public service agency for distribution of the gift packages;

(2) The separate gifts not exceeding $100 in fair retail value in the country of shipment ($200, in the case of articles sent from persons in the Virgin Islands, Guam, and American Samoa) included in the consolidated shipment are before shipment individually wrapped and addressed to the donee in the United States;

(3) Each gift package is marked on the outside to indicate that it contains a gift not exceeding $100 in fair retail value in the country of shipment ($200, in the case of packages sent from persons in the Virgin Islands, Guam, and American Samoa); and

(4) Each gift package is separately listed in the name of the addressee-donee on a packing list, manifest, bill of lading, or other shipping document.

(e) No alcoholic beverage, perfume containing alcohol (except where the aggregate fair retail value in the country of shipment of all merchandise contained in the shipment does not exceed $5), cigars, or cigarettes shall be exempted from the payment of duty and tax under § 10.151 or § 10.152.

(f) The exemptions provided for in § 10.151 or § 10.152 are not to be allowed in respect of any shipment containing one or more gifts having an aggregate fair retail value in the country of shipment in excess of $100 ($200, in the case of articles sent from persons in the Virgin Islands, Guam, and American Samoa), except as indicated in paragraph (d) of this section. For example, an article ordinarily subject to an ad valorem rate of duty but sent as a gift, if the fair retail value exceeds the $100 (or $200) exemption, would be subject to a duty based upon its value under the provisions of section 402 or 402(a), Tariff Act of 1930, as amended (19 U.S.C. 1401a or 1402), even though the dutiable value is less than the $100 (or $200) exemption.

(g) The exemption referred to in § 10.151 is not to be allowed in the case of any merchandise of a class or kind provided for in any absolute or tariff-rate quota, whether the quota is open or closed. In the case of merchandise of a class or kind provided for in a tariff-rate quota, the merchandise is subject to the rate of duty in effect on the date of entry.

[T.D. 73–175, 38 FR 17445, July 2, 1973, as amended by T.D. 75–185, 40 FR 31753, July 29, 1975; T.D. 78–394, 43 FR 49787, Oct. 25, 1978; T.D. 85–123, 50 FR 29953, July 23, 1985; T.D. 94–51, 59 FR 30293, June 13, 1994]

GENERALIZED SYSTEM OF PREFERENCES

§ 10.171 General.

(a) *Statutory authority*. Title V of the Trade Act of 1974 as amended (19 U.S.C. 2461–2467) authorizes the President to establish a Generalized System of Preferences (GSP) to provide duty-free treatment for eligible articles imported directly from designated beneficiary developing countries. Beneficiary developing countries and articles eligible for duty-free treatment are designated by the President by Executive order in accordance with sections 502(a)(1) and 503(a) of the Trade Act of 1974 as amended (19 U.S.C. 2462(a)(1), 2463(a)).

(b) *Country defined*. For purposes of §§ 10.171 through 10.178, except as otherwise provided in § 10.176(a), the term ''country'' means any foreign country, any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union or which is contributing to

comprehensive regional economic integration among its members through appropriate means, including but not limited to, the reduction of duties, the President may by Executive order provide that all members of such association other than members which are barred from designation under section 502(b) of the Trade Act of 1974 (19 U.S.C. 2462(b)) shall be treated as one country for purposes of §§ 10.171 through 10.178.

[T.D. 76–2, 40 FR 60047, Dec. 31, 1975, as amended by T.D. 80–271, 45 FR 75641, Nov. 17, 1980; T.D. 00–67, 65 FR 59675, Oct. 5, 2000]

§ 10.172 Claim for exemption from duty under the Generalized System of Preferences.

A claim for an exemption from duty on the ground that the Generalized System of Preferences applies shall be allowed by the port director only if he is satisfied that the requirements set forth in this section and §§ 10.173 through 10.178 have been met. If duty-free treatment is claimed at the time of entry, a written claim shall be filed on the entry document by placing the symbol ''A'' as a prefix to the subheading of the Harmonized Tariff Schedule of the United States for each article for which such treatment is claimed.

[T.D. 76–2, 40 FR 60048, Dec. 31, 1975, as amended by T.D. 77–36, 42 FR 5041, Jan. 27, 1977; T.D. 89–1, 53 FR 51252, Dec. 21, 1988; T.D. 94–47, 59 FR 25569, May 17, 1994; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 10.173 Evidence of country of origin.

(a) *Shipments covered by a formal entry*—(1) *Merchandise not wholly the growth, product, or manufacture of a beneficiary developing country.* (i) *Declaration.* In a case involving merchandise covered by a formal entry which is not wholly the growth, product, or manufacture of a single beneficiary developing country, the exporter of the merchandise or other appropriate party having knowledge of the relevant facts shall be prepared to submit directly to the port director, upon request, a declaration setting forth all pertinent detailed information concerning the production or manufacture of the merchandise. When requested by the port director, the declaration shall be prepared in substantially the following form:

GSP DECLARATION

I, _____ (name), hereby declare that the articles described below were produced or manufactured in _____ (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other country or countries which are members of the same association of countries as set forth below and incorporate materials produced in the country named above or in any other country or countries which are members of the same association of countries as set forth below:

Number and date of invoices	Description of articles and quantity	Processing operations performed on articles		Materials produced in a beneficiary developing country or members of the same association	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of production	Cost or value of material

Date _____
Address _____
Signature _____
Title _____

(ii) *Retention of records and submission of declaration.* The information necessary for preparation of the declaration shall be retained in the files of the party responsible for its preparation and submission for a period of 5 years. In the event that the port director requests submission of the declaration during the 5-year period, it shall be

submitted by the appropriate party directly to the port director within 60 days of the date of the request or such additional period as the port director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(2) *Merchandise wholly the growth, product, or manufacture of a beneficiary developing country.* In a case involving merchandise covered by a formal entry which is wholly the growth, product, or manufacture of a single beneficiary developing country, a statement to that effect shall be included on the commercial invoice provided to Customs.

(b) *Shipments covered by an informal entry.* Although the filing of the declaration provided for in paragraph (a)(1)(i) of this section will not be required for a shipment covered by an informal entry, the port director may require such other evidence of country of origin as deemed necessary.

(c) *Verification of documentation.* Any evidence of country of origin submitted under this section shall be subject to such verification as the port director deems necessary. In the event that the port director is prevented from obtaining the necessary verification, the port director may treat the entry as dutiable.

[T.D. 94–47, 59 FR 25569, May 17, 1994]

§ 10.174 Evidence of direct shipment.

(a) *Documents constituting evidence of direct shipment.* The port director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were ''imported directly'', as that term is defined in § 10.175. Any evidence of direct shipment required by the port director shall be subject to such verification as he deems necessary.

(b) *Waiver of evidence of direct shipment.* The port director may waive the submission of evidence of direct shipment when he is otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise clearly qualifies for treatment under the Generalized System of Preferences.

[T.D. 76–2, 40 FR 60048, Dec. 31, 1975, as amended by T.D. 77–27, 42 FR 3162, Jan. 17, 1977]

§ 10.175 Imported directly defined.

Eligible articles shall be imported directly from a beneficiary developing country to qualify for treatment under the Generalized System of Preferences. For purposes of §§ 10.171 through 10.178 the words ''imported directly'' mean:

(a) Direct shipment from the beneficiary country to the United States without passing through the territory of any other country; or

(b) If the shipment is from a beneficiary developing country to the U.S. through the territory of any other country, the merchandise in the shipment does not enter into the commerce of any other country while en route to the U.S., and the invoice, bills of lading, and other shipping documents show the U.S. as the final destination; or

(c) If shipped from the beneficiary developing country to the United States through a free trade zone in a beneficiary developing country, the merchandise shall not enter into the commerce of the country maintaining the free trade zone, and

(1) The eligible articles must not undergo any operation other than:

(i) Sorting, grading, or testing,

(ii) Packing, unpacking, changes of packing, decanting or repacking into other containers,

(iii) Affixing marks, labels, or other like distinguishing signs on articles or their packing, if incidental to operations allowed under this section, or

(iv) Operations necessary to ensure the preservation of merchandise in its condition as introduced into the free trade zone.

(2) Merchandise may be purchased and resold, other than at retail, for export within the free trade zone.

(3) For the purposes of this section, a free trade zone is a predetermined area or region declared and secured by or under governmental authority, where certain operations may be performed with respect to articles, without such

articles having entered into the commerce of the country maintaining the free trade zone; or

(d) If the shipment is from any beneficiary developing country to the U.S through the territory of any other country and the invoices and other documents do not show the U.S as the final destination, the articles in the shipment upon arrival in the U.S. are imported directly only if they:

(1) Remained under the control of the customs authority of the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the latter's sales agent; and

(3) Were not subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition; or

(e)(1) Shipment to the U.S. from a beneficiary developing country which is a member of an association of countries treated as one country under section 507(2), Trade Act of 1974, as amended (19 U.S.C. 2467(2)), through the territory of a former beneficiary developing country whose designation as a member of the same association for GSP purposes was terminated by the President pursuant to section 502(d), Trade Act of 1974, as amended (19 U.S.C. 2462(d)), provided the articles in the shipment did not enter into the commerce of the former beneficiary developing country except for purposes of performing one or more of the operations specified in paragraph (c)(1) of this section and except for purposes of purchase or resale, other than at retail, for export.

(2) The designation of the following countries as members of an association of countries for GSP purposes has been terminated by the President pursuant to section 502(d) of the Trade Act of 1974 (19 U.S.C. 2462(d)):

The Bahamas
Brunei Darussalam
Malaysia
Singapore

[T.D. 76–2, 40 FR 60048, Dec. 31, 1975, as amended by T.D. 83–144, 48 FR 29684, June 28, 1983; T.D. 84–237, 49 FR 47992, Dec. 7, 1984; T.D. 86–107, 51 FR 20816, June 9, 1986; T.D. 92–6, 57 FR 2018, Jan. 17, 1992; T.D. 94–47, 59 FR 25569, May 17, 1994; T.D. 95–30, 60 FR 18543, Apr. 12, 1995; T.D. 00–67, 65 FR 59675, Oct. 5, 2000]

§ 10.176 Country of origin criteria.

(a) *Merchandise produced in a beneficiary developing country or any two or more countries which are members of the same association of countries*—(1) *General.* Except as otherwise provided in this section, any article which either is wholly the growth, product, or manufacture of, or is a new or different article of commerce that has been grown, produced, or manufactured in, a beneficiary developing country may qualify for duty-free entry under the Generalized System of Preferences (GSP). No article will be considered to have been grown, produced, or manufactured in a beneficiary developing country by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. Duty-free entry under the GSP may be accorded to an article only if the sum of the cost or value of the materials produced in the beneficiary developing country or any two or more countries that are members of the same association of countries and are treated as one country under section 507(2) of the Trade Act of 1974, as amended (19 U.S.C. 2467(2)), plus the direct costs of processing operations performed in the beneficiary developing country or member countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(2) *Combining, packaging, and diluting operations.* No article which has undergone only a simple combining or packaging operation or a mere dilution in a beneficiary developing country within the meaning of paragraph (a)(1) of this section will be entitled to duty-free treatment even though the processing operation causes the article to meet the value requirement set forth in that

paragraph. For purposes of this section:

(i) Simple combining or packaging operations and mere dilution include, but are not limited to, the following:

(A) The addition of batteries to devices;

(B) Fitting together a small number of components by bolting, glueing, soldering, *etc.;*

(C) Blending foreign and beneficiary developing country tobacco;

(D) The addition of substances such as anticaking agents, preservatives, wetting agents, etc.;

(E) Repacking or packaging components together;

(F) Reconstituting orange juice by adding water to orange juice concentrate; and

(G) Diluting chemicals with inert ingredients to bring them to standard degrees of strength;

(ii) Simple combining or packaging operations and mere dilution will not be taken to include processes such as the following:

(A) The assembly of a large number of discrete components onto a printed circuit board;

(B) The mixing together of two bulk medicinal substances followed by the packaging of the mixed product into individual doses for retail sale;

(C) The addition of water or another substance to a chemical compound under pressure which results in a reaction creating a new chemical compound; and

(D) A simple combining or packaging operation or mere dilution coupled with any other type of processing such as testing or fabrication (for example, a simple assembly of a small number of components, one of which was fabricated in the beneficiary developing country where the assembly took place); and

(iii) The fact that an article has undergone more than a simple combining or packaging operation or mere dilution is not necessarily dispositive of the question of whether that processing constitutes a substantial transformation for purposes of determining the country of origin of the article.

(b) [Reserved]

(c) *Merchandise grown, produced, or manufactured in a beneficiary developing country.* Merchandise which is wholly the growth, product, or manufacture of a beneficiary developing country, or an association of countries treated as one country under section 507(2) of the Trade Act of 1974 (19 U.S.C. 2467(2)) and § 10.171(b), and manufactured products consisting of materials produced only in such country or countries, shall normally be presumed to meet the requirements set forth in this section.

[T.D. 76–2, 40 FR 60048, Dec. 31, 1975, as amended by T.D. 80–271, 45 FR 75641, Nov. 17, 1980; T.D. 00–67, 65 FR 59675, Oct. 5, 2000]

§ 10.177 Cost or value of materials produced in the beneficiary developing country.

(a) *''Produced in the beneficiary developing country'' defined.* For purposes of §§ 10.171 through 10.178, the words ''produced in the beneficiary developing country'' refer to the constituent materials of which the eligible article is composed which are either:

(1) Wholly the growth, product, or manufacture of the beneficiary developing country; or

(2) Substantially transformed in the beneficiary developing country into a new and different article of commerce.

(b) *Questionable origin.* When the origin of an article either is not ascertainable or not satisfactorily demonstrated to the port director, the article shall not be considered to have been produced in the beneficiary developing country.

(c) *Determination of cost or value of materials produced in the beneficiary developing country.* (1) The cost or value of materials produced in the beneficiary developing country includes:

(i) The manufacturer's actual cost for the materials;

(ii) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(iii) The actual cost of waste or spoilage (material list), less the value of recoverable scrap; and

(iv) Taxes and/or duties imposed on the materials by the beneficiary developing country, or an association of

countries treated as one country, provided they are not remitted upon exportation.

(2) Where the material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of:

(i) All expenses incurred in the growth, production, manufacture or assembly of the material, including general expenses;

(ii) An amount for profit; and

(iii) Freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant.

If the pertinent information needed to compute the cost or value of the materials is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

[T.D. 76–2, 40 FR 60049, Dec. 31, 1975, as amended by T.D. 86–118, 51 FR 22515, June 20, 1986]

§ 10.178 Direct costs of processing operations performed in the beneficiary developing country.

(a) *Items included in the direct costs of processing operations.* As used in § 10.176, the words ''direct costs of processing operations'' means those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to:

(1) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(2) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(3) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and

(4) Costs of inspecting and testing the specific merchandise.

(b) *Items not included in the direct costs of processing operations.* Those items which are not included within the meaning of the words ''direct costs of processing operations'' are those which are not directly attributable to the merchandise under consideration or are not ''costs'' of manufacturing the product. These include, but are not limited to:

(1) Profit; and

(2) General expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

[T.D. 76–2, 40 FR 60049, Dec. 31, 1975]

§ 10.178a Special duty-free treatment for sub-Saharan African countries.

(a) *General.* Section 506A of the Trade Act of 1974 (19 U.S.C. 2466a) authorizes the President to provide duty-free treatment for certain articles otherwise excluded from duty-free treatment under the Generalized System of Preferences (GSP) pursuant to section 503(b)(1)(B) through (G) of the Trade Act of 1974 (19 U.S.C. 2463(b)(1)(B) through (G)) and authorizes the President to designate a country listed in section 107 of the African Growth and Opportunity Act (19 U.S.C. 3706) as an eligible beneficiary sub-Saharan African country for purposes of that duty-free treatment.

(b) *Eligible articles.* The duty-free treatment referred to in paragraph (a) of this section will apply to any article within any of the following classes of articles, provided that the article in question has been designated by the President for that purpose and is the growth, product, or manufacture of an eligible beneficiary sub-Saharan African country and meets the requirements specified or referred to in paragraph (d) of this section:

(1) Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions;

(2) Certain electronic articles;

(3) Certain steel articles;

(4) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of the GSP on January 1, 1995, as the GSP was in effect on that date;

(5) Certain semimanufactured and manufactured glass products; and

(6) Any other articles which the President determines to be import-sensitive in the context of the GSP.

(c) *Claim for duty-free treatment*. A claim for the duty-free treatment referred to in paragraph (a) of this section must be made by placing on the entry document the symbol ''D'' as a prefix to the subheading of the Harmonized Tariff Schedule of the United States for each article for which duty-free treatment is claimed;

(d) *Origin and related rules*. The provisions of §§10.171, 10.173, and 10.175 through 10.178 will apply for purposes of duty-free treatment under this section. However, application of those provisions in the context of this section will be subject to the following rules:

(1) The term ''beneficiary developing country,'' wherever it appears, means ''beneficiary sub-Saharan African country;'

(2) In the GSP declaration set forth in §10.173(a)(1)(i), the column heading ''Materials produced in a beneficiary developing country or members of the same association'' should read ''Material produced in a beneficiary sub-Saharan African country or in the U.S.;''

(3) The provisions of §10.175(c) will not apply; and

(4) For purposes of determining compliance with the 35 percent value content requirement set forth in §10.176(a):

(i) An amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States, and the provisions of §10.177 will apply for purposes of identifying materials produced in the customs territory of the United States and the cost or value of those materials; and

(ii) The cost or value of materials included in the article that are produced in more than one beneficiary sub-Saharan African country may be applied without regard to whether those countries are members of the same association of countries.

(e) *Importer requirements*. In order to make a claim for duty-free treatment under this section, the importer:

(1) Must have records that explain how the importer came to the conclusion that the article qualifies for duty-free treatment;

(2) Must have records that demonstrate that the importer is claiming that the article qualifies for duty-free treatment because it is the growth of a beneficiary sub-Saharan African country or because it is the product of a beneficiary sub-Saharan African country or because it is the manufacture of a beneficiary sub-Saharan African country. If the importer is claiming that the article is the growth of a beneficiary sub-Saharan African country, the importer must have records that indicate that the product was grown in that country, such as a record of receipt from a farmer whose crops are grown in that country. If the importer is claiming that the article is the product of, or the manufacture of, a beneficiary sub-Saharan African country, the importer must have records that indicate that the manufacturing or processing operations reflected in or applied to the article meet the country of origin rules set forth in §10.176(a) and paragraph (d) of this section. A properly completed GSP declaration in the form set forth in §10.173(a)(1) is one example of a record that would serve this purpose;

(3) Must establish and implement internal controls which provide for the periodic review of the accuracy of the declarations or other records referred to in paragraph (e)(2) of this section;

(4) Must have shipping papers that show how the article moved from the beneficiary sub-Saharan African country to the United States. If the imported article was shipped through a country other than a beneficiary sub-Saharan African country and the invoices and other documents from the beneficiary sub-Saharan African country do not show the United States as the final destination, the importer also

must have documentation that demonstrates that the conditions set forth in § 10.175(d)(1) through (3) were met;

(5) Must have records that demonstrate the cost or value of the materials produced in the United States and the cost or value of the materials produced in a beneficiary sub-Saharan African country or countries and the direct costs of processing operations incurred in the beneficiary sub-Saharan African country that were relied upon by the importer to determine that the article met the 35 percent value content requirement set forth in § 10.176(a) and paragraph (c) of this section. A properly completed GSP declaration in the form set forth in § 10.173(a)(1) is one example of a record that would serve this purpose; and

(6) Must be prepared to produce the records referred to in paragraphs (e)(1), (e)(2), (e)(4), and (e)(5) of this section within 30 days of a request from Customs and must be prepared to explain how those records and the internal controls referred to in paragraph (e)(3) of this section justify the importer's claim for duty-free treatment.

[T.D. 00–67, 65 FR 59675, Oct. 5, 2000]

CANADIAN CRUDE PETROLEUM

§ 10.179 Canadian crude petroleum subject to a commercial exchange agreement between United States and Canadian refiners.

(a) Crude petroleum (as defined in Chapter 27, Additional U.S. Note 1, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202)) produced in Canada may be admitted free of duty if the entry is accompanied by a certificate from the importer establishing that:

(1) The petroleum is imported pursuant to a commercial exchange agreement between United States and Canadian refiners which has been approved by the Secretary of Energy;

(2) An equivalent amount of domestic or duty-paid foreign crude petroleum on which the importer has executed a written waiver of drawback, has been exported to Canada pursuant to the export license and previously has not been used to effect the duty-free entry of like Canadian products; and,

(3) An export license has been issued by the Secretary of Commerce for the petroleum which has been exported to Canada.

(b) The provisions of this section may be applied to:

(1) Liquidated or reliquidated entries if the required certification is filed with the director of the port where the original entry was made on or before the 180th day after the date of entry; and

(2) Articles entered, or withdrawn from warehouse, for consumption, pursuant to a commercial exchange agreement.

(c) Verification of the quantities of crude petroleum exported to or imported from Canada under such a commercial exchange agreement shall be made in accordance with import verification provided in Part 151, Subpart C, Customs Regulations (19 CFR part 151, subpart C).

[T.D. 81–292, 46 FR 58069, Nov. 30, 1981, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988; T.D. 91–82, 56 FR 49845, Oct. 2, 1991]

CERTAIN FRESH, CHILLED, OR FROZEN BEEF

§ 10.180 Certification.

(a) The foreign official's meat-inspection certificate required by U.S. Department of Agriculture regulations (9 CFR 327.4) shall be modified to include the certification below when fresh, chilled, or frozen beef is to be entered under the provisions of subheadings 0201.20.10, 0201.30.02, 0202.20.02, 0202.20.10, Harmonized Tariff Schedule of the United States (HTSUS). The certification shall be made, prior to exportation of the beef, by an official of the government of the exporting country and filed with Customs with the entry summary or with the entry when the entry summary is filed at the time of entry. The requirements of this section shall be in addition to those requirements contained in 9 CFR 327.4. Appropriate officials of the exporting country should consult with the U.S. Department of Agriculture as to the beef grades or standards within their country that satisfy the certification requirement. Exporters or importers of beef to be entered under the provisions of subheadings 0201.20.10, 0201.30.02,

0202.20.02, 0202.20.10, HTSUS, should consult with the U.S. Department of Agriculture prior to exportation in order to insure that the beef will satisfy the certification requirements. This certification is relevant only to U.S. Customs tariff classification and is not applicable to marketing of beef under U.S. Department of Agriculture grading standards, a matter within U.S. Department of Agriculture's jurisdiction.

CERTIFICATION

I hereby certify to the best of my knowledge and belief that the herein described fresh, chilled, or frozen beef, meets the specifications prescribed in regulations issued by the U.S. Department of Agriculture (7 CFR 2853.106 (a) and (b)).

(b) Appropriate officials of the following countries have agreed with the U.S. Department of Agriculture as to the grades or standards for fresh, chilled, or frozen beef within their respective countries which will satisfy the certification requirements of paragraph (a) of this section: Canada.

[T.D. 82–8, 47 FR 945, Jan. 8, 1982, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

WATCHES AND WATCH MOVEMENTS FROM U.S. INSULAR POSSESSIONS

§§ 10.181–10.182 [Reserved]

CIVIL AIRCRAFT

§ 10.183 Duty-free entry of civil aircraft, aircraft engines, ground flight simulators, parts, components, and subassemblies.

(a) *Applicability*. Except as provided in paragraph (b) of this section, this section applies to aircraft, aircraft engines, and ground flight simulators, including their parts, components, and subassemblies, that qualify as civil aircraft under General Note 6(b) ofthe Harmonized Tariff Schedule of the United States (HTSUS) by meeting the following requirements:

(1) The aircraft, aircraft engines, ground flight simulators, or their parts, components, and subassemblies, are used as original or replacement equipment in the design, development, testing, evaluation, manufacture, repair, maintenance, rebuilding, modification, or conversion of aircraft; and

(2) They are either:

(i) Manufactured or operated pursuant to a certificate issued by the Administrator of the Federal Aviation Administration (FAA) under 49 U.S.C. 44704 or pursuant to the approval of the airworthiness authority in the country of exportation, if that approval is recognized by the FAA as an acceptable substitute for the FAA certificate;

(ii) Covered by an application for such certificate, submitted to and accepted by the FAA, filed by an existing type and production certificate holder pursuant to 49 U.S.C. 44702 and implementing regulations (Federal Aviation Administration Regulations, title 14, Code of Federal Regulations); or

(iii) Covered by an application for such approval or certificate which will be submitted in the future by an existing type and production certificate holder, pending the completion of design or other technical requirements stipulated by the FAA (applicable only to the quantities of parts, components, and subassemblies as are required to meet the stipulation).

(b) *Department of Defense or U.S. Coast Guard use*. If purchased for use by the Department of Defense or the United States Coast Guard, aircraft, aircraft engines, and ground flight simulators, including their parts, components, and subassemblies, are subject to this section only if they are used as original or replacement equipment in the design, development, testing, evaluation, manufacture, repair, maintenance, rebuilding, modification, or conversion of aircraft and meet the requirements of either paragraph (a)(2)(i) or (a)(2)(ii) of this section.

(c) *Claim for admission free of duty*. Merchandise qualifying under paragraph (a) or paragraph (b) of this section is entitled to duty-free admission in accordance with General Note 6, HTSUS, upon meeting the requirements of this section. An importer will make a claim for duty-free admission under this section and General Note 6, HTSUS, by properly entering qualifying merchandise under a provision for which the rate of duty ''Free (C)'' appears in the ''Special'' subcolumn of the HTSUS and by placing the special indicator ''C'' on the entry summary. The fact that qualifying merchandise

has previously been exported with benefit of drawback does not preclude free entry under this section.

(d) *Importer certification.* In making a claim for duty-free admission as provided for under paragraph (c) of this section, the importer is deemed to certify, in accordance with General Note 6(a)(ii), HTSUS, that the imported merchandise is, as described in paragraph (a) or paragraph (b) of this section, a civil aircraft or has been imported for use in a civil aircraft and will be so used.

(e) *Documentation.* Each entry summary claiming duty-free admission for imported merchandise in accordance with paragraph (c) of this section must be supported by documentation to verify the claim for duty-free admission, including the written order or contract and other evidence that the merchandise entered qualifies under General Note 6, HTSUS, as a civil aircraft, aircraft engine, or ground flight simulator, or their parts, components, and subassemblies. Evidence that the merchandise qualifies under the general note includes evidence of compliance with paragraph (a)(1) of this section concerning use of the merchandise and evidence of compliance with the airworthiness certification requirement of paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this section, including, as appropriate in the circumstances, an FAA certification; approval of airworthiness by an airworthiness authority in the country of export and evidence that the FAA recognizes that approval as an acceptable substitute for an FAA certification; an application for a certification submitted to and accepted by the FAA; a type and production certificate issued by the FAA; and/or evidence that a type and production certificate holder will submit an application for certification or approval in the future pending completion of design or other technical requirements stipulated by the FAA and of estimates of quantities of parts, components, and subassemblies as are required to meet design and technical requirements stipulated by the FAA. This documentation need not be filed with the entry summary but must be maintained in accordance with the general note and with the recordkeeping provisions of Part 163 of this chapter. Customs may request production of documentation at any time to verify the claim for duty-free admission. Failure to produce documentation sufficient to satisfy the port director that the merchandise qualifies for duty-free admission will result in a denial of duty-free treatment and may result in such other measures permitted under the regulations as the port director finds necessary to more closely monitor the importer's importations of merchandise claimed to be duty-free under this section. Proof of end use of the entered merchandise need not be maintained.

(f) *Post-entry claim.* An importer may file a claim for duty-free treatment under General Note 6, HTSUS, after filing an entry that made no such duty-free claim, by filing a written statement with Customs any time prior to liquidation of the entry or prior to the liquidation becoming final. When filed, the written statement constitutes the importer=s claim for duty-free treatment under the general note and its certification that the entered merchandise is a civil aircraft or has been imported for use in a civil aircraft and will be so used. In accordance with General Note 6, HTSUS, any refund resulting from a claim made under this paragraph will be without interest, notwithstanding the provision of 19 U.S.C. 1505(c).

(g) *Verification.* The port director will monitor and periodically audit selected entries made under this section.

[T.D. 01–31, 67 FR 39289, June 7, 2002]

Subpart B—Caribbean Basin Initiative

SOURCE: Sections 10.191 through 10.197 issued by T.D. 84–237, 49 FR 47993, Dec. 7, 1984, unless otherwise noted.

§ 10.191 General.

(a) *Statutory authority.* Subtitle A, Title II, Pub. L. 98–67, entitled the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701–2706) and referred to as the Caribbean Basin Initiative (CBI), authorizes the President to proclaim duty-free treatment for all eligible articles from any beneficiary country.

(b) *Definitions*—(1) *Beneficiary country*. For purposes of § 10.191 through § 10.199 and except as otherwise provided in § 10.195(b), the term ''beneficiary country'' means any country or territory or successor political entity with respect to which there is in effect a proclamation by the President designating such country, territory or successor political entity as a beneficiary country in accordance with section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(a)(1)(A)).

(2) *Eligible articles*. Except as provided herein, for purposes of § 10.191(a), the term ''eligible articles'' means any merchandise which is imported directly from a beneficiary country as provided in § 10.193 and which meets the country of origin criteria set forth in § 10.195 or in § 10.198b. The following merchandise shall not be considered eligible articles entitled to duty-free treatment under the CBI.

(i) Textile and apparel articles which were not eligible articles for purposes of the CBI on January 1, 1994, as the CBI was in effect on that date.

(ii) Footwear not designated on August 5, 1983, as eligible articles for the purpose of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467).

(iii) Tuna, prepared or preserved in any manner, in airtight containers.

(iv) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710, Harmonized Tariff Schedule of the United States (HTSUS).

(v) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply.

(vi) Articles to which reduced rates of duty apply under § 10.198a.

(vii) Sugars, sirups, and molasses, provided for in subheadings 1701.11.00 and 1701.12.00, HTSUS, to the extent that importation and duty-free treatment of such articles are limited by Additional U.S. Note 4, Chapter 17, HTSUS.

(viii) Articles subject to the provisions of the subheadings of Subchapter III, from the beginning through 9903.85.21, Chapter 99, HTSUS, to the extent that such provisions have not been modified or terminated by the President pursuant to section 213(e)(5) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(e)(5)).

(ix) Merchandise for which duty-free treatment under the CBI is suspended or withdrawn by the President pursuant to sections 213 (c)(2), (e)(1), or (f)(3) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703 (c)(2), (e)(1), or (f)(3)).

(3) *Wholly the growth, product, or manufacture of a beneficiary country*. For purposes of § 10.191 through § 10.199, the expression ''wholly the growth, product, or manufacture of a beneficiary country'' refers both to any article which has been entirely grown, produced, or manufactured in a beneficiary country or two or more beneficiary countries and to all materials incorporated in an article which have been entirely grown, produced, or manufactured in any beneficiary country or two or more beneficary countries, as distinguished from articles or materials imported into a beneficiary country from a non-beneficiary country whether or not such articles or materials were substantially transformed into new or different articles of commerce after their importation into the beneficiary country.

(4) *Entered*. For purposes of § 10.191 through § 10.199, the term ''entered'' means entered, or withdrawn from warehouse for consumption, in the customs territory of the U.S.

[T.D. 84–237, 49 FR 47993, Dec. 7, 1984, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988; T.D. 00–68, 65 FR 59657, Oct. 5, 2000; T.D. 01–17, 66 FR 9645, Feb. 9, 2001]

§ 10.192 Claim for exemption from duty under the CBI.

A claim for an exemption from duty on the ground that the CBI applies shall be allowed by the port director only if he is satisfied that the requirements set forth in this section and § 10.193 through § 10.198b have been met. Duty-free treatment may be claimed at

the time of filing the entry summary by placing the symbol ''E'' as a prefix to the HTSUS subheading number for each article for which such treatment is claimed on that document.

[T.D. 84–237, 49 FR 47993, Dec. 7, 1984, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988; T.D. 94–47, 59 FR 25570, May 17, 1994; T.D. 00–68, 65 FR 59658, Oct. 5, 2000]

§ 10.193 Imported directly.

To qualify for treatment under the CBI, an article shall be imported directly from a beneficiary country into the customs territory of the U.S. For purposes of § 10.191 through § 10.198b the words ''imported directly'' mean:

(a) Direct shipment from any beneficiary country to the U.S. without passing through the territory of any non-beneficiary country; or

(b) If the shipment is from any beneficiary country to the U.S. through the territory of any non-beneficiary country, the articles in the shipment do not enter into the commerce of any non-beneficiary country while en route to the U.S. and the invoices, bills of lading, and other shipping documents show the U.S. as the final destination; or

(c) If the shipment is from any beneficiary country to the U.S. through the territory of any non-beneficiary country, and the invoices and other documents do not show the U.S. as the final destination, the articles in the shipment upon arrival in the U.S. are imported directly only if they:

(1) Remained under the control of the customs authority of the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commericial transaction between the importer and the producer or the latter's sales agent; and

(3) Were not subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition.

[T.D. 84–237, 49 FR 47993, Dec. 7, 1984, as amended by T.D. 00–68, 65 FR 59658, Oct. 5, 2000]

§ 10.194 Evidence of direct shipment.

(a) *Documents constituting evidence of direct shipment.* The port director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were ''imported directly'', as that term is defined in § 10.193. Any evidence of direct shipment required shall be subject to such verification as deemed necessary by the port director.

(b) *Waiver of evidence of direct shipment.* The port director may waive the submission of evidence of direct shipment when otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise was, in fact, imported directly and that it otherwise clearly qualifies for treatment under the CBI.

§ 10.195 Country of origin criteria.

(a) *Articles produced in a beneficiary country*—(1) *General.* Except as provided herein, any article which is either wholly the growth, product, or manufacture of a beneficiary country or a new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country, may qualify for duty-free entry under the CBI. No article or material shall be considered to have been grown, produced, or manufactured in a beneficiary country by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. Duty-free entry under the CBI may be accorded to an article only if the sum of the cost or value of the material produced in a beneficiary country or countries, plus the direct costs of processing operations performed in a beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(2) *Combining, packaging, and diluting operations.* No article which has undergone only a simple combining or packaging operation or a mere dilution in a beneficiary country within the meaning of paragraph (a)(1) of this section shall be entitled to duty-free treatment

even though the processing operation causes the article to meet the value requirement set forth in that paragraph.

(i) For purposes of this section, simple combining or packaging operations and mere dilution include, but are not limited to, the following processes:

(A) The addition of batteries to devices;

(B) Fitting together a small number of components by bolting, glueing, soldering etc.;

(C) Blending foreign and beneficiary country tobacco;

(D) The addition of substances such as anticaking agents, preservatives, wetting agents, etc.;

(E) Repacking or packaging components together;

(F) Reconstituting orange juice by adding water to orange juice concentrate; and

(G) Diluting chemicals with inert ingredients to bring them to standard degrees of strength.

(ii) For purposes of this section, simple combining or packaging operations and mere dilution shall not be taken to include processes such as the following:

(A) The assembly of a large number of discrete components onto a printed circuit board;

(B) The mixing together of two bulk medicinal substances followed by the packaging of the mixed product into individual doses for retail sale;

(C) The addition of water or another substance to a chemical compound under pressure which results in a reaction creating a new chemical compound; and

(D) A simple combining or packaging operation or mere dilution coupled with any other type of processing such as testing or fabrication (*e.g.*, a simple assembly of a small number of components, one of which was fabricated in the beneficiary country where the assembly took place).

The fact that an article or material has undergone more than a simple combining or packaging operation or mere dilution is not necessarily dispositive of the question of whether that processing constitutes a substantial transformation for purposes of determining the country of origin of the article or material.

(b) *Commonwealth of Puerto Rico and U.S. Virgin Islands*—(1) *General*. For purposes of determining the percentage referred to in paragraph (a) of this section, the term ''beneficiary country'' includes the Commonwealth of Puerto Rico and the U.S. Virgin Islands. Any cost or value of materials or direct costs of processing operations attributable to the U.S. Virgin Islands must be included in the article prior to its final exportation from a beneficiary country to the United States.

(2) *Manufacture in the Commonwealth of Puerto Rico after final exportation*. Notwithstanding the provisions of 19 U.S.C. 1311, if an article from a beneficiary country is entered under bond for processing or use in manufacturing in the Commonwealth of Puerto Rico, no duty will be imposed on the withdrawal from warehouse for consumption of the product of that processing or manufacturing provided that:

(i) The article entered in the warehouse in the Commonwealth of Puerto Rico was grown, produced, or manufactured in a beneficiary country within the meaning of paragraph (a) of this section and was imported directly from a beneficiary country within the meaning of § 10.193; and

(ii) At the time of its withdrawal from the warehouse, the product of the processing or manufacturing in the Commonwealth of Puerto Rico meets the 35 percent value-content requirement prescribed in paragraph (a) of this section.

(c) *Materials produced in the U.S.* For purposes of determining the percentage referred to in paragraph (a) of this section, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the U.S. (other than the Commonwealth of Puerto Rico). In the case of materials produced in the customs territory of the U.S., the provisions of § 10.196 shall apply.

(d) *Textile components cut to shape in the U.S.* The percentage referred to in paragraph (c) of this section may be attributed in whole or in part to the cost or value of a textile component that is cut to shape (but not to length, width, or both) in the U.S. (including the

Commonwealth of Puerto Rico) from foreign fabric and exported to a beneficiary country for assembly into an article that is then returned to the U.S. and entered, or withdrawn from warehouse, for consumption on or after July 1, 1996. For purposes of this paragraph, the terms ''textile component'' and ''fabric'' have reference only to goods covered by the definition of ''textile or apparel product'' set forth in § 102.21(b)(5) of this chapter.

(e) *Articles wholly grown, produced, or manufactured in a beneficiary country.* Any article which is wholly the growth, product, or manufacture of a beneficiary country, including articles produced or manufactured in a beneficiary country exclusively from materials which are wholly the growth, product, or manufacture of a beneficiary country or countries, shall normally be presumed to meet the requirements set forth in paragraph (a) of this section.

(f) *Country of origin marking.* The general country of origin marking requirements that apply to all importations are also applicable to articles imported under the CBI.

[T.D. 84–237, 49 FR 47993, Dec. 7, 1984; 49 FR 49575, Dec. 20, 1984, as amended by T.D. 95–69, 60 FR 46197, Sept. 5, 1995; T.D. 95–69, 60 FR 55995, Nov. 6, 1996; T.D. 00–68, 65 FR 59658, Oct. 5, 2000]

§ 10.196 Cost or value of materials produced in a beneficiary country or countries.

(a) *''Materials produced in a beneficiary country or countries'' defined.* For purposes of § 10.195, the words ''materials produced in a beneficiary country or countries'' refer to those materials incorporated in an article which are either:

(1) Wholly the growth, product, or manufacture of a beneficiary country or two or more beneficiary countries; or

(2) Subject to the limitations set forth in § 10.195(a), substantially transformed in any beneficiary country or two or more beneficiary countries into a new or different article of commerce which is then used in any beneficiary country in the production or manufacture of a new or different article which is imported directly into the U.S.

Example 1. A raw, perishable skin of an animal grown in one beneficiary country is sent to another beneficiary country where it is tanned to create nonperishable ''crust leather''. The tanned product is then imported directly into the U.S. Because the material of which the imported article is composed is wholly the growth, product, or manufacture of one of more beneficiary countries, the entire cost or value of that material may be counted toward the 35 percent value requirement set forth in § 10.195.

Example 2. A raw, perishable skin of an animal grown in a non-beneficiary country is sent to a beneficiary country where it is tanned to create nonperishable ''crust leather''. The tanned skin is then imported directly into the U.S. Although the tanned skin represents a new or different article of commerce produced in a beneficiary country within the meaning of § 10.195(a), the cost or value of the raw skin may not be counted toward the 35 percent value requirement because (1) the tanned material of which the imported article is composed is not wholly the growth, product, or manufacture of a beneficiary country and (2) the tanning operation creates the imported article itself rather than an intermediate article which is then used in the beneficiary country in the production or manufacture of an article imported into the U.S. The tanned skin would be eligible for duty-free treatment only if the direct costs attributable to the tanning operation represent at least 35 percent of the appraised value of the imported article.

Example 3. A raw, perishable skin of an animal grown in a non-beneficiary country is sent to a beneficiary country where it is tanned to create nonperishable ''crust leather''. The tanned material is then cut, sewn and assembled with a metal buckle imported from a non-beneficiary country to create a finished belt which is imported directly into the U.S. Because the operations performed in the beneficiary country involved both the substantial transformation of the raw skin into a new or different article and the use of that intermediate article in the production or manufacture of a new or different article imported into the U.S., the cost or value of the tanned material used to make the imported article may be counted toward the 35 percent value requirement. The cost or value of the metal buckle imported into the beneficiary country may not be counted toward the 35 percent value requirement because the buckle was not substantially transformed in the beneficiary country into a new or different article prior to its incorporation in the finished belt.

Example 4. A raw, perishable skin of an animal grown in the U.S. Virgin Islands is sent to a beneficiary country where it is tanned to create nonperishable ''crust leather'', which is then imported directly into the U.S.

The tanned skin represents a new or different article of commerce produced in a beneficiary country within the meaning of § 10.195(a), and under § 10.195(b), the raw skin from which the tanned product was made is considered to have been grown in a beneficiary country for the purpose of applying the 35 percent value requirement. The tanned material of which the imported article is composed is considered to be wholly the growth, product, or manufacture of one or more beneficiary countries with the result that the entire cost or value of that material may be counted toward the 35 percent value requirement.

(b) *Questionable origin*. When the origin of a material either is not ascertainable or is not satisfactorily demonstrated to the port director, the material shall not be considered to have been grown, produced, or manufactured in a beneficiary country.

(c) *Determination of cost or value of materials produced in a beneficiary country*. (1) The cost or value of materials produced in a beneficiary country or countries includes:

(i) The manufacturer's actual cost for the materials;

(ii) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(iii) The actual cost of waste or spoilage (material list), less the value of recoverable scrap; and

(iv) Taxes and/or duties imposed on the materials by any beneficiary country, provided they are not remitted upon exportation.

(2) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of:

(i) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(ii) An amount for profit; and

(iii) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

If the pertinent information needed to compute the cost or value of a material is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

§ 10.197 Direct costs of processing operations performed in a beneficiary country or countries.

(a) *Items included in the direct costs of processing operations*. As used in § 10.195 and § 10.198, the words ''direct costs of processing operations'' mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported merchandise:

(1) All actual labor costs involved in the growth, production, manufacture or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(2) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(3) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise and;

(4) Costs of inspecting and testing the specific merchandise.

(b) *Items not included in the direct costs of processing operations*. Those items which are not included within the meaning of the words ''direct costs of processing operations'' are those which are not directly attributable to the merchandise under consideration or are not ''costs'' of manufacturing the product. These include, but are not limited to:

(1) Profit; and

(2) General expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

[T.D. 84–237, 49 FR 47993, Dec. 7, 1984; 49 FR 49575, Dec. 20, 1984]

§ 10.198 Evidence of country of origin.

(a) *Shipments covered by a formal entry*—(1) *Articles not wholly the growth, product, or manufacture of a beneficiary country*—(i) *Declaration*. In a case involving an article covered by a formal entry which is not wholly the growth, product, or manufacture of a single beneficiary country, the exporter or other appropriate party having knowledge of the relevant facts in the beneficiary country where the article was produced or last processed shall be prepared to submit directly to the port director, upon request, a declaration setting forth all pertinent detailed information concerning the production or manufacture of the article. When requested by the port director, the declaration shall be prepared in substantially the following form:

CBI DECLARATION

I. _____,
(name), hereby declare that the articles described below (a) were produced or manufactured in _____ (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other beneficiary country or countries (including the Commonwealth of Puerto Rico and the U.S. Virgin Islands) as set forth below and (b) incorporate materials produced in the country named above or in any other beneficiary country or countries (including the Commonwealth of Puerto Rico and the U.S. Virgin Islands) or in the customs territory of the United States (other than the Commonwealth of Puerto Rico) as set forth below:

Number and date of invoices	Description of articles and quantity	Processing operations performed on articles		Material produced in a beneficiary country or in the U.S.	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of production	Cost or value of material

Date _____
Address _____
Signature _____
Title _____

(ii) *Retention of records and submission of declaration*. The information necessary for preparation of the declaration shall be retained in the files of the party responsible for its preparation and submission for a period of 5 years. In the event that the port director requests submission of the declaration during the 5-year period, it shall be submitted by the appropriate party directly to the port director within 60 days of the date of the request or such additional period as the port director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(iii) *Value added after final exportation*. In a case in which value is added to an article in a bonded warehouse or in a foreign-trade zone in the Commonwealth of Puerto Rico or in the U.S. after final exportation of the article from a beneficiary country, in order to ensure compliance with the value requirement under § 10.195(a), the declaration provided for in paragraph (a)(1)(i) of this section shall be filed by the importer or consignee with the entry summary as evidence of the country of origin. The declaration shall be properly completed by the party responsible for the addition of such value.

(2) *Merchandise wholly the growth, product, or manufacture of a beneficiary country*. In a case involving merchandise covered by a formal entry which is wholly the growth, product, or manufacture of a single beneficiary country, a statement to that effect shall be included on the commercial invoice provided to Customs.

(b) *Shipments covered by an informal entry*. Although the filing of the declaration provided for in paragraph

(a)(1)(i) of this section will not be required for a shipment covered by an informal entry, the port director may require such other evidence of country of origin as deemed necessary.

(c) *Verification of documentation.* Any evidence of country of origin submitted under this section shall be subject to such verification as the port director deems necessary. In the event that the port director is prevented from obtaining the necessary verification, the port director may treat the entry as dutiable.

[T.D. 94–47, 59 FR 25570, May 17, 1994]

§ 10.198a Duty reduction for certain leather-related articles.

Except as otherwise provided in § 10.233, reduced rates of duty as proclaimed by the President will apply to handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467), provided that the article in question at the time it is entered:

(a) Was grown, produced, or manufactured in a beneficiary country within the meaning of § 10.195;

(b) Meets the 35 percent value-content requirement prescribed in § 10.195; and

(c) Was imported directly from a beneficiary country within the meaning of § 10.193.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000]

§ 10.198b Products of Puerto Rico processed in a beneficiary country.

Except in the case of any article described in § 10.191(b)(2)(i) through (vi), the duty-free treatment provided for under the CBI will apply to an article that is the growth, product, or manufacture of the Commonwealth of Puerto Rico and that is by any means advanced in value or improved in condition in a beneficiary country, provided that:

(a) If any materials are added to the article in the beneficiary country, those materials consist only of materials that are a product of a beneficiary country or the United States; and

(b) The article is imported directly from the beneficiary country into the customs territory of the United States within the meaning of § 10.193.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000]

§ 10.199 Duty-free entry for certain beverages produced in Canada from Caribbean rum.

(a) *General.* A spirituous beverage that is imported directly from the territory of Canada and that is classifiable under subheading 2208.40 or 2208.90, Harmonized Tariff Schedule of the United States (HTSUS), will be entitled, upon entry or withdrawal from warehouse for consumption, to duty-free treatment under section 213(a)(6) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(6)), also known as the Caribbean Basin Initiative (CBI), if the spirituous beverage has been produced in the territory of Canada from rum, provided that the rum:

(1) Is the growth, product, or manufacture either of a beneficiary country or of the U.S. Virgin Islands;

(2) Was imported directly into the territory of Canada from a beneficiary country or from the U.S. Virgin Islands; and

(3) Accounts for at least 90 percent of the alcoholic content by volume of the spirituous beverage.

(b) *Claim for exemption from duty under CBI.* A claim for an exemption from duty for a spirituous beverage under section 213(a)(6) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(6)) may be made by entering such beverage under subheading 9817.22.05, HTSUS, on the entry summary document or its electronic equivalent. In order to claim the exemption, the importer must have the records described in paragraphs (d), (e), (f) and (g) of this section so that, upon Customs request, the importer can establish that:

(1) The rum used to produce the beverage is the growth, product or manufacture either of a beneficiary country or of the U.S. Virgin Islands;

(2) The rum was shipped directly from a beneficiary country or from the U.S. Virgin Islands to Canada;

(3) The beverage was produced in Canada;

(4) The rum accounts for at least 90% of the alcohol content of the beverage; and

(5) The beverage was shipped directly from Canada to the United States.

(c) *Imported directly*. For a spirituous beverage imported from Canada to qualify for duty-free entry under the CBI, the spirituous beverage must be imported directly into the customs territory of the United States from Canada; and the rum used in its production must have been imported directly into the territory of Canada either from a beneficiary country or from the U.S. Virgin Islands.

(1) ''Imported directly'' into the customs territory of the United States from Canada means:

(i) Direct shipment from the territory of Canada to the U.S. without passing through the territory of any other country; or

(ii) If the shipment is from the territory of Canada to the U.S. through the territory of any other country, the spirituous beverages do not enter into the commerce of any other country while en route to the U.S.; or

(iii) If the shipment is from the territory of Canada to the U.S. through the territory of another country, and the invoices and other documents do not show the U.S. as the final destination, the spirituous beverages in the shipment are imported directly only if they:

(A) Remained under the control of the customs authority of the intermediate country;

(B) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the latter's sales agent; and

(C) Were not subjected to operations other than loading and unloading, and other activities necessary to preserve the products in good condition.

(2) ''Imported directly'' from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada means:

(i) Direct shipment from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada without passing through the territory of any non-beneficiary country; or

(ii) If the shipment is from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada through the territory of any non-beneficiary country, the rum does not enter into the commerce of any non-beneficiary country while en route to Canada; or

(iii) If the shipment is from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada through the territory of any non-beneficiary country, the rum in the shipment is imported directly into the territory of Canada only if it:

(A) Remained under the control of the customs authority of the intermediate country;

(B) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail; and

(C) Was not subjected to operations in the intermediate country other than loading and unloading, and other activities necessary to preserve the product in good condition.

(d) *Evidence of direct shipment*—(1) *Spirituous beverages imported from Canada*. The importer must be prepared to provide to the port director, if requested, documentary evidence that the spirituous beverages were imported directly from the territory of Canada, as described in paragraph (c)(1) of this section. This evidence may include documents such as a bill of lading, invoice, air waybill, freight waybill, or cargo manifest. Any evidence of the direct shipment of these spirituous beverages from Canada into the U.S. may be subject to such verification as deemed necessary by the port director.

(2) *Rum imported into Canada from beneficiary country or U.S. Virgin Islands*. The importer must be prepared to provide to the port director, if requested, evidence that the rum used in producing the spirituous beverages was imported directly into the territory of Canada from a beneficiary country or from the U.S. Virgin Islands, as described in paragraph (c)(2) of this section. This evidence may include documents such as a Canadian customs entry, Canadian customs invoice, Canadian customs manifest, cargo manifest,

bill of lading, landing certificate, airway bill, or freight waybill. Any evidence of the direct shipment of the rum from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada for use there in producing the spirituous beverages may be subject to such verification as deemed necessary by the port director.

(e) *Origin of rum used in production of the spirituous beverage*—(1) *Origin criteria*. In order for a spirituous beverage covered by this section to be entitled to duty-free entry under the CBI, the rum used in producing the spirituous beverage in the territory of Canada must be wholly the growth, product, or manufacture either of a beneficiary country under the CBI or of the U.S. Virgin Islands, or must constitute a new or different article of commerce that was produced or manufactured in a beneficiary country or in the U.S. Virgin Islands. Such rum will not be considered to have been grown, produced, or manufactured in a beneficiary country or in the U.S. Virgin Islands by virtue of having merely undergone blending, combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the product.

(2) *Evidence of origin of rum*—(i) *Declaration*. The importer must be prepared to submit directly to the port director, if requested, a declaration prepared and signed by the person who produced or manufactured the rum, affirming that the rum is the growth, product or manufacture of a beneficiary country or of the U.S. Virgin Islands. While no particular form is prescribed for the declaration, it must include all pertinent information concerning the processing operations by which the rum was produced or manufactured, the address of the producer or manufacturer, the title of the party signing the declaration, and the date it is signed.

(ii) *Records supporting declaration*. The supporting records, including those production records, that are necessary for the preparation of the declaration must also be available for submission to the port director if requested. The declaration and any supporting evidence as to the origin of the rum may be subject to such verification as deemed necessary by the port director.

(f) *Canadian processor declaration; supporting documentation*. (1) *Canadian processor declaration*. The importer must be prepared to submit directly to the port director, if requested, a declaration prepared by the person who produced the spirituous beverage(s) in Canada, setting forth all pertinent information concerning the production of the beverages. The declaration will be in substantially the following form:

I, _____ declare that the spirituous beverages here specified are the products that were produced by me (us), as described below, with the use of rum that was received by me (us); that the rum used in producing the beverages was received by me (us) on _____ (date), from _____ (name and address of owner or exporter in the beneficiary country or in the U.S. Virgin Islands, as applicable); and that such rum accounts for at least 90 percent of the alcoholic content by volume, as shown below, of each spirituous beverage so produced.

Marks and numbers	Description of products and of processing	Alcoholic content of products; alcoholic content (%) attributable to rum [1]
.....	.....	.....
.....	.....	.....
.....	.....	.....

[1] The production records must establish, for each lot of beverage produced, the quantity of rum the growth, product or manufacture of a CBI beneficiary country or of the U.S. Virgin Islands under 19 U.S.C. 2703(a)(6) that is used in producing the finished beverage; the alcoholic content by volume of the finished beverage; and the alcoholic content by volume of the finished beverage, expressed as a percentage, that is attributable to the qualifying rum. If rum from two or more qualifying sources (*e.g.*, rum the growth, product or manufacture of a CBI beneficiary country or of the U.S. Virgin Islands and other rum the growth, product or manufacture of another CBI country) are used in processing the beverage, the alcoholic content requirement may be met by aggregating the alcoholic content of the finished beverage that is attributable to rum from each of the qualifying sources used in processing the finished beverage, as reflected in the production records.

Date _____
Address _____
Signature _____
Title _____

(2) *Availability of supporting documents*. The information, including any supporting documents and records, necessary for the preparation of the declaration, as described in paragraph (f)(1) of this section, must be available for submission to the port director, if

requested. The declaration and any supporting evidence may be subject to such verification as deemed necessary by the port director. The specific documentary evidence necessary to support the declaration consists of those documents and records which satisfactorily establish:

(i) The receipt of the rum by the Canadian processor, including the date of receipt and the name and address of the party from whom the rum was received (the owner or exporter in the beneficiary country or the U.S. Virgin Islands); and

(ii) For each lot of beverage produced and included in the declaration, the specific identification of the production lot(s) involved; the quantity of qualifying rum that is used in producing the finished beverage, including a description of the processing and of the finished products; the alcoholic content by volume of the finished beverage; and the alcoholic content by volume of the finished beverage, expressed as a percentage, that is attributable to the qualifying rum.

(g) *Importer system for review of necessary recordkeeping*. The importer will establish and implement a system of internal controls which demonstrate that reasonable care was exercised in its claim for duty-free treatment under the CBI. These controls should include tests to assure the accuracy and availability of records that establish:

(1) The origin of the rum;

(2) The direct shipment of the rum from a beneficiary country or from the U.S. Virgin Islands to Canada;

(3) The alcohol content of the finished beverage imported from Canada; and

(4) The direct shipment of the finished beverage from Canada to the United States.

(h) *Submission of documents to Customs*. The importer must be prepared to submit directly to the port director, if requested, those documents and/or supporting records as described in paragraphs (d), (e) and (f) of this section, for a period of 5 years from the date of entry of the related spirituous beverages under section 213(a)(6) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(6)), as provided in § 163.4(a) of this chapter. If requested, the importer must submit such documents and/or supporting records to the port director within 60 calendar days of the date of the request or such additional period as the port director may allow for good cause shown.

[T.D. 02–59, 67 FR 62882, Oct. 9, 2002]

Subpart C—Andean Trade Preference

SOURCE: Sections 10.201 through 10.208 appear at T.D. 98–76, 63 FR 51292, Sept. 25, 1998, unless otherwise noted.

§ 10.201 Applicability.

Title II of Pub. L. 102–182 (105 Stat. 1233), entitled the Andean Trade Preference Act (ATPA) and codified at 19 U.S.C. 3201 through 3206, authorizes the President to proclaim duty-free treatment for all eligible articles from any beneficiary country and to designate countries as beneficiary countries. The provisions of §§ 10.202 through 10.207 set forth the legal requirements and procedures that apply for purposes of obtaining that duty-free treatment for certain articles from a beneficiary country which are identified for purposes of that treatment in General Note 11, Harmonized Tariff Schedule of the United States (HTSUS), and in the ''Special'' rate of duty column of the HTSUS. Provisions regarding preferential treatment of apparel and other textile articles under the ATPA are contained in §§ 10.241 through 10.248, and provisions regarding preferential treatment of tuna and certain other non-textile articles under the ATPA are contained in §§ 10.251 through 10.257.

[T.D. 03–16, 68 FR 14486, Mar. 25, 2003; 68 FR 67338, Dec. 1, 2003]

§ 10.202 Definitions.

The following definitions apply for purposes of §§ 10.201 through 10.207:

(a) *Beneficiary country*. Except as otherwise provided in § 10.206(b), the term ''beneficiary country'' refers to any country or successor political entity with respect to which there is in effect a proclamation by the President designating such country or successor political entity as a beneficiary country in accordance with section 203 of the ATPA (19 U.S.C. 3202).

(b) *Eligible articles.* The term ''eligible'' when used with reference to an article means merchandise which is imported directly from a beneficiary country as provided in § 10.204, which meets the country of origin criteria set forth in § 10.205 and the value-content requirement set forth in § 10.206, and which, if the requirements of § 10.207 are met, is therefore entitled to duty-free treatment under the ATPA. However, the following merchandise shall not be considered eligible articles entitled to duty-free treatment under the ATPA:

(1) Textiles and apparel articles which were not eligible articles for purposes of the ATPA on January 1, 1994, as the ATPA was in effect on that date, except as otherwise provided in §§ 10.241 through 10.248;

(2) Rum and tafia classified in subheading 2208.40, Harmonized Tariff Schedule of the United States;

(3) Sugars, syrups, and sugar-containing products subject to over-quota duty rates under applicable tariff-rate quotas; or

(4) Tuna prepared or preserved in any manner in airtight containers, except as otherwise provided in §§ 10.251 through 10.257.

(c) *Entered.* The term ''entered'' means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(d) *Wholly the growth, product, or manufacture of a beneficiary country.* The expression ''wholly the growth, product, or manufacture of a beneficiary country'' has the same meaning as that set forth in § 10.191(b)(3) of this part.

[T.D. 98–76, 63 FR 51292, Sept. 25, 1998, as amended by T.D. 03–16, 68 FR 14486, Mar. 25, 2003; 68 FR 67338, Dec. 1, 2003]

§ 10.203 Eligibility criteria in general.

An article classifiable under a subheading of the Harmonized Tariff Schedule of the United States for which a rate of duty of ''Free'' appears in the ''Special'' subcolumn followed by the symbol ''J'' or ''J*'' in parentheses is eligible for duty-free treatment, and will be accorded such treatment, if each of the following requirements is met:

(a) *Imported directly.* The article is imported directly from a beneficiary country as provided in § 10.204.

(b) *Country of origin criteria.* The article complies with the country of origin criteria set forth in § 10.205.

(c) *Value content requirement.* The article complies with the value content requirement set forth in § 10.206.

(d) *Filing of claim and submission of supporting documentation.* The claim for duty-free treatment is filed, and any required documentation in support of the claim is submitted, in accordance with the procedures set forth in § 10.207.

§ 10.204 Imported directly.

In order to be eligible for duty-free treatment under the ATPA, an article shall be imported directly from a beneficiary country into the customs territory of the United States. For purposes of this requirement, the words ''imported directly'' mean:

(a) Direct shipment from any beneficiary country to the United States without passing through the territory of any non-beneficiary country; or

(b) If shipment from any beneficiary country to the United States was through the territory of a non-beneficiary country, the articles in the shipment did not enter into the commerce of the non-beneficiary country while en route to the United States, and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(c) If shipment from any beneficiary country to the United States was through the territory of a non-beneficiary country and the invoices and other documents do not show the United States as the final destination, then the articles in the shipment, upon arrival in the United States, are imported directly only if they:

(1) Remained under the control of the customs authority in the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the articles are imported into the United States as a result of the original commercial transaction between the importer and the producer or the latter's sales agent; and

(3) Were not subjected to operations in the intermediate country other than loading and unloading, and other activities necessary to preserve the articles in good condition.

§ 10.205 Country of origin criteria.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an article may be eligible for duty-free treatment under the ATPA if the article is either:

(1) Wholly the growth, product, or manufacture of a beneficiary country; or

(2) A new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country.

(b) *Exceptions.* No article shall be eligible for duty-free treatment under the ATPA by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The principles and examples set forth in § 10.195(a)(2) of this part shall apply equally for purposes of this paragraph.

§ 10.206 Value content requirement.

(a) *General.* An article may be eligible for duty-free treatment under the ATPA only if the sum of the cost or value of the materials produced in a beneficiary country or countries, plus the direct costs of processing operations performed in a beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(b) *Commonwealth of Puerto Rico, U.S. Virgin Islands and CBI beneficiary countries.* For purposes of determining the percentage referred to in paragraph (a) of this section, the term ''beneficiary country'' includes the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country as defined in § 10.191(b)(1) of this part. Any cost or value of materials or direct costs of processing operations attributable to the Virgin Islands or any CBI beneficiary country must be included in the article prior to its final exportation to the United States from a beneficiary country as defined in § 10.202(a).

(c) *Materials produced in the United States.* For purposes of determining the percentage referred to in paragraph (a) of this section, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico). The principles set forth in paragraph (d)(1) of this section shall apply in determining whether a material is ''produced in the customs territory of the United States'' for purposes of this paragraph.

(d) *Cost or value of materials*—(1) *''Materials produced in a beneficiary country or countries'' defined.* For purposes of paragraph (a) of this section, the words *materials produced in a beneficiary country or countries* refer to those materials incorporated in an article which are either:

(i) Wholly the growth, product, or manufacture of a beneficiary country or two or more beneficiary countries; or

(ii) Substantially transformed in any beneficiary country or two or more beneficiary countries into a new or different article of commerce which is then used in any beneficiary country as defined in § 10.202(a) in the production or manufacture of a new or different article which is imported directly into the United States. For purposes of this paragraph (d)(1)(ii), no material shall be considered to be substantially transformed into a new or different article of commerce by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The examples set forth in § 10.196(a) of this part, and the principles and examples set forth in § 10.195(a)(2) of this part, shall apply for purposes of the corresponding context under paragraph (d)(1) of this section.

(2) *Questionable origin.* When the origin of a material either is not ascertainable or is not satisfactorily demonstrated to the appropriate port director, the material shall not be considered to have been grown, produced, or manufactured in a beneficiary country or in the customs territory of the United States.

(3) *Determination of cost or value of materials.* (i) The cost or value of materials produced in a beneficiary country or countries or in the customs territory of the United States includes:

(A) The manufacturer's actual cost for the materials;

(B) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(C) The actual cost of waste or spoilage, less the value of recoverable scrap; and

(D) Taxes and/or duties imposed on the materials by any beneficiary country or by the United States, provided they are not remitted upon exportation.

(ii) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of:

(A) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(B) An amount for profit; and

(C) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

(iii) If the pertinent information needed to compute the cost or value of a material is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

(e) *Direct costs of processing operations*—(1) *Items included.* For purposes of paragraph (a) of this section, the words *direct costs of processing operations* mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported merchandise:

(i) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(ii) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(iii) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and

(iv) Costs of inspecting and testing the specific merchandise.

(2) *Items not included.* For purposes of paragraph (a) of this section, the words ''direct costs of processing operations'' do not include items which are not directly attributable to the merchandise under consideration or are not costs of manufacturing the product. These include, but are not limited to:

(i) Profit; and

(ii) General expenses of doing business which either are not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

(f) *Articles wholly the growth, product, or manufacture of a beneficiary country.* Any article which is wholly the growth, product, or manufacture of a beneficiary country as defined in § 10.202(a), and any article produced or manufactured in a beneficiary country as defined in § 10.202(a) exclusively from materials which are wholly the growth, product, or manufacture of a beneficiary country or countries, shall normally be presumed to meet the requirement set forth in paragraph (a) of this section.

§ 10.207 Procedures for filing duty-free treatment claim and submitting supporting documentation.

(a) *Filing claim for duty-free treatment.* Except as provided in paragraph (c) of this section, a claim for duty-free treatment under the ATPA may be made at the time of filing the entry summary by placing the symbol ''J'' as a prefix to the Harmonized Tariff Schedule of the United States subheading number applicable to each article for which duty-free treatment is claimed on that document.

(b) *Shipments covered by a formal entry*—(1) *Articles not wholly the growth, product, or manufacture of a beneficiary country*—(i) *Declaration.* In a case involving an article covered by a formal entry for which duty-free treatment is claimed under the ATPA and which is not wholly the growth, product, or manufacture of a single beneficiary country as defined in § 10.202(a), the exporter or other appropriate party having knowledge of the relevant facts in the beneficiary country as defined in § 10.202(a) where the article was produced or last processed shall be prepared to submit directly to the port director, upon request, a declaration setting forth all pertinent detailed information concerning the production or manufacture of the article. When requested by the port director, the declaration shall be prepared in substantially the following form:

ATPA DECLARATION

I, _____ (name), hereby declare that the articles described below (a) were produced or manufactured in _____ (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other beneficiary country or countries (including the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country) as set forth below and (b) incorporate materials produced in the country named above or in any other beneficiary country or countries (including the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country) or in the customs territory of the United States (other than the Commonwealth of Puerto Rico) as set forth below: _____

Number and date of invoices	Description of articles and quantity	Processing operations performed on articles		Material produced in a beneficiary country or in the U.S.	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of production	Cost or value of material

Date _____
Address _____
Signature _____
Title _____

(ii) *Retention of records and submission of declaration.* The information necessary for the preparation of the declaration shall be retained in the files of the party responsible for its preparation and submission for a period of 5 years. In the event that the port director requests submission of the declaration during the 5-year period, it shall be submitted by the appropriate party directly to the port director within 60 days of the date of the request or such additional period as the port director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(iii) *Value added after final exportation.* In a case in which value is added to an article in the Commonwealth of Puerto Rico or in the United States after final exportation of the article from a beneficiary country as defined in § 10.202(a), in order to ensure compliance with the value requirement under § 10.206(a), the declaration provided for in paragraph (b)(1)(i) of this section shall be filed by the importer or consignee with the entry summary. The declaration shall be completed by the party responsible for the addition of such value.

(2) *Articles wholly the growth, product, or manufacture of a beneficiary country.* In a case involving an article covered by a formal entry for which duty-free treatment is claimed under the ATPA

and which is wholly the growth, product, or manufacture of a single beneficiary country as defined in § 10.202(a), a statement to that effect shall be included on the commercial invoice provided to Customs.

(c) *Shipments covered by an informal entry*. The normal procedure for filing a claim for duty-free treatment as set forth in paragraph (a) of this section need not be followed, and the filing of the declaration provided for in paragraph (b)(1)(i) of this section will not be required, in a case involving a shipment covered by an informal entry. However, the port director may require submission of such other evidence of entitlement to duty-free treatment as deemed necessary.

(d) *Evidence of direct importation*—(1) *Submission*. The port director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were ''imported directly'', as that term is defined in § 10.204.

(2) *Waiver*. The port director may waive the submission of evidence of direct importation when otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise was, in fact, imported directly and that it otherwise clearly qualifies for duty-free treatment under the ATPA.

(e) *Verification of documentation*. The documentation submitted under this section to demonstrate compliance with the requirements for duty-free treatment under the ATPA shall be subject to such verification as the port director deems necessary. In the event that the port director is prevented from obtaining the necessary verification, the port director may treat the entry as fully dutiable.

Subpart D—Textile and Apparel Articles Under the African Growth and Opportunity Act

SOURCE: T.D. 00–67, 65 FR 59676, Oct. 5, 2000, unless otherwise noted.

§ 10.211 Applicability.

Title I of Public Law 106–200 (114 Stat. 251), entitled the African Growth and Opportunity Act (AGOA), authorizes the President to extend certain trade benefits to designated countries in sub-Saharan Africa. Section 112 of the AGOA, codified at 19 U.S.C. 3721, provides for the preferential treatment of certain textile and apparel articles from beneficiary countries. The provisions of §§ 10.211–10.217 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to section 112.

§ 10.212 Definitions.

When used in §§ 10.211 through 10.217, the following terms have the meanings indicated:

Apparel articles. ''Apparel articles'' means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99 and 6505.90 of the HTSUS.

Assembled in one or more beneficiary countries. ''Assembled in one or more beneficiary countries'' when used in the context of a textile or apparel article has reference to a joining together of two or more components that occurred in one or more beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States.

Beneficiary country. ''Beneficiary country'' means a country listed in section 107 of the African Growth and Opportunity Act (19 U.S.C. 3706) which has been the subject of a finding by the President or his designee, published in the FEDERAL REGISTER, that the country has satisfied the requirements of section 113 of the African Growth and Opportunity Act (19 U.S.C. 3722) and which the President has designated as a beneficiary sub-Saharan African country under section 506A of the Trade Act of 1974 (19 U.S.C. 2466a).

Cut in one or more beneficiary countries. ''Cut in one or more beneficiary countries'' when used with reference to apparel articles means that all fabric components used in the assembly of the article were cut from fabric in one or more beneficiary countries.

Foreign. ''Foreign'' means of a country other than the United States or a beneficiary country.

HTSUS. ''HTSUS'' means the Harmonized Tariff Schedule of the United States.

Knit-to-shape articles. ''Knit-to-shape,'' when used with reference to sweaters or other apparel articles, means any apparel article of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the apparel article, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether an apparel article is ''knit-to-shape.''

Knit-to-shape components. ''Knit-to-shape,'' when used with reference to textile components, means components that are knitted or crocheted from a yarn directly to a specific shape containing a self-start edge. Minor cutting or trimming will not affect the determination of whether a component is ''knit-to-shape.''

Major parts. ''Major parts'' means integral components of an apparel article but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts or components.

NAFTA. ''NAFTA'' means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

Originating. ''Originating'' means having the country of origin determined by application of the provisions of § 102.21 of this chapter.

Preferential treatment. ''Preferential treatment'' means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative limitations as provided in 19 U.S.C. 3721.

Wholly assembled in. When used with reference to a textile or apparel article in the context of one or more beneficiary countries or one or more lesser developed beneficiary countries, the expression ''wholly assembled in'' means that all of the components of the textile or apparel article (including thread, decorative embellishments, buttons, zippers, or similar components) were joined together in one or more beneficiary countries or one or more lesser developed beneficiary countries.

Wholly formed fabrics. ''Wholly formed,'' when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in the United States or in one or more beneficiary countries.

Wholly formed on seamless knitting machines. ''Wholly formed on seamless knitting machines,'' when used to describe apparel articles, has reference to a process that created a knit-to-shape apparel article by feeding yarn(s) into a knitting machine to result in that article. When taken from the knitting machine, an apparel article created by this process either is in its final form or requires only minor cutting or trimming or the addition of minor components or parts such as patch pockets, appliques, capping, or elastic strip.

Wholly formed yarns. ''Wholly formed,'' when used with reference to yarns, means that all of the production processes, starting with the extrusion of filament, strip, film, or sheet and including slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a yarn or plied yarn, took place in a single country.

[T.D. 00–67, 65 FR 59676, Oct. 5, 2000; 65 FR 67260, Nov. 9, 2000, as amended by T.D. 03–15, 68 FR 13824, Mar. 21, 2003]

§ 10.213 Articles eligible for preferential treatment.

(a) *General.* The preferential treatment referred to in § 10.211 applies to the following textile and apparel articles that are imported directly into the customs territory of the United States from a beneficiary country:

(1) Apparel articles sewn or otherwise assembled in one or more beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut

in the United States) that are entered under subheading 9802.00.80 of the HTSUS;

(2) Apparel articles sewn or otherwise assembled in one or more beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes in a beneficiary country;

(3) Apparel articles sewn or otherwise assembled in one or more beneficiary countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more beneficiary countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States).

(4) Apparel articles wholly assembled in one or more beneficiary countries from fabric wholly formed in one or more beneficiary countries from yarns originating either in the United States or one or more beneficiary countries (including fabrics not formed from yarns, if those fabrics are classified under heading 5602 or 5603 of the HTSUS and are wholly formed in one or more beneficiary countries), or from components knit-to-shape in one or more beneficiary countries from yarns originating either in the United States or in one or more beneficiary countries, or apparel articles wholly formed on seamless knitting machines in a beneficiary country from yarns originating either in the United States or in one or more beneficiary countries, subject to the applicable quantitative limit published in the FEDERAL REGISTER pursuant to U.S. Note 2, Subchapter XIX, Chapter 98, HTSUS;

(5) Apparel articles wholly assembled, or knit-to-shape and wholly assembled, or both, in one or more lesser developed beneficiary countries regardless of the country of origin of the fabric or the yarn used to make the articles, subject to the applicable quantitative limit published in the FEDERAL REGISTER pursuant to U.S. Note 2, Subchapter XIX, Chapter 98, HTSUS;

(6) Sweaters, in chief weight of cashmere, knit-to-shape in one or more beneficiary countries and classifiable under subheading 6110.10 of the HTSUS;

(7) Sweaters, containing 50 percent or more by weight of wool measuring 21.5 microns in diameter or finer, knit-to-shape in one or more beneficiary countries;

(8) Apparel articles, other than brassieres classifiable under subheading 6212.10, HTSUS, that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries, from fabrics or yarn that is not formed in the United States or a beneficiary country, provided that apparel articles of those fabrics or yarn would be considered an originating good under General Note 12(t), HTSUS, if the apparel articles had been imported directly from Canada or Mexico;

(9) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabrics or yarn that the President or his designee has designated in the FEDERAL REGISTER as not available in commercial quantities in the United States;

(10) A handloomed, handmade, or folklore article of a beneficiary country or countries that is certified as a handloomed, handmade, or folklore article by the competent authority of the beneficiary country or countries, provided that the President or his designee has determined that the article in question will be treated as being a handloomed, handmade, or folklore article.

(11) Apparel articles sewn or otherwise assembled in one or more beneficiary countries with thread formed in the United States:

(i) From components cut in the United States and in one or more beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS);

(ii) From components knit-to-shape in the United States and one or more beneficiary countries from yarns wholly formed in the United States; or

(iii) From any combination of two or more of the cutting or knitting-to-shape operations described in paragraph (a)(11)(i) or paragraph (a)(11)(ii) of this section.

(b) *Special rules for certain component materials*—(1) *General*. An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in §10.211 because the article contains:

(i) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''findings and trimmings'' include, but are not limited to, hooks and eyes, snaps, buttons, ''bow buds,'' decorative lace trim, elastic strips (but only if they are each less than 1 inch in width and are used in the production of brassieres), zippers (including zipper tapes), labels, and sewing thread except in the case of an article described in paragraph (a)(3) of this section;

(ii) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''interlinings'' include only a chest type plate, a ''hymo'' piece, or ''sleeve header,'' of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments;

(iii) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings and interlinings does not exceed 25 percent of the cost of the components of the assembled article; or

(iv) Fibers or yarns not wholly formed in the United States or one or more beneficiary countries if the total weight of all those fibers and yarns is not more than 7 percent of the total weight of the article.

(2) *''Cost''and ''value'' defined*. The ''cost'' of components and the ''value'' of findings and trimmings or interlinings referred to in paragraph (b)(1) of this section means:

(i) The price of the components, findings and trimmings, or interlinings when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(A) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(B) If no exportation to a beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing and other costs incurred in transporting the components, findings and trimmings, or interlinings to the place of production if included in that price; or

(ii) If the price cannot be determined under paragraph (b)(2)(i) of this section or if Customs finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the components, findings and trimmings, or interlinings, including the cost or value of materials and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the components, findings and trimmings, or interlinings to the port of exportation.

(3) *Treatment of fibers and yarns as findings or trimmings*. If any fibers or yarns not wholly formed in the United States or one or more beneficiary countries are used in an article as a finding or trimming described in paragraph (b)(1)(i) of this section, the fibers or yarns will be considered to be a finding or trimming for purposes of paragraph (b)(1) of this section.

(c) *Imported directly defined*. For purposes of paragraph (a) of this section, the words ''imported directly'' mean:

(1) Direct shipment from any beneficiary country to the United States without passing through the territory of any non-beneficiary country;

(2) If the shipment is from any beneficiary country to the United States through the territory of any non-beneficiary country, the articles in the shipment do not enter into the commerce of any non-beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any beneficiary country to the United States through the territory of any non-beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

[T.D. 00–67, 65 FR 59676, Oct. 5, 2000; 65 FR 67260, Nov. 9, 2000, as amended by T.D. 03–15, 68 FR 13824, Mar. 21, 2003]

§ 10.214 Certificate of Origin.

(a) *General*. A Certificate of Origin must be employed to certify that a textile or apparel article being exported from a beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.211. The Certificate of Origin must be prepared by the exporter in the beneficiary country in the form specified in paragraph (b) of this section. Where the beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(1) Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

(b) *Form of Certificate*. The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

African Growth and Opportunity Act
Textile Certificate of Origin

1. Exporter Name and Address:	3. Importer Name and Address:
2. Producer Name and Address:	4. Preference Group:
5. Description of Article:	

Group	*Each description below is only a summary of the cited CFR provision.*	19 CFR
1-A	Apparel assembled from U.S. fabrics and/or knit-to-shape components, from U.S. yarns. All fabric must be cut in the United States.	10.213(a)(1)
2-B	Apparel assembled from U.S. fabrics and/or knit-to-shape components, from U.S. yarns. All fabric must be cut in the United States. After assembly, the apparel is embroidered or subject to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes.	10.213(a)(2)
3-C	Apparel assembled from U.S. fabrics and/or U.S. knit-to-shape components and/or U.S. and beneficiary country knit-to-shape components, from U.S. yarns and sewing thread. The U.S. fabrics may be cut in beneficiary countries or in beneficiary countries and the United States.	10.213(a)(3) or 10.213(a)(11)
4-D	Apparel assembled from beneficiary country fabrics and/or knit-to-shape components, from yarns originating in the United States and/or one or more beneficiary countries.	10.213(a)(4)
5-E	Apparel assembled or knit-to-shape and assembled, or both, in one or more lesser developed beneficiary countries regardless of the country of origin of the fabric or the yarn used to make such articles.	10.213(a)(5)
6-F	Knit-to-shape sweaters in chief weight of cashmere.	10.213(a)(6)
7-G	Knit-to-shape sweaters 50 percent or more by weight of wool measuring 21.5 microns in diameter or finer.	10.213(a)(7)
8-H	Apparel assembled from fabrics or yarns considered in short supply in the NAFTA, or designated as not available in commercial quantities in the United States.	10.213(a)(8) or 10.213(a)(9)
9-I	Handloomed fabrics, handmade articles made of handloomed fabrics, or textile folklore articles – as defined in bilateral consultations.	10.213(a)(10)

6. U.S./African Fabric Producer Name and Address:	7. U.S./African Yarn Producer Name and Address:
	8. U.S. Thread Producer Name and Address:
9. Handloomed, Handmade, or Folklore Article:	10. Name of Short Supply or Designated Fabric or Yarn:

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document. I agree to maintain, and present upon request, documentation necessary to support this certificate.

11. Authorized Signature:		12. Company:
13. Name: (Print or Type)		14. Title:
15. Date: (DD/MM/YY)	16. Blanket Period From: To:	17. Telephone: Facsimile:

(c) *Preparation of Certificate.* The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country)

of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state ''available to Customs upon request'' in block 2. If the producer and the exporter are the same, state ''same'' in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) In block 4, insert the number and/or letter that identifies the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(6) Block 5 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(7) Blocks 6 through 10 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 4;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the legal name and address (including country) of the thread producer;

(11) Block 9 should state the name of the folklore article or should state that the article is handloomed or handmade;

(12) Block 10 should be completed only when the preference group identifier ''8'' and/or ''H'' is inserted in block 4 and should state the name of the fabric or yarn that is in short supply in the NAFTA or that has been designated as not available in commercial quantities in the United States;

(13) Block 11 must contain the signature of the exporter or of the exporter's authorized agent having knowledge of the relevant facts;

(14) Block 15 should reflect the date on which the Certificate was completed and signed;

(15) Block 16 should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 5 that are imported into the United States during a specified period of up to one year (see §10.216(b)(4)(ii)). The ''from'' date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 15). The ''to'' date is the date on which the blanket period expires;

(16) The telephone and facsimile numbers included in block 17 should be those at which the person who signed the Certificate may be contacted; and

(17) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

[T.D. 00–67, 65 FR 59676, Oct. 5, 2000, as amended by T.D. 03–15, 68 FR 13825, Mar. 21, 2003]

§10.215 Filing of claim for preferential treatment.

(a) *Declaration*. In connection with a claim for preferential treatment for a textile or apparel article described in §10.213, the importer must make a written declaration that the article qualifies for that treatment. The inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in §10.216(d)(1), the declaration required under this paragraph must be based on an original Certificate of Origin that has been completed and properly executed in accordance with §10.214, that covers the article being imported, and that is in the possession of the importer.

(b) *Corrected declaration*. If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date

of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

[T.D. 00–67, 65 FR 59676, Oct. 5, 2000, as amended by T.D. 03–15, 68 FR 13827, Mar. 21, 2003]

§ 10.216 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.215 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.215(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on a textile or apparel article under § 10.215(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be in writing or must be transmitted electronically pursuant to any electronic data interchange system authorized by Customs for that purpose;

(2) Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph and § 10.214(c)(15), ''identical articles'' means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential treatment under the AGOA.

Check One:

( ) Producer
( ) Exporter
( ) Importer
( ) Agent

Name

Title

Address

Signature and Date

(2) *Exception*. If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.214 through 10.216, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a ''series of importations'' means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

[T.D. 00–67, 65 FR 59676, Oct. 5, 2000, as amended by T.D. 03–15, 68 FR 13827, Mar. 21, 2003]

§ 10.217 Verification and justification of claim for preferential treatment.

(a) *Verification by Customs*. A claim for preferential treatment made under § 10.215, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.216, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements*. In order to make a claim for preferential treatment under § 10.215, the importer:

(1) Must have records that explain how the importer came to the conclusion that the textile or apparel article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under § 10.213(a). If the importer is claiming that the article incorporates fabric or yarn that originated or was wholly formed in the United States, the importer must have records that identify the U.S. producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in § 10.214(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificate of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the beneficiary country to the United States. If the imported article was shipped through a country other than a beneficiary country and the invoices and other documents from the beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.213(c)(3) (i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this

section justify the importer's claim for preferential treatment.

[T.D. 00–67, 65 FR 59676, Oct. 5, 2000, as amended by T.D. 03–15, 68 FR 13827, Mar. 21, 2003]

Subpart E—United States-Caribbean Basin Trade Partnership Act

TEXTILE AND APPAREL ARTICLES UNDER THE UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT

SOURCE: T.D. 00–68, 65 FR 59658, Oct. 5, 2000, unless otherwise noted.

§ 10.221 Applicability.

Title II of Public Law 106–200 (114 Stat. 251), entitled the United States-Caribbean Basin Trade Partnership Act (CBTPA), amended section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA, 19 U.S.C. 2701–2707) to authorize the President to extend additional trade benefits to countries that have been designated as beneficiary countries under the CBERA. Section 213(b)(2) of the CBERA (19 U.S.C. 2703(b)(2)) provides for the preferential treatment of certain textile and apparel articles from CBERA beneficiary countries. The provisions of §§ 10.221–10.227 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to CBERA section 213(b)(2).

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000; 65 FR 67262, Nov. 9, 2000]

§ 10.222 Definitions.

When used in §§ 10.221 through 10.228, the following terms have the meanings indicated:

Apparel articles. ''Apparel articles'' means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99 and 6505.90 of the HTSUS.

Assembled in one or more CBTPA beneficiary countries. ''Assembled in one or more CBTPA beneficiary countries'' when used in the context of a textile or apparel article has reference to a joining together of two or more components that occurred in one or more CBTPA beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States.

CBERA. ''CBERA'' means the Caribbean Basin Economic Recovery Act, 19 U.S.C. 2701–2707.

CBTPA beneficiary country. ''CBTPA beneficiary country'' means a ''beneficiary country'' as defined in § 10.191(b)(1) for purposes of the CBERA which the President also has designated as a beneficiary country for purposes of preferential treatment of textile and apparel articles under 19 U.S.C. 2703(b)(2) and which has been the subject of a finding by the President or his designee, published in the FEDERAL REGISTER, that the beneficiary country has satisfied the requirements of 19 U.S.C. 2703(b)(4)(A)(ii).

Cut in one or more CBTPA beneficiary countries. ''Cut in one or more CBTPA beneficiary countries'' when used with reference to apparel articles means that all fabric components used in the assembly of the article were cut from fabric in one or more CBTPA beneficiary countries.

Foreign. ''Foreign'' means of a country other than the United States or a CBTPA beneficiary country.

HTSUS. ''HTSUS'' means the Harmonized Tariff Schedule of the United States.

Knit-to-shape. The term ''knit-to-shape'' applies to any apparel article of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the apparel article, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether an apparel article is ''knit-to-shape.''

Luggage. ''Luggage'' means travel goods (such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel) and brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera

cases, binocular cases, gun cases, occupational luggage cases (for example, physicians' cases, sample cases), and like containers and cases designed to be carried with the person. The term ''luggage'' does not include handbags (that is, pocketbooks, purses, shoulder bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls). The term ''luggage'' also does not include flat goods (that is, small flatware designed to be carried on the person, such as banknote cases, bill cases, billfolds, bill purses, bill rolls, card cases, change cases, cigarette cases, coin purses, coin holders, compacts, currency cases, key cases, letter cases, license cases, money cases, pass cases, passport cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches, and similar articles).

Made in one or more CBTPA beneficiary countries. ''Made in one or more CBTPA beneficiary countries'' when used with reference to non-underwear t-shirts means cut in one or more CBTPA beneficiary countries and wholly assembled in one or more CBTPA beneficiary countries.

Major parts. ''Major parts'' means integral components of an apparel article but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts or components.

NAFTA. ''NAFTA'' means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

Preferential treatment. ''Preferential treatment'' means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels as provided in 19 U.S.C. 2703(b)(2).

Wholly assembled in one or more CBTPA beneficiary countries. ''Wholly assembled in one or more CBTPA beneficiary countries'' when used in the context of a textile or apparel article has reference to a joining together of all components (including thread, decorative embellishments, buttons, zippers, or similar components) that occurred only in one or more CBTPA beneficiary countries.

Wholly formed. ''Wholly formed,'' when used with reference to yarns, means that all of the production processes, starting with the extrusion of filament, strip, film, or sheet and including slitting a film or sheet into strip or the spinning of all fibers into yarn or both and ending with a yarn or plied yarn, took place in a single country, and, when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in a single country.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000; 65 FR 67262, Nov. 9, 2000; T.D. 01–74, 66 FR 50537, Oct. 4, 2001, as amended by T.D. 03–12, 68 FR 13831, Mar. 21, 2003]

§ 10.223 Articles eligible for preferential treatment.

(a) *General.* The preferential treatment referred to in § 10.221 applies to the following textile and apparel articles that are imported directly into the customs territory of the United States from a CBTPA beneficiary country:

(1) Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States, from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS, and provided that any other processing involving the article conforms to the rules set forth in paragraph (b) of this section;

(2) Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States, from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the

HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes in a CBTPA beneficiary country, and provided that any other processing involving the article conforms to the rules set forth in paragraph (b) of this section;

(3) Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more CBTPA beneficiary countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States), and provided that any other processing involving the article conforms to the rules set forth in paragraph (b) of this section;

(4) Apparel articles (other than socks provided for in heading 6115 of the HTSUS) knit to shape in a CBTPA beneficiary country from yarns wholly formed in the United States, and knitted or crocheted apparel articles (other than non-underwear t-shirts classifiable under subheadings 6109.10.00 and 6109.90.10 of the HTSUS and described in paragraph (a)(5) of this section) cut and wholly assembled in one or more CBTPA beneficiary countries from fabrics formed in one or more CBTPA beneficiary countries or in one or more CBTPA beneficiary countries and the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more CBTPA beneficiary countries);

(5) Non-underwear t-shirts, classifiable under subheadings 6109.10.00 and 6109.90.10 of the HTSUS, made in one or more CBTPA beneficiary countries from fabric formed in one or more CBTPA beneficiary countries from yarns wholly formed in the United States;

(6) Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or in one or more CBTPA beneficiary countries, or in both, other than articles entered as articles described in paragraphs (a)(1) through (a)(5), paragraphs (a)(7) through (a)(9), or paragraph (a)(12), and provided that any applicable additional requirements set forth in §10.228 are met;

(7) Apparel articles, other than articles described in paragraph (a)(6) of this section, that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries, from fabrics or yarn that is not formed in the United States or in one or more CBTPA beneficiary countries, to the extent that apparel articles of those fabrics or yarn would be eligible for preferential treatment, without regard to the source of the fabrics or yarn, under Annex 401 of the NAFTA;

(8) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabrics or yarn that the President or his designee has designated in the FEDERAL REGISTER as not available in commercial quantities in the United States;

(9) A handloomed, handmade, or folklore textile or apparel article of a CBTPA beneficiary country that the President or his designee and representatives of the CBTPA beneficiary country mutually agree is a handloomed, handmade, or folklore article and that is certified as a handloomed, handmade, or folklore article by the competent authority of the CBTPA beneficiary country;

(10) Textile luggage assembled in a CBTPA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS;

(11) Textile luggage assembled in a CBTPA beneficiary country from fabric cut in a CBTPA beneficiary country

from fabric wholly formed in the United States from yarns wholly formed in the United States;

(12) Knitted or crocheted apparel articles cut and assembled in one or more CBTPA beneficiary countries from fabrics wholly formed in the United States from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed wholly in the United States), provided that the assembly is with thread formed in the United States, and provided that any other processing involving the article conforms to the rules set forth in paragraph (b) of this section; and

(13) Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries with thread formed in the United States:

(i) From components cut in the United States and in one or more CBTPA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS);

(ii) From components knit-to-shape in the United States and one or more CBTPA beneficiary countries from yarns wholly formed in the United States; or

(iii) From any combination of two or more of the cutting or knitting-to-shape operations described in paragraph (a)(13)(i) or paragraph (a)(13)(ii) of this section; and

(iv) Provided that any processing not described in this paragraph (a)(13) conforms to the rules set forth in paragraph (b) of this section.

(b) *Dyeing, printing, finishing and other operations*—(1) *Dyeing, printing and finishing operations.* Dyeing, printing, and finishing operations may be performed on any yarn, fabric, or knit-to-shape or other component used in the production of any article described under paragraph (a) of this section without affecting the eligibility of the article for preferential treatment, provided that the operation is performed in the United States or in a CBTPA beneficiary country and not in any other country and subject to the following additional conditions:

(i) In the case of an article described in paragraph (a)(1), (a)(2), (a)(3), (a)(12), or (a)(13) of this section that is entered on or after September 1, 2002, and that contains a knitted or crocheted or woven fabric, or a knitted or crocheted or woven fabric component produced from fabric, that was wholly formed in the United States from yarns wholly formed in the United States, any dyeing, printing, or finishing of that knitted or crocheted or woven fabric or component must have been carried out in the United States; and

(ii) In the case of assembled luggage described in paragraph (a)(10) of this section, an operation may be performed in a CBTPA beneficiary country only if that operation is incidental to the assembly process within the meaning of § 10.16.

(2) *Other operations.* An article described under paragraph (a) of this section that is otherwise eligible for preferential treatment will not be disqualified from receiving that treatment by virtue of having undergone one or more operations such as embroidering, stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing or screen printing, provided that the operation is performed in the United States or in a CBTPA beneficiary country and not in any other country. However, in the case of assembled luggage described in paragraph (a)(10) of this section, an operation may be performed in a CBTPA beneficiary country without affecting the eligibility of the article for preferential treatment only if it is incidental to the assembly process within the meaning of § 10.16.

(c) *Special rules for certain component materials*—(1) *Foreign findings, trimmings, interlinings, fibers and yarns*—(i) *General.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.221 because the article contains:

(A) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25

percent of the cost of the components of the assembled article. For purposes of this section ''findings and trimmings'' include, but are not limited to, hooks and eyes, snaps, buttons, ''bow buds,'' decorative lace trim, elastic strips (but only if they are each less than 1 inch in width and are used in the production of brassieres), zippers (including zipper tapes), labels, and sewing thread except in the case of an article described in paragraph (a)(3) or (a)(12) of this section;

(B) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''interlinings'' include only a chest type plate, a ''hymo'' piece, or ''sleeve header,'' of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments;

(C) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings and interlinings does not exceed 25 percent of the cost of the components of the assembled article; or

(D) Fibers or yarns not wholly formed in the United States or in one or more CBTPA beneficiary countries if the total weight of all those fibers and yarns is not more than 7 percent of the total weight of the article, except in the case of any apparel article described in paragraph (a)(1) through (a)(5) or (a)(12) of this section containing elastomeric yarns which will be eligible for preferential treatment only if those yarns are wholly formed in the United States.

(ii) *''Cost'' and ''value'' defined.* The ''cost'' of components and the ''value'' of findings and trimmings or interlinings referred to in paragraph (c)(1)(i) of this section means:

(A) The price of the components, findings and trimmings, or interlinings when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(*2*) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the components, findings and trimmings, or interlinings to the place of production if included in that price; or

(B) If the price cannot be determined under paragraph (c)(1)(ii)(A) of this section or if Customs finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the components, findings and trimmings, or interlinings, including the cost or value of materials and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the components, findings and trimmings, or interlinings to the port of exportation.

(iii) *Treatment of fibers and yarns as findings or trimmings.* If any fibers or yarns not wholly formed in the United States or one or more beneficiary countries are used in an article as a finding or trimming described in paragraph (c)(1)(i)(A) of this section, the fibers or yarns will be considered to be a finding or trimming for purposes of paragraph (c)(1)(i) of this section.

(2) *Special rule for nylon filament yarn.* An article otherwise described under paragraph (a)(1), (a)(2), (a)(3) or (a)(12) of this section will not be ineligible for the preferential treatment referred to in § 10.221 because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS duty-free from Canada, Mexico or Israel.

(3) *Dyed, printed, or finished thread.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.221 because the thread used to assemble the article is dyed, printed, or finished in one or more CBTPA beneficiary countries.

(d) *Imported directly defined.* For purposes of paragraph (a) of this section, the words ''imported directly'' mean:

(1) Direct shipment from any CBTPA beneficiary country to the United States without passing through the territory of any country that is not a CBTPA beneficiary country;

(2) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not a CBTPA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000; 65 FR 67262, Nov. 9, 2000, as amended by T.D. 01–74, 66 FR 50537, Oct. 4, 2001; T.D. 03–12, 68 FR 13832, Mar. 21, 2003]

§ 10.224 Certificate of Origin.

(a) *General*. A Certificate of Origin must be employed to certify that a textile or apparel article being exported from a CBTPA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.221. The Certificate of Origin must be prepared by the exporter in the CBTPA beneficiary country in the form specified in paragraph (b) of this section. Where the CBTPA beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(1) Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

(b) *Form of Certificate*. The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

Caribbean Basin Trade Partnership Act
Textile Certificate of Origin

1. Exporter Name & Address:	3. Importer Name & Address:
2. Producer Name & Address:	4. Preference Group:
5. Description of Article:	

Group	*Each description below is only a summary of the cited CFR provision.*	19 CFR
A.	Apparel assembled from U.S. formed and cut fabrics and/or knit-to-shape components, from U.S. yarns.	10.223(a)(1)
B.	Apparel assembled and further processed from U.S. formed and cut fabrics and/or knit-to-shape components, from U.S. yarns.	10.223(a)(2)
C.	Apparel (except apparel in group K) assembled with U.S. thread, cut from U.S. formed fabrics from U.S. yarns, and may include components knit-to-shape in the United States from U.S. yarns.	10.223(a)(3)
D.	Apparel knit-to-shape in the region from U.S. yarn (except socks in heading 6115); and knit apparel cut and assembled from regional or regional and U.S. fabrics from U.S. yarn. This group does not include non-underwear t-shirts in group E.	10.223(a)(4)
E.	Non-underwear t-shirts in subheading 6109.10.00 & 6109.90.10 made of regional fabric from U.S. yarn.	10.223(a)(5)
F.	Brassieres cut and assembled in the United States and/or one or more CBTPA beneficiary countries.	10.223(a)(6)
G.	Apparel assembled from fabrics or yarns considered in short supply in the NAFTA, or designated as not available in commercial quantities in the United States.	10.223(a)(7) 10.223(a)(8)
H.	Handloomed fabrics, handmade articles made of handloomed fabrics, or textile folklore articles – as defined in bilateral consultations.	10.223(a)(9)
I.	Textile luggage assembled from U.S. formed and cut fabric from U.S. yarns.	10.223(a)(10)
J.	Textile luggage cut and assembled from U.S. fabric from U.S. yarn.	10.223(a)(11)
K.	Knit apparel assembled with U.S. thread, cut from U.S. formed fabrics from U.S. yarns, and may include components knit-to-shape in the United States from U.S. yarns.	10.223(a)(12)
L.	Apparel assembled with U.S. thread from (1) U.S. fabric cut in the United States and the region, or (2) components knit-to-shape in the United States and the region, or (3) a combination of cutting and knitting-to-shape in the United States or the region.	10.223(a)(13)

6. U.S./Caribbean Fabric Producer Name & Address:	7. U.S./Caribbean Yarn Producer Name & Address: 8. U.S. Thread Producer Name & Address:
9. Handloomed, Handmade, or Folklore Article:	10. Name of Short Supply Fabric or Yarn:

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document. I agree to maintain, and present upon request, documentation necessary to support this certificate.

11. Authorized Signature:		12. Company:
13. Name: (Print or Type)		14. Title:
15. Date: (DD/MM/YY)	16. Blanket Period From: To:	17: Telephone: Facsimile:

(c) *Preparation of Certificate.* The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state ''available to Customs upon request'' in block 2. If the producer and the exporter are the same, state ''same'' in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) In block 4, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(6) Block 5 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(7) Blocks 6 through 10 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 4;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the legal name and address (including country) of the thread producer;

(11) Block 9 should state the name of the folklore article or should state that the article is handloomed or handmade of handloomed fabric;

(12) Block 10 should be completed if the article described in block 5 incorporates a fabric or yarn described in preference group G and should state the name of the fabric or yarn that has been considered as being in short supply in the NAFTA or that has been designated as not available in commercial quantities in the United States;

(13) Block 11 must contain the signature of the exporter or of the exporter's authorized agent having knowledge of the relevant facts;

(14) Block 15 should reflect the date on which the Certificate was completed and signed;

(15) Block 16 should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 5 that are imported into the United States during a specified period of up to one year (see §10.226(b)(4)(ii)). The ''from'' date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 15). The ''to'' date is the date on which the blanket period expires; and

(16) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000; 65 FR 67263, Nov. 9, 2000, as amended by T.D. 03–12, 68 FR 13833, Mar. 21, 2003]

§10.225 Filing of claim for preferential treatment.

(a) *Declaration*. In connection with a claim for preferential treatment for a textile or apparel article described in §10.223, the importer must make a written declaration that the article qualifies for that treatment. The inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in §10.226(d)(1), the declaration required under this paragraph must be based on a Certificate of Origin that has been completed and properly executed in accordance with §10.224 and that covers the article being imported.

(b) *Corrected declaration*. If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties

that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000; 65 FR 67263, Nov. 9, 2000, as amended by T.D. 03–12, 68 FR 13835, Mar. 21, 2003]

§ 10.226 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.225 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.225(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on a textile or apparel article under § 10.225(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be in writing or must be transmitted electronically pursuant to any electronic data interchange system authorized by Customs for that purpose;

(2) Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph and § 10.224(c)(15), ''identical articles'' means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US $2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential treatment under the CBTPA.

Check One:

( ) Producer
( ) Exporter
( ) Importer
( ) Agent

_____
Name
_____

Title

Address

Signature and Date

(2) *Exception*. If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.224 through 10.226, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a ''series of importations'' means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000, as amended by T.D. 03–12, 68 FR 13835, Mar. 21, 2003]

§ 10.227 Verification and justification of claim for preferential treatment.

(a) *Verification by Customs*. A claim for preferential treatment made under § 10.225, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.226, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements*. In order to make a claim for preferential treatment under § 10.225, the importer:

(1) Must have records that explain how the importer came to the conclusion that the textile or apparel article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under § 10.223(a). If the importer is claiming that the article incorporates fabric or yarn that was wholly formed in the United States, the importer must have records that identify the U.S. producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in § 10.224(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificates of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the CBTPA beneficiary country to the United States. If the imported article was shipped through a country other than a CBTPA beneficiary country and the invoices and other documents from the CBTPA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.223(d)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this

section justify the importer's claim for preferential treatment.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000, as amended by T.D. 03–12, 68 FR 13835, Mar. 21, 2003]

§ 10.228 Additional requirements for preferential treatment of brassieres.

(a) *Definitions.* When used in this section, the following terms have the meanings indicated:

(1) *Producer.* ''Producer'' means an individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the production process in a CBTPA beneficiary country.

(2) *Entity controlling production.* ''Entity controlling production'' means an individual, corporation, partnership, association, or other entity or group that is not a producer and that controls the production process in a CBTPA beneficiary country through a contractual relationship or other indirect means.

(3) *Fabrics formed in the United States.* ''Fabrics formed in the United States'' means fabrics that were produced by a weaving, knitting, needling, tufting, felting, entangling or other fabric-making process performed in the United States.

(4) *Cost.* ''Cost'' when used with reference to fabrics formed in the United States means:

(i) The price of the fabrics when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(A) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(B) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the fabrics to the place of production if included in that price; or

(ii) If the price cannot be determined under paragraph (a)(4)(i) of this section or if CBP finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the fabrics, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in forming the fabrics) and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabrics to the port of exportation.

(5) *Declared customs value.* ''Declared customs value'' when used with reference to fabric contained in an article means the sum of:

(i) The cost of fabrics formed in the United States that the producer or entity controlling production can verify; and

(ii) The cost of all other fabric contained in the article, exclusive of all findings and trimmings, determined as follows:

(A) In the case of fabric purchased by the producer or entity controlling production, the f.o.b. port of exportation price of the fabric as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price; or

(*2*) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price, but less the freight, insurance, packing, and other costs incurred in transporting the fabric to the place of production if included in that price;

(B) In the case of fabric for which the cost cannot be determined under paragraph (a)(5)(ii)(A) of this section or if CBP finds that cost to be unreasonable, all reasonable expenses incurred in the growth, production, or manufacture of the fabric, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in the growth, production, or manufacture of the fabric), general expenses and embroidering and dyeing, printing, and

finishing expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric to the port of exportation;

(C) In the case of fabric components purchased by the producer or entity controlling production, the f.o.b. port of exportation price of those fabric components as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify; or

(*2*) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, and less the freight, insurance, packing, and other costs incurred in transporting the fabric components to the place of production if included in that price; and

(D) In the case of fabric components for which a fabric cost cannot be determined under paragraph (a)(5)(ii)(C) of this section or if CBP finds that cost to be unreasonable: all reasonable expenses incurred in the growth, production, or manufacture of the fabric components, including the cost or value of materials (which does not include the cost of recoverable scrap generated in the growth, production, or manufacture of the fabric components) and general expenses, but excluding the cost or value of any non-textile materials, and excluding expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric components to the port of exportation.

(6) *Year*. ''Year'' means a 12-month period beginning on October 1 and ending on September 30 but does not include any 12-month period that began prior to October 1, 2000.

(7) *Entered*. ''Entered'' means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(b) *Limitations on preferential treatment*—(1) *General*. During the year that begins on October 1, 2002, and during any subsequent year, articles of a producer or an entity controlling production that conform to the production standards set forth in §10.223(a)(6) will be eligible for preferential treatment only if:

(i) The aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that are entered as articles described in §10.223(a)(6) during the immediately preceding year was at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that are entered as articles described in §10.223(a)(6) during that year; or

(ii) In a case in which the 75 percent requirement set forth in paragraph (b)(1)(i) of this section was not met during a year and therefore those articles of that producer or that entity controlling production were not eligible for preferential treatment during the following year, the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that conform to the production standards set forth in §10.223(a)(6) and that were entered during the immediately preceding year was at least 85

percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that conform to the production standards set forth in §10.223(a)(6) and that were entered during that year; and

(iii) In conjunction with the filing of the claim for preferential treatment under §10.225, the importer records on the entry summary or warehouse withdrawal for consumption (CBP Form 7501, column 34), or its electronic equivalent, the distinct and unique identifier assigned by CBP to the applicable documentation prescribed under paragraph (c) of this section.

(2) *Rules of application*—(i) *General.* For purposes of paragraphs (b)(1)(i) and (b)(1)(ii) of this section and for purposes of preparing and filing the documentation prescribed in paragraph (c) of this section, the following rules will apply:

(A) The articles in question must have been produced in the manner specified in §10.223(a)(6) and the articles in question must be entered within the same year;

(B) Articles that are exported to countries other than the United States and are never entered are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(C) Articles that are entered under an HTSUS subheading other than the HTSUS subheading which pertains to articles described in §10.223(a)(6) are not to be considered in determining compliance with the 75 percent standard specified in paragraph (b)(1)(i) of this section;

(D) For purposes of determining compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section, all articles that conform to the production standards set forth in §10.223(a)(6) must be considered, regardless of the HTSUS subheading under which they were entered;

(E) Fabric components and fabrics that constitute findings or trimmings are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(F) Beginning October 1, 2002, in order for articles to be eligible for preferential treatment in a given year, a producer of, or entity controlling production of, those articles must have met the 75 percent standard specified in paragraph (b)(1)(i) of this section during the immediately preceding year. If articles of a producer or entity controlling production fail to meet the 75 percent standard specified in paragraph (b)(1)(i) of this section during a year, articles of that producer or entity controlling production:

(*1*) Will not be eligible for preferential treatment during the following year;

(*2*) Will remain ineligible for preferential treatment until the year that follows a year in which articles of that producer or entity controlling production met the 85 percent standard specified in paragraph (b)(1)(ii) of this section; and

(*3*) After the 85 percent standard specified in paragraph (b)(1)(ii) of this section has been met, will again be subject to the 75 percent standard specified in paragraph (b)(1)(i) of this section during the following year for purposes of determining eligibility for preferential treatment in the next year.

(G) A new producer or new entity controlling production, that is, a producer or entity controlling production which did not produce or control production of articles that were entered as articles described in §10.223(a)(6) during the immediately preceding year, must first establish compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section as a prerequisite to preparation of the declaration of compliance referred to in paragraph (c) of this section;

(H) A declaration of compliance prepared by a producer or by an entity controlling production must cover all production of that producer or all production that the entity controls for the year in question;

(I) A producer is not required to prepare a declaration of compliance if all of its production is covered by a declaration of compliance prepared by an entity controlling production;

(J) In the case of a producer, the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section and the declaration of compliance procedure under paragraph (c) of this section apply to all articles of that producer for the year in question, even if some but not all of that production is also covered by a declaration of compliance prepared by an entity controlling production;

(K) The U.S. importer does not have to be the producer or the entity controlling production who prepared the declaration of compliance; and

(L) The exclusion references regarding findings and trimmings in paragraph (b)(1)(i) and paragraph (b)(1)(ii) of this section apply to all findings and trimmings, whether or not they are of foreign origin.

(ii) *Examples*. The following examples will illustrate application of the principles set forth in paragraph (b)(2)(i) of this section.

Example 1. A CBTPA beneficiary country producer of articles that meet the production standards specified in §10.223(a)(6) in the first year sends 50 percent of that production to CBTPA region markets and the other 50 percent to the U.S. market; the cost of the fabrics formed in the United States equals 100 percent of the value of all of the fabric in the articles sent to the CBTPA region and 60 percent of the value of all of the fabric in the articles sent to the United States. Although the cost of fabrics formed in the United States is more than 75 percent of the value of all of the fabric used in all of the articles produced, this producer could not prepare a valid declaration of compliance because the articles sent to the United States did not meet the minimum 75 percent standard.

Example 2. A producer sends to the United States in the first year three shipments of articles that meet the description in §10.223(a)(6); one of those shipments is entered under the HTSUS subheading that covers articles described in §10.223(a)(6), the second shipment is entered under the HTSUS subheading that covers articles described in §10.223(a)(12), and the third shipment is entered under subheading 9802.00.80, HTSUS. In determining whether the minimum 75 percent standard has been met in the first year for purposes of entry of articles under the HTSUS subheading that covers articles described in §10.223(a)(6) during the following (that is, second) year, consideration must be restricted to the articles in the first shipment and therefore must not include the articles in the second and third shipments.

Example 3. A producer in the second year begins production of articles that conform to the production standards specified in §10.223(a)(6); some of those articles are entered in that year under HTSUS subheading 6212.10 and others under HTSUS subheading 9802.00.80 but none are entered in that year under the HTSUS subheading which pertains to articles described in §10.223(a)(6) because the 75 percent standard had not been met in the preceding (that is, first) year. In this case the 85 percent standard applies, and all of the articles that were entered under the various HTSUS provisions in the second year must be taken into account in determining whether that 85 percent standard has been met. If the 85 percent was met in the aggregate for all of the articles entered in the second year, in the next (that is, third) year articles of that producer may receive preferential treatment under the HTSUS subheading which pertains to articles described in §10.223(a)(6).

Example 4. An entity controlling production of articles that meet the description in §10.223(a)(6) buys for the U.S., Canadian and Mexican markets; the articles in each case are first sent to the United States where they are entered for consumption and then placed in a commercial warehouse from which they are shipped to various stores in the United States, Canada and Mexico. Notwithstanding the fact that some of the articles ultimately ended up in Canada or Mexico, a declaration of compliance prepared by the entity controlling production must cover all of the articles rather than only those that remained in the United States because all of those articles had been entered for consumption.

Example 5. Fabric is cut and sewn in the United States with other U.S. materials to form cups which are joined together to form brassiere front subassemblies in the United States, and those front subassemblies are then placed in a warehouse in the United States where they are held until the following year; during that following year all of the front subassemblies are shipped to a CBTPA beneficiary country where they are assembled with elastic strips and labels produced in an Asian country and other fabrics, components or materials produced in the CBTPA beneficiary country to form articles that meet the production standards specified in §10.223(a)(6) and that are then shipped to the United States and entered during that same year. In determining whether the entered articles meet the minimum 75 or 85 percent standard, the fabric in the elastic strips and labels is to be disregarded entirely because the strips and labels constitute findings or trimmings for purposes of this section, and all of the fabric in the front subassemblies is countable because it was all formed in the United States and used in the

production of articles that were entered in the same year.

Example 6. A CBTPA beneficiary country producer's entire production of articles that meet the description in §10.223(a)(6) is sent to a U.S. importer in two separate shipments, one in February and the other in June of the same calendar year; the articles shipped in February do not meet the minimum 75 percent standard, the articles shipped in June exceed the 85 percent standard, and the articles in the two shipments, taken together, do meet the 75 percent standard; the articles covered by the February shipment are entered for consumption on March 1 of that calendar year, and the articles covered by the June shipment are placed in a CBP bonded warehouse upon arrival and are subsequently withdrawn from warehouse for consumption on November 1 of that calendar year. The CBTPA beneficiary country producer may not prepare a valid declaration of compliance covering the articles in the first shipment because those articles did not meet the minimum 75 percent standard and because those articles cannot be included with the articles of the second shipment on the same declaration of compliance since they were entered in a different year. However, the CBTPA beneficiary country producer may prepare a valid declaration of compliance covering the articles in the second shipment because those articles did meet the requisite 85 percent standard which would apply for purposes of entry of articles in the following year.

Example 7. A producer in the second year begins production of articles exclusively for the U.S. market that meet the production standards specified in §10.223(a)(6), but the entered articles do not meet the requisite 85 percent standard until the third year; the entered articles fail to meet the 75 percent standard in the fourth year; and the entered articles do not attain the 85 percent standard until the sixth year. The producer's articles may not receive preferential treatment during the second year because there was no production (and thus there were no entered articles) in the immediately preceding (that is, first) year on which to assess compliance with the 75 percent standard. The producer's articles also may not receive preferential treatment during the third year because the 85 percent standard was not met in the immediately preceding (that is, second) year. However, the producer's articles are eligible for preferential treatment during the fourth year based on compliance with the 85 percent standard in the immediately preceding (that is, third) year. The producer's articles may not receive preferential treatment during the fifth year because the 75 percent standard was not met in the immediately preceding (that is, fourth) year. The producer's articles may not receive preferential treatment during the sixth year because the 85 percent standard has become applicable and was not met in the immediately preceding (that is, fifth) year. The producer's articles are eligible for preferential treatment during the seventh year because the 85 percent standard was met in the immediately preceding (that is, sixth) year, and during that seventh year the 75 percent standard is applicable for purposes of determining whether the producer's articles are eligible for preferential treatment in the following (that is, eighth) year.

Example 8. An entity controlling production (Entity A) uses five CBTPA beneficiary country producers (Producers 1–5), all of which produce only articles that meet the description in §10.223(a)(6); Producers 1–4 send all of their production to the United States and Producer 5 sends 10 percent of its production to the United States and the rest to Europe; Producers 1–3 and Producer 5 produce only pursuant to contracts with Entity A, but Producer 4 also operates independently of Entity A by producing for several U.S. importers, one of which is an entity controlling production (Entity B) that also controls all of the production of articles of one other producer (Producer 6) which sends all of its production to the United States. A declaration of compliance prepared by Entity A must cover all of the articles of Producers 1–3 and the 10 percent of articles of Producer 5 that are sent to the United States and that portion of the articles of Producer 4 that are produced pursuant to the contract with Entity A, because Entity A controls the production of those articles. There is no need for Producers 1–3 and Producer 5 to prepare a declaration of compliance because they have no production that is not covered by a declaration of compliance prepared by an entity controlling production. A declaration of compliance prepared by Producer 4 would cover all of its production, that is, articles produced for Entity A, articles produced for Entity B, and articles produced independently for other U.S. importers; a declaration of compliance prepared by Entity B must cover that portion of the production of Producer 4 that it controls as well as all of the production of Producer 6 because Entity B also controls all of the production of Producer 6. Producer 6 would not prepare a declaration of compliance because all of its production is covered by the declaration of compliance prepared by Entity B.

(c) *Documentation*—(1) *Initial declaration of compliance.* In order for an importer to comply with the requirement set forth in paragraph (b)(1)(iii) of this section, the producer or the entity controlling production must have filed with CBP, in accordance with paragraph (c)(4) of this section, a declaration of compliance with the applicable

75 or 85 percent requirement prescribed in paragraph (b)(1)(i) or (b)(1)(ii) of this section. After filing of the declaration of compliance has been completed, CBP will advise the producer or the entity controlling production of the distinct and unique identifier assigned to that declaration. The producer or the entity controlling production will then be responsible for advising each appropriate U.S. importer of that distinct and unique identifier for purposes of recording that identifier on the entry summary or warehouse withdrawal. In order to provide sufficient time for advising the U.S. importer of that distinct and unique identifier prior to the arrival of the articles in the United States, the producer or the entity controlling production should file the declaration of compliance with CBP at least 10 calendar days prior to the date of the first shipment of the articles to the United States.

(2) *Amended declaration of compliance.* If the information on the declaration of compliance referred to in paragraph (c)(1) of this section is based on an estimate because final year-end information was not available at that time and the final data differs from the estimate, or if the producer or the entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information, within 30 calendar days after the final year-end information becomes available or within 30 calendar days after the date of discovery of the error:

(i) The producer or the entity controlling production must file with the CBP office identified in paragraph (c)(4) of this section an amended declaration of compliance containing that final year-end information or other corrected information; or

(ii) If that final year-end information or other corrected information demonstrates noncompliance with the applicable 75 or 85 percent requirement, the producer or the entity controlling production must in writing advise both the CBP office identified in paragraph (c)(4) of this section and each appropriate U.S. importer of that fact.

(3) *Form and preparation of declaration of compliance*—(i) *Form.* The declaration of compliance referred to in paragraph (c)(1) of this section may be printed and reproduced locally and must be in the following format:

CARIBBEAN BASIN TRADE PARTNERSHIP ACT DECLARATION OF COMPLIANCE FOR BRASSIERES

[19 CFR 10.223(a)(6) and 10.228]

1. Year beginning date: October 1, _____
   Year ending date: September 30, _____

   Official U.S. Customs and Border Protection Use Only
   Assigned number: _____
   Assignment date: _____

2. Identity of preparer (producer or entity controlling production):
   Full name and address:

   Telephone number: _____
   Facsimile number: _____
   Importer identification number: _____

3. If the preparer is an entity controlling production, provide the following for each producer:
   Full name and address:

   Telephone number: _____
   Facsimile number: _____

4. Aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of brassieres that were entered during the year: _____
5. Aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in brassieres that were entered during the year: _____
6. I declare that the aggregate cost of fabric (exclusive of all findings and trimmings) formed in the United States was at least 75 percent (or 85 percent, if applicable under 19 CFR 10.228(b)(1)(ii)) of the aggregate declared customs value of the fabric contained in brassieres entered during the year.
7. Authorized signature:

   _____
   Date:

8. Name and title (print or type):

(ii) *Preparation.* The following rules will apply for purposes of completing the declaration of compliance set forth in paragraph (c)(3)(i) of this section:

(A) In block 1, fill in the year commencing October 1 and ending September 30 of the calendar year during which the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was met;

(B) Block 2 should state the legal name and address (including country) of the preparer and should also include the preparer's importer identification number (see §24.5 of this chapter), if the preparer has one;

(C) Block 3 should state the legal name and address (including country) of the CBTPA beneficiary country producer if that producer is not already identified in block 2. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers;

(D) Blocks 4 and 5 apply only to articles that were entered during the year identified in block 1; and

(E) In block 7, the signature must be that of an authorized officer, employee, agent or other person having knowledge of the relevant facts and the date must be the date on which the declaration of compliance was completed and signed.

(4) *Filing of declaration of compliance.* The declaration of compliance referred to in paragraph (c)(1) of this section:

(i) Must be completed either in the English language or in the language of the country in which the articles covered by the declaration were produced. If the declaration is completed in a language other than English, the producer or the entity controlling production must provide to CBP upon request a written English translation of the declaration; and

(ii) Must be filed with the New York Strategic Trade Center, Customs and Border Protection, 1 Penn Plaza, New York, New York 10119.

(d) *Verification of declaration of compliance*—(1) *Verification procedure.* A declaration of compliance filed under this section will be subject to whatever verification CBP deems necessary. In the event that CBP for any reason is prevented from verifying the statements made on a declaration of compliance, CBP may deny any claim for preferential treatment made under §10.225 that is based on that declaration. A verification of a declaration of compliance may involve, but need not be limited to, a review of:

(i) All records required to be made, kept, and made available to CBP by the importer, the producer, the entity controlling production, or any other person under part 163 of this chapter;

(ii) Documentation and other information regarding all articles that meet the production standards specified in §10.223(a)(6) that were exported to the United States and that were entered during the year in question, whether or not a claim for preferential treatment was made under §10.225. Those records and other information include, but are not limited to, work orders and other production records, purchase orders, invoices, bills of lading and other shipping documents;

(iii) Evidence to document the cost of fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records;

(iv) Evidence to document the cost or value of all fabric other than fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records; and

(v) Accounting books and documents to verify the records and information referred to in paragraphs (d)(1)(ii) through (d)(1)(iv) of this section. The verification of purchase orders, invoices and bills of lading will be accomplished through the review of a distinct audit trail. The audit trail documents must consist of a cash disbursement or purchase journal or equivalent records to establish the purchase of the fabric. The headings in each of these journals or other records must contain the date, vendor name, and amount paid for the fabric. The verification of production records and work orders will be accomplished through analysis of the inventory records of the producer or entity controlling production.

The inventory records must reflect the production of the finished article which must be referenced to the original purchase order or lot number covering the fabric used in production. In the inventory production records, the inventory should show the opening balance of the inventory plus the purchases made during the accounting period and the inventory closing balance.

(2) *Notice of determination*. If, based on a verification of a declaration of compliance filed under this section, CBP determines that the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was not met, CBP will publish a notice of that determination in the FEDERAL REGISTER.

[CBP Dec. 04–40, 69 FR 69518, Nov. 30, 2004]

NON-TEXTILE ARTICLES UNDER THE UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT

SOURCE: T.D. 00–68, 65 FR 59663, Oct. 5, 2000, unless otherwise noted.

§ 10.231 Applicability.

Title II of Public Law 106–200 (114 Stat. 251), entitled the United States-Caribbean Basin Trade Partnership Act (CBTPA), amended section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA, 19 U.S.C. 2701–2707) to authorize the President to extend additional trade benefits to countries that have been designated as beneficiary countries under the CBERA. Section 213(b)(3) of the CBERA (19 U.S.C. 2703(b)(3)) provides for special preferential tariff treatment of certain non-textile articles that are otherwise excluded from duty-free treatment under the CBERA. The provisions of §§ 10.231–10.237 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential tariff treatment pursuant to CBERA section 213(b)(3).

[T.D. 00–68, 65 FR 59663, Oct. 5, 2000; 65 FR 67263, Nov. 9, 2000]

§ 10.232 Definitions.

When used in §§ 10.231 through 10.237, the following terms have the meanings indicated:

CBERA. ''CBERA'' means the Caribbean Basin Economic Recovery Act, 19 U.S.C. 2701–2707.

CBTPA beneficiary country. ''CBTPA beneficiary country'' means a ''beneficiary country'' as defined in § 10.191(b)(1) for purposes of the CBERA which the President also has designated as a beneficiary country for purposes of preferential duty treatment of articles under 19 U.S.C. 2703(b)(3) and which has been the subject of a finding by the President or his designee, published in the FEDERAL REGISTER, that the beneficiary country has satisfied the requirements of 19 U.S.C. 2703(b)(4)(A)(ii).

CBTPA originating good. ''CBTPA originating good'' means a good that meets the rules of origin for a good as set forth in General Note 12, HTSUS, and in the appendix to part 181 of this chapter and as applied under § 10.233(b).

HTSUS. ''HTSUS'' means the Harmonized Tariff Schedule of the United States.

NAFTA. ''NAFTA'' means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

Preferential tariff treatment. ''Preferential tariff treatment'' when used with reference to an imported article means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States with duty and other tariff treatment that is identical to the tariff treatment that would be accorded at that time under Annex 302.2 of the NAFTA to an imported article described in the same 8-digit subheading of the HTSUS that is a good of Mexico.

[T.D. 00–68, 65 FR 59663, Oct. 5, 2000; 65 FR 67264, Nov. 9, 2000]

§ 10.233 Articles eligible for preferential tariff treatment.

(a) *General*. The preferential tariff treatment referred to in § 10.231 applies to any of the following articles, provided that the article in question is a CBTPA originating good, is imported directly into the customs territory of the United States from a CBTPA beneficiary country, and is not accorded duty-free treatment under U.S. Note 2(b), Subchapter II, Chapter 98, HTSUS (see § 10.26):

(1) Footwear not designated on August 5, 1983, as eligible articles for the purpose of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467);

(2) Tuna, prepared or preserved in any manner, in airtight containers;

(3) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTSUS;

(4) Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply; and

(5) Articles to which reduced rates of duty apply under § 10.198a, except as otherwise provided in paragraph (c) of this section.

(b) *Application of NAFTA rules of origin*. In determining whether an article is a CBTPA originating good for purposes of paragraph (a) of this section, application of the provisions of General Note 12 of the HTSUS and the appendix to part 181 of this chapter will be subject to the following rules:

(1) No country other than the United States and a CBTPA beneficiary country may be treated as being a party to the NAFTA;

(2) Any reference to trade between the United States and Mexico will be deemed to refer to trade between the United States and a CBTPA beneficiary country;

(3) Any reference to a party will be deemed to refer to a CBTPA beneficiary country or the United States; and

(4) Any reference to parties will be deemed to refer to any combination of CBTPA beneficiary countries or to the United States and one or more CBTPA beneficiary countries (or any combination involving the United States and CBTPA beneficiary countries).

(c) *Duty reductions for leather-related articles*. If, after it is determined that an article described in paragraph (a)(5) of this section qualifies as a CBTPA originating good and is eligible for preferential tariff treatment under this section, it is determined that the article in question also would otherwise qualify for a reduced rate of duty under § 10.198a and that reduced rate of duty is lower than the rate of duty that would apply under this section, that lower rate of duty will apply to the article for purposes of preferential tariff treatment under this section.

(d) *Imported directly defined*. For purposes of paragraph (a) of this section, the words ''imported directly'' mean:

(1) Direct shipment from any CBTPA beneficiary country to the United States without passing through the territory of any country that is not a CBTPA beneficiary country;

(2) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not a CBTPA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

§ 10.234 Certificate of Origin.

A Certificate of Origin as specified in § 10.236 must be employed to certify that an article described in § 10.233(a)(1) through (5) being exported from a

CBTPA beneficiary country to the United States qualifies for the preferential tariff treatment referred to in § 10.231. The Certificate of Origin must be prepared by the exporter in the CBTPA beneficiary country. Where the CBTPA beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(a) Its reasonable reliance on the producer's written representation that the article qualifies for preferential tariff treatment; or

(b) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

§ 10.235 Filing of claim for preferential tariff treatment.

(a) *Declaration*. In connection with a claim for preferential tariff treatment for an article described in § 10.233(a)(1) through (5), the importer must make a written declaration that the article qualifies for that treatment. The written declaration should be made by including on the entry summary, or equivalent documentation, the symbol ''R'' as a prefix to the subheading of the HTSUS under which the article in question is classified. Except in any of the circumstances described in § 10.236(d)(1), the declaration required under this paragraph must be based on a complete and properly executed original Certificate of Origin that covers the article being imported and that is in the possession of the importer.

(b) *Corrected declaration*. If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

§ 10.236 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records*. Each importer claiming preferential tariff treatment for an article under § 10.235 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.235(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate*. An importer who claims preferential tariff treatment on an article under § 10.235(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be on Customs Form 450, including privately-printed copies of that Form, or, as an alternative to Customs Form 450, in an approved computerized format or other medium or format as is approved by the Office of Field Operations, U.S. Customs Service, Washington, DC 20229. An alternative format must contain the same information and certification set forth on Customs Form 450;

(2) Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified period, not to exceed 12 months, set out in the Certificate by the exporter.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential tariff treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential tariff treatment under the CBTPA.

Check One:
( ) Producer
( ) Exporter
( ) Importer
( ) Agent

Name

Title

Address

Signature and Date

(2) *Exception.* If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§10.234 through 10.236, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential tariff treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential tariff treatment. For purposes of this paragraph, a ''series of importations'' means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§ 10.237 Verification and justification of claim for preferential tariff treatment.

(a) *Verification by Customs.* A claim for preferential tariff treatment made under §10.235, including any statements or other information contained on a Certificate of Origin submitted to Customs under §10.236, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential tariff treatment. A verification of a claim for preferential tariff treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information in a CBTPA beneficiary country regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence in a CBTPA beneficiary country to document the use of U.S.

materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements*. In order to make a claim for preferential tariff treatment under § 10.235, the importer:

(1) Must have records that explain how the importer came to the conclusion that the article qualifies for preferential tariff treatment. Those records must include documents that support a claim that the article in question qualifies for preferential tariff treatment because it meets the applicable rule of origin set forth in General Note 12, HTSUS, and in the appendix to part 181 of this chapter. A properly completed Certificate of Origin in the form prescribed in § 10.236(b) is a record that would serve this purpose;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificate of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the CBTPA beneficiary country to the United States. If the imported article was shipped through a country other than a CBTPA beneficiary country and the invoices and other documents from the CBTPA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.233(d)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential tariff treatment.

Subpart F—Andean Trade Promotion and Drug Eradication Act

APPAREL AND OTHER TEXTILE ARTICLES UNDER THE ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT

SOURCE: Sections 10.241 through 10.248 issued by T.D. 03–16, 68 FR 14487, Mar. 25, 2003; 68 FR 67338, Dec. 1, 2003, unless otherwise noted.

§ 10.241 Applicability.

Title XXXI of Public Law 107–210 (116 Stat. 933), entitled the Andean Trade Promotion and Drug Eradication Act (ATPDEA), amended sections 202, 203, 204, and 208 of the Andean Trade Preference Act (the ATPA, 19 U.S.C. 3201–3206) to authorize the President to extend additional trade benefits to countries that are designated as beneficiary countries under the ATPA. Section 204(b)(3) of the ATPA (19 U.S.C. 3203(b)(3)) provides for the preferential treatment of certain apparel and other textile articles from those ATPA beneficiary countries which the President designates as ATPDEA beneficiary countries. The provisions of §§ 10.241 through 10.248 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to ATPA section 204(b)(3) and Subchapter XXI, Chapter 98, HTSUS.

§ 10.242 Definitions.

When used in §§ 10.241 through 10.248, the following terms have the meanings indicated:

Apparel articles. ''Apparel articles'' means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99.15 and 6505.90 of the HTSUS.

Assembled or sewn or otherwise assembled in one or more ATPDEA beneficiary countries. ''Assembled'' and ''sewn or otherwise assembled'' when used in the context of production of an apparel or other textile article in one or more ATPDEA beneficiary countries has reference to a joining together of two or more components that occurred in one or more ATPDEA beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States.

ATPA. ''ATPA'' means the Andean Trade Preference Act, 19 U.S.C. 3201–3206.

ATPDEA beneficiary country. ''ATPDEA beneficiary country'' means a ''beneficiary country'' as defined in § 10.202(a) for purposes of the ATPA

which the President also has designated as a beneficiary country for purposes of preferential treatment of apparel and other textile articles under 19 U.S.C. 3203(b)(3) and which has been the subject of a determination by the President or his designee, published in the FEDERAL REGISTER, that the beneficiary country has satisfied the requirements of 19 U.S.C. 3203(b)(5)(A)(ii).

Chief value. ''Chief value'' when used with reference to llama, alpaca, and vicuña means that the value of those materials exceeds the value of any other single textile material in the fabric or component under consideration, with the value in each case determined by application of the principles set forth in § 10.243(c)(1)(ii).

Cut in one or more ATPDEA beneficiary countries. ''Cut'' when used in the context of production of textile luggage in one or more ATPDEA beneficiary countries means that all fabric components used in the assembly of the article were cut from fabric in one or more ATPDEA beneficiary countries, or were cut from fabric in the United States and used in a partial assembly operation in the United States prior to cutting of fabric and assembly of the article in one or more ATPDEA beneficiary countries, or both.

Foreign. ''Foreign'' means of a country other than the United States or an ATPDEA beneficiary country.

HTSUS. ''HTSUS'' means the Harmonized Tariff Schedule of the United States.

Knit-to-shape components. ''Knit-to-shape,'' when used with reference to textile components, means components that are knitted or crocheted from a yarn directly to a specific shape containing a self-start edge. Minor cutting or trimming will not affect the determination of whether a component is ''knit-to-shape.''

Luggage. ''Luggage'' means travel goods (such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel) and brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (for example, physicians' cases, sample cases), and like containers and cases designed to be carried with the person. The term ''luggage'' does not include handbags (that is, pocketbooks, purses, shoulder bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls). The term ''luggage'' also does not include flat goods (that is, small flatware designed to be carried on the person, such as banknote cases, bill cases, billfolds, bill purses, bill rolls, card cases, change cases, cigarette cases, coin purses, coin holders, compacts, currency cases, key cases, letter cases, license cases, money cases, pass cases, passport cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches, and similar articles).

NAFTA. ''NAFTA'' means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

Preferential treatment. ''Preferential treatment'' means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels as provided in 19 U.S.C. 3203(b)(3).

Wholly formed fabric components. ''Wholly formed,'' when used with reference to fabric components, means that all of the production processes, starting with the production of wholly formed fabric and ending with a component that is ready for incorporation into an apparel article, took place in a single country.

Wholly formed fabrics. ''Wholly formed,'' when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in a single country.

Wholly formed yarns. ''Wholly formed,'' when used with reference to yarns, means that all of the production processes, starting with the extrusion

of filament, strip, film, or sheet and including drawing to fully orient a filament or slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a yarn or plied yarn, took place in the United States or in one or more ATPDEA beneficiary countries.

§ 10.243 Articles eligible for preferential treatment.

(a) *General.* Subject to paragraphs (b) and (c) of this section, preferential treatment applies to the following apparel and other textile articles that are imported directly into the customs territory of the United States from an ATPDEA beneficiary country:

(1) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or in the United States, or in both, exclusively from any one of the following:

(i) Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in the United States), provided that, if the apparel article is assembled from knitted or crocheted or woven wholly formed fabrics or from knitted or crocheted or woven wholly formed fabric components produced from fabric, all dyeing, printing, and finishing of that knitted or crocheted or woven fabric or component was carried out in the United States;

(ii) Fabrics or fabric components formed, or components knit-to-shape, in one or more ATPDEA beneficiary countries from yarns wholly formed in one or more ATPDEA beneficiary countries, if those fabrics (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries) or components are in chief value of llama, alpaca, and/or vicuña;

(iii) Fabrics or yarns, provided that apparel articles (except articles classifiable under subheading 6212.10 of the HTSUS) of those fabrics or yarns would be considered an originating good under General Note 12(t), HTSUS, if the apparel articles had been imported directly from Canada or Mexico; or

(iv) Fabrics or yarns that the President or his designee has designated in the FEDERAL REGISTER as fabrics or yarns that cannot be supplied by the domestic industry in commercial quantities in a timely manner;

(2) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or in the United States, or in both, exclusively from a combination of fabrics, fabric components, knit-to-shape components or yarns described in two or more of paragraphs (a)(1)(i) through (a)(1)(iv) of this section;

(3) A handloomed, handmade, or folklore apparel or other textile article of an ATPDEA beneficiary country that the President or his designee and representatives of the ATPDEA beneficiary country mutually agree is a handloomed, handmade, or folklore article and that is certified as a handloomed, handmade, or folklore article by the competent authority of the ATPDEA beneficiary country;

(4) Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or in one or more ATPDEA beneficiary countries, or in both, other than articles entered as articles described in paragraphs (a)(1) through (a)(3) and (a)(7) of this section, and provided that any applicable additional requirements set forth in § 10.248 are met;

(5) Textile luggage assembled in an ATPDEA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS;

(6) Textile luggage assembled in one or more ATPDEA beneficiary countries from fabric cut in one or more ATPDEA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States; and

(7) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed, or from components knit-to-shape, in one

or more ATPDEA beneficiary countries from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries), including apparel articles sewn or otherwise assembled in part but not exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (a)(1) of this section.

(b) *Dyeing, printing, finishing and other operations*—(1) *Dyeing, printing and finishing operations.* Dyeing, printing, and finishing operations may be performed on any yarn, fabric, or knit-to-shape or other component used in the production of any article described under paragraph (a) of this section without affecting the eligibility of the article for preferential treatment, provided that the operation is performed in the United States or in an ATPDEA beneficiary country and not in any other country and subject to the following additional conditions:

(i) In the case of an article described in paragraph (a)(1), (a)(2), or (a)(7) of this section that contains a knitted or crocheted or woven fabric, or a knitted or crocheted or woven fabric component produced from fabric, that was wholly formed in the United States from yarns wholly formed in the United States, any dyeing, printing, or finishing of that knitted or crocheted or woven fabric or component must have been carried out in the United States; and

(ii) In the case of assembled luggage described in paragraph (a)(5) of this section, an operation may be performed in an ATPDEA beneficiary country only if that operation is incidental to the assembly process within the meaning of § 10.16.

(2) *Other operations.* An article described under paragraph (a) of this section that is otherwise eligible for preferential treatment will not be disqualified from receiving that treatment by virtue of having undergone one or more operations such as embroidering, stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing or screen printing, provided that the operation is performed in the United States or in an ATPDEA beneficiary country and not in any other country. However, in the case of assembled luggage described in paragraph (a)(5) of this section, an operation may be performed in an ATPDEA beneficiary country without affecting the eligibility of the article for preferential treatment only if it is incidental to the assembly process within the meaning of § 10.16.

(c) *Special rules for certain component materials*—(1) *Foreign findings, trimmings, interlinings, and yarns*—(i) *General.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.241 because the article contains:

(A) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''findings and trimmings'' include, but are not limited to, sewing thread, hooks and eyes, snaps, buttons, ''bow buds,'' decorative lace trim, elastic strips, zippers (including zipper tapes), and labels;

(B) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''interlinings'' include only a chest type plate, a ''hymo'' piece, or ''sleeve header,'' of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments;

(C) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings and interlinings does not exceed 25 percent of the cost of the components of the assembled article; or

(D) Yarns not wholly formed in the United States or in one or more ATPDEA beneficiary countries if the total weight of all those yarns is not more than 7 percent of the total weight of the article.

(ii) *''Cost'' and ''value'' defined.* The ''cost'' of components and the ''value''

of findings and trimmings or interlinings referred to in paragraph (c)(1)(i) of this section means:

(A) The price of the components, findings and trimmings, or interlinings when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(*2*) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the components, findings and trimmings, or interlinings to the place of production if included in that price; or

(B) If the price cannot be determined under paragraph (c)(1)(ii)(A) of this section or if Customs finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the components, findings and trimmings, or interlinings, including the cost or value of materials and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the components, findings and trimmings, or interlinings to the port of exportation.

(iii) *Treatment of yarns as findings or trimmings.* If any yarns not wholly formed in the United States or one or more ATPDEA beneficiary countries are used in an article as a finding or trimming described in paragraph (c)(1)(i)(A) of this section, the yarns will be considered to be a finding or trimming for purposes of paragraph (c)(1)(i) of this section.

(2) *Special rule for nylon filament yarn.* An article otherwise described under paragraph (a)(1)(i) through (iii), (a)(2), or (a)(7) of this section will not be ineligible for the preferential treatment referred to in § 10.241 because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable in subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS and that is entered free of duty from Canada, Mexico, or Israel.

(d) *Imported directly defined.* For purposes of paragraph (a) of this section, the words ''imported directly'' mean:

(1) Direct shipment from any ATPDEA beneficiary country to the United States without passing through the territory of any country that is not an ATPDEA beneficiary country;

(2) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not an ATPDEA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

§ 10.244 Certificate of Origin.

(a) *General.* A Certificate of Origin must be employed to certify that an apparel or other textile article being exported from an ATPDEA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.241. The Certificate of Origin must be prepared by the exporter in the ATPDEA beneficiary country in

the format specified in paragraph (b) of this section. Where the ATPDEA beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(1) Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

(b) *Form of Certificate*. The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

Andean Trade Promotion and Drug Eradication Act
Textile Certificate of Origin

1. Exporter Name & Address:	3. Importer Name & Address:
2. Producer Name & Address:	
4. Description of Article:	
5. Preference Group:	

Group	*Each description below is only a summary of the cited CFR provision.*	19 CFR
A.	Apparel assembled from U.S. formed, dyed, printed and finished fabrics or fabric components, or U.S. formed knit-to-shape components from U.S. or Andean yarns.	10.243(a)(1)(i)
B.	Apparel assembled from Andean chief value llama, alpaca or vicuña fabrics, fabric components, or knit-to-shape components, from Andean yarns.	10.243(a)(1)(ii)
C.	Apparel assembled from fabrics or yarns considered as being in short supply in the NAFTA.	10.243(a)(1)(iii)
D.	Apparel assembled from fabrics or yarns designated as not available in commercial quantities in the United States.	10.243(a)(1)(iv)
E.	Apparel assembled from a combination of two or more yarns, fabrics, fabric components, or knit-to-shape components described in preference groups A though D.	10.243(a)(2)
F.	Handloomed, handmade, or folklore textile and apparel goods.	10.243(a)(3)
G.	Brassieres assembled in the U.S. and/or one or more Andean beneficiary countries.	10.243(a)(4)
H.	Textile luggage assembled from U.S. formed fabrics from U.S. yarns.	10.243(a)(5)&(6)
I.	Apparel assembled from Andean formed fabrics, fabric components, or knit-to-shape components from U.S. or Andean yarns, whether or not also assembled, in part, from yarns, fabrics and fabric components described in preference groups A through D.	10.243(a)(7)

6. U.S./Andean Fabric Producer Name & Address:	7. U.S./Andean Yarn Producer Name & Address:
8. Handloomed, Handmade, or Folklore Article:	9. Name of Short Supply Fabric or Yarn:

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document. I agree to maintain, and present upon request, documentation necessary to support this certificate.

10. Authorized Signature:		11. Company:
12. Name: (Print or Type)		13. Title:
14. Date: (DD/MM/YY)	15. Blanket Period From: To:	16: Telephone: Facsimile:

(c) *Preparation of Certificate.* The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country)

of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state ''available to Customs upon request'' in block 2. If the producer and the exporter are the same, state ''same'' in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) Block 4 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(6) In block 5, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(7) Blocks 6 through 9 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 5;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the name of the folklore article or should state that the article is handloomed or handmade of handloomed fabric;

(11) Block 9 should be completed if the article described in block 4 incorporates a fabric or yarn described in preference group C or D and should state the name of the fabric or yarn that has been considered as being in short supply in the NAFTA or that has been designated as not available in commercial quantities in the United States. Block 9 also should be completed if preference group E or I applies to the article described in block 4 and the article incorporates a fabric or yarn described in preference group C or D;

(12) Block 10 must contain the signature of the exporter or of the exporter's authorized agent having knowledge of the relevant facts;

(13) Block 14 should reflect the date on which the Certificate was completed and signed;

(14) Block 15 should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 4 that are imported into the United States during a specified period of up to one year (see §10.246(b)(4)(ii)). The ''from'' date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 14). The ''to'' date is the date on which the blanket period expires; and

(15) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

§10.245 Filing of claim for preferential treatment.

(a) *Declaration*. In connection with a claim for preferential treatment for an apparel or other textile article described in §10.243, the importer must make a written declaration that the article qualifies for that treatment. The inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in §10.246(d)(1), the declaration required under this paragraph must be based on a Certificate of Origin that has been completed and properly executed in accordance with §10.244, that covers the article being imported, and that is in the possession of the importer.

(b) *Corrected declaration*. If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a

letter or other written statement to the Customs port where the declaration was originally filed.

§ 10.246 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.245 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include a copy of the Certificate of Origin referred to in § 10.245(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on an apparel or other textile article under § 10.245(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be in writing or must be transmitted electronically through any electronic data interchange system authorized by Customs for that purpose;

(2) If in writing, must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph and § 10.244(c)(14), ''identical articles'' means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential treatment under the ATPDEA.

Check One:

( ) Producer
( ) Exporter
( ) Importer
( ) Agent

_____
Name

_____
Title

_____
Address

_____
Signature and Date

(2) *Exception*. If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.244 through 10.246, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a ''series of importations'' means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§ 10.247 Verification and justification of claim for preferential treatment.

(a) *Verification by Customs*. A claim for preferential treatment made under § 10.245, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.246, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. or ATPDEA beneficiary country materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements*. In order to make a claim for preferential treatment under § 10.245, the importer:

(1) Must have records that explain how the importer came to the conclusion that the apparel or other textile article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under § 10.243(a). If the importer is claiming that the article incorporates fabric or yarn that was wholly formed in the United States or in an ATPDEA beneficiary country, the importer must have records that identify the producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in § 10.244(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificates of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the ATPDEA beneficiary country to the United States. If the imported article was shipped through a country other than an ATPDEA beneficiary country and the invoices and other documents from the ATPDEA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.243(d)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

§ 10.248 Additional requirements for preferential treatment of brassieres.

(a) *Definitions.* When used in this section, the following terms have the meanings indicated:

(1) *Producer.* ''Producer'' means an individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the production process in an ATPDEA beneficiary country.

(2) *Entity controlling production.* ''Entity controlling production'' means an individual, corporation, partnership, association, or other entity or group that is not a producer and that controls the production process in an ATPDEA beneficiary country through a contractual relationship or other indirect means.

(3) *Fabrics formed in the United States.* ''Fabrics formed in the United States'' means fabrics that were produced by a weaving, knitting, needling, tufting, felting, entangling or other fabric-making process performed in the United States.

(4) *Cost.* ''Cost'' when used with reference to fabrics formed in the United States means:

(i) The price of the fabrics when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(A) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(B) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the fabrics to the place of production if included in that price; or

(ii) If the price cannot be determined under paragraph (a)(4)(i) of this section or if Customs finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the fabrics, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in forming the fabrics) and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabrics to the port of exportation.

(5) *Declared customs value.* ''Declared customs value'' when used with reference to fabric contained in an article means the sum of:

(i) The cost of fabrics formed in the United States that the producer or entity controlling production can verify; and

(ii) The cost of all other fabric contained in the article, exclusive of all findings and trimmings, determined as follows:

(A) In the case of fabric purchased by the producer or entity controlling production, the f.o.b. port of exportation price of the fabric as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price; or

(*2*) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price, but less the freight, insurance, packing, and other costs incurred in transporting the fabric to the place of production if included in that price;

(B) In the case of fabric for which the cost cannot be determined under paragraph (a)(5)(ii)(A) of this section or if Customs finds that cost to be unreasonable, all reasonable expenses incurred in the growth, production, or manufacture of the fabric, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in the growth, production, or manufacture of the fabric), general expenses and embroidering and dyeing, printing, and finishing expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric to the port of exportation;

(C) In the case of fabric components purchased by the producer or entity controlling production, the f.o.b. port of exportation price of those fabric components as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify; or

(*2*) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, and less the freight, insurance, packing, and other costs incurred in transporting the fabric components to the place of production if included in that price; and

(D) In the case of fabric components for which a fabric cost cannot be determined under paragraph (a)(5)(ii)(C) of this section or if Customs finds that cost to be unreasonable: all reasonable expenses incurred in the growth, production, or manufacture of the fabric components, including the cost or value of materials (which does not include the cost of recoverable scrap generated in the growth, production, or manufacture of the fabric components) and general expenses, but excluding the cost or value of any non-textile materials, and excluding expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric components to the port of exportation.

(6) *Year*. ''Year'' means a 12-month period beginning on October 1 and ending on September 30 but does not include any 12-month period that began prior to October 1, 2002.

(7) *Entered*. ''Entered'' means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(b) *Limitations on preferential treatment*—(1) *General*. During the year that begins on October 1, 2003, and during any subsequent year, articles of a producer or an entity controlling production that conform to the production standards set forth in §10.243(a)(4) will be eligible for preferential treatment only if:

(i) The aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that are entered as articles described in §10.243(a)(4) during the immediately preceding year was at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that are entered as articles described in §10.243(a)(4) during that year; or

(ii) In a case in which the 75 percent requirement set forth in paragraph (b)(1)(i) of this section was not met during a year and therefore those articles of that producer or that entity controlling production were not eligible for preferential treatment during the following year, the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that conform to the production standards set forth in §10.243(a)(4) and that were entered during the immediately preceding year was at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production

that conform to the production standards set forth in §10.243(a)(4) and that were entered during that year; and

(iii) In conjunction with the filing of the claim for preferential treatment under §10.245, the importer records on the entry summary or warehouse withdrawal for consumption (Customs Form 7501, column 34), or its electronic equivalent, the distinct and unique identifier assigned by Customs to the applicable documentation prescribed under paragraph (c) of this section.

(2) *Rules of application*—(i) *General.* For purposes of paragraphs (b)(1)(i) and (b)(1)(ii) of this section and for purposes of preparing and filing the documentation prescribed in paragraph (c) of this section, the following rules will apply:

(A) The articles in question must have been produced in the manner specified in §10.243(a)(4) and the articles in question must be entered within the same year;

(B) Articles that are exported to countries other than the United States and are never entered are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(C) Articles that are entered under an HTSUS subheading other than the HTSUS subheading which pertains to articles described in §10.243(a)(4) are not to be considered in determining compliance with the 75 percent standard specified in paragraph (b)(1)(i) of this section;

(D) For purposes of determining compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section, all articles that conform to the production standards set forth in §10.243(a)(4) must be considered, regardless of the HTSUS subheading under which they were entered;

(E) Fabric components and fabrics that constitute findings or trimmings are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(F) Beginning October 1, 2003, in order for articles to be eligible for preferential treatment in a given year, a producer of, or entity controlling production of, those articles must have met the 75 percent standard specified in paragraph (b)(1)(i) of this section during the immediately preceding year. If articles of a producer or entity controlling production fail to meet the 75 percent standard specified in paragraph (b)(1)(i) of this section during a year, articles of that producer or entity controlling production:

(*1*) Will not be eligible for preferential treatment during the following year;

(*2*) Will remain ineligible for preferential treatment until the year that follows a year in which articles of that producer or entity controlling production met the 85 percent standard specified in paragraph (b)(1)(ii) of this section; and

(*3*) After the 85 percent standard specified in paragraph (b)(1)(ii) of this section has been met, will again be subject to the 75 percent standard specified in paragraph (b)(1)(i) of this section during the following year for purposes of determining eligibility for preferential treatment in the next year.

(G) A new producer or new entity controlling production, that is, a producer or entity controlling production who did not produce or control production of articles that were entered as articles described in §10.243(a)(4) during the immediately preceding year, must first establish compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section as a prerequisite to preparation of the declaration of compliance referred to in paragraph (c) of this section;

(H) A declaration of compliance prepared by a producer or by an entity controlling production must cover all production of that producer or all production that the entity controls for the year in question;

(I) A producer would not prepare a declaration of compliance if all of its production is covered by a declaration of compliance prepared by an entity controlling production;

(J) In the case of a producer, the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section and the declaration of compliance procedure under paragraph (c) of this section apply to all articles

of that producer for the year in question, even if some but not all of that production is also covered by a declaration of compliance prepared by an entity controlling production;

(K) The U.S. importer does not have to be the producer or the entity controlling production who prepared the declaration of compliance; and

(L) The exclusion references regarding findings and trimmings in paragraph (b)(1)(i) and paragraph (b)(1)(ii) of this section apply to all findings and trimmings, whether or not they are of foreign origin.

(ii) *Examples*. The following examples will illustrate application of the principles set forth in paragraph (b)(2)(i) of this section.

Example 1. An ATPDEA beneficiary country producer of articles that meet the production standards specified in §10.243(a)(4) in the first year sends 50 percent of that production to ATPDEA region markets and the other 50 percent to the U.S. market; the cost of the fabrics formed in the United States equals 100 percent of the value of all of the fabric in the articles sent to the ATPDEA region and 60 percent of the value of all of the fabric in the articles sent to the United States. Although the cost of fabrics formed in the United States is more than 75 percent of the value of all of the fabric used in all of the articles produced, this producer could not prepare a valid declaration of compliance because the articles sent to the United States did not meet the minimum 75 percent standard.

Example 2. A producer sends to the United States in the first year three shipments of articles that meet the description in §10.243(a)(4); one of those shipments is entered under the HTSUS subheading that covers articles described in §10.243(a)(4), the second shipment is entered under the HTSUS subheading that covers articles described in §10.243(a)(7), and the third shipment is entered under subheading 9802.00.80, HTSUS. In determining whether the minimum 75 percent standard has been met in the first year for purposes of entry of articles under the HTSUS subheading that covers articles described in §10.243(a)(4) during the following (that is, second) year, consideration must be restricted to the articles in the first shipment and therefore must not include the articles in the second and third shipments.

Example 3. A producer in the second year begins production of articles that conform to the production standards specified in §10.243(a)(4); some of those articles are entered in that year under HTSUS subheading 6212.10 and others under HTSUS subheading 9802.00.80 but none are entered in that year under the HTSUS subheading which pertains to articles described in §10.243(a)(4) because the 75 percent standard had not been met in the preceding (that is, first) year. In this case the 85 percent standard applies, and all of the articles that were entered under the various HTSUS provisions in the second year must be taken into account in determining whether that 85 percent standard has been met. If the 85 percent was met in the aggregate for all of the articles entered in the second year, in the next (that is, third) year articles of that producer may receive preferential treatment under the HTSUS subheading which pertains to articles described in §10.243(a)(4).

Example 4. An entity controlling production of articles that meet the description in §10.243(a)(4) buys for the U.S., Canadian and Mexican markets; the articles in each case are first sent to the United States where they are entered for consumption and then placed in a commercial warehouse from which they are shipped to various stores in the United States, Canada and Mexico. Notwithstanding the fact that some of the articles ultimately ended up in Canada or Mexico, a declaration of compliance prepared by the entity controlling production must cover all of the articles rather than only those that remained in the United States because all of those articles had been entered for consumption.

Example 5. Fabric is cut and sewn in the United States with other U.S. materials to form cups which are joined together to form brassiere front subassemblies in the United States, and those front subassemblies are then placed in a warehouse in the United States where they are held until the following year; during that following year all of the front subassemblies are shipped to an ATPDEA beneficiary country where they are assembled with elastic strips and labels produced in an Asian country and other fabrics, components or materials produced in the ATPDEA beneficiary country to form articles that meet the production standards specified in §10.243(a)(4) and that are then shipped to the United States and entered during that same year. In determining whether the entered articles meet the minimum 75 or 85 percent standard, the fabric in the elastic strips and labels is to be disregarded entirely because the strips and labels constitute findings or trimmings for purposes of this section, and all of the fabric in the front subassemblies is countable because it was all formed in the United States and used in the production of articles that were entered in the same year.

Example 6. An ATPDEA beneficiary country producer's entire production of articles that meet the description in §10.243(a)(4) is sent to a U.S. importer in two separate shipments, one in February and the other in June of the same calendar year; the articles

shipped in February do not meet the minimum 75 percent standard, the articles shipped in June exceed the 85 percent standard, and the articles in the two shipments, taken together, do meet the 75 percent standard; the articles covered by the February shipment are entered for consumption on March 1 of that calendar year, and the articles covered by the June shipment are placed in a Customs bonded warehouse upon arrival and are subsequently withdrawn from warehouse for consumption on November 1 of that calendar year. The ATPDEA beneficiary country producer may not prepare a valid declaration of compliance covering the articles in the first shipment because those articles did not meet the minimum 75 percent standard and because those articles cannot be included with the articles of the second shipment on the same declaration of compliance since they were entered in a different year. However, the ATPDEA beneficiary country producer may prepare a valid declaration of compliance covering the articles in the second shipment because those articles did meet the requisite 85 percent standard which would apply for purposes of entry of articles in the following year.

Example 7. A producer in the second year begins production of articles exclusively for the U.S. market that meet the production standards specified in §10.243(a)(4), but the entered articles do not meet the requisite 85 percent standard until the third year. The producer's articles may not receive preferential treatment during the second year because there was no production (and thus there were no entered articles) in the immediately preceding (that is, first) year on which to assess compliance with the 75 percent standard. The producer's articles also may not receive preferential treatment during the third year because the 85 percent standard was not met in the immediately preceding (that is, second) year. However, the producer's articles are eligible for preferential treatment during the fourth year based on compliance with the 85 percent standard in the immediately preceding (that is, third) year.

Example 8. An entity controlling production (Entity A) uses five ATPDEA beneficiary country producers (Producers 1–5), all of which produce only articles that meet the description in §10.243(a)(4); Producers 1–4 send all of their production to the United States and Producer 5 sends 10 percent of its production to the United States and the rest to Europe; Producers 1–3 and Producer 5 produce only pursuant to contracts with Entity A, but Producer 4 also operates independently of Entity A by producing for several U.S. importers, one of which is an entity controlling production (Entity B) that also controls all of the production of articles of one other producer (Producer 6) which sends all of its production to the United States. A declaration of compliance prepared by Entity A must cover all of the articles of Producers 1–3 and the 10 percent of articles of Producer 5 that are sent to the United States and that portion of the articles of Producer 4 that are produced pursuant to the contract with Entity A, because Entity A controls the production of those articles. There is no need for Producers 1–3 and Producer 5 to prepare a declaration of compliance because they have no production that is not covered by a declaration of compliance prepared by an entity controlling production. A declaration of compliance prepared by Producer 4 would cover all of its production, that is, articles produced for Entity A, articles produced for Entity B, and articles produced independently for other U.S. importers; a declaration of compliance prepared by Entity B must cover that portion of the production of Producer 4 that it controls as well as all of the production of Producer 6 because Entity B also controls all of the production of Producer 6. Producer 6 would not prepare a declaration of compliance because all of its production is covered by the declaration of compliance prepared by Entity B.

(c) *Documentation*—(1) *Initial declaration of compliance.* In order for an importer to comply with the requirement set forth in paragraph (b)(1)(iii) of this section, the producer or the entity controlling production must have filed with Customs, in accordance with paragraph (c)(4) of this section, a declaration of compliance with the applicable 75 or 85 percent requirement prescribed in paragraph (b)(1)(i) or (b)(1)(ii) of this section. After filing of the declaration of compliance has been completed, Customs will advise the producer or the entity controlling production of the distinct and unique identifier assigned to that declaration. The producer or the entity controlling production will then be responsible for advising each appropriate U.S. importer of that distinct and unique identifier for purposes of recording that identifier on the entry summary or warehouse withdrawal. In order to provide sufficient time for advising the U.S. importer of that distinct and unique identifier prior to the arrival of the articles in the United States, the producer or the entity controlling production should file the declaration of compliance with Customs at least 10 calendar days prior to the date of the first shipment of the articles to the United States.

(2) *Amended declaration of compliance.* If the information on the declaration of

compliance referred to in paragraph (c)(1) of this section is based on an estimate because final year-end information was not available at that time and the final data differs from the estimate, or if the producer or the entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information, within 30 calendar days after the final year-end information becomes available or within 30 calendar days after the date of discovery of the error:

(i) The producer or the entity controlling production must file with the Customs office identified in paragraph (c)(4) of this section an amended declaration of compliance containing that final year-end information or other corrected information; or

(ii) If that final year-end information or other corrected information demonstrates noncompliance with the applicable 75 or 85 percent requirement, the producer or the entity controlling production must in writing advise both the Customs office identified in paragraph (c)(4) of this section and each appropriate U.S. importer of that fact.

(3) *Form and preparation of declaration of compliance*—(i) *Form.* The declaration of compliance referred to in paragraph (c)(1) of this section may be printed and reproduced locally and must be in the following format:

Andean Trade Promotion and Drug Eradication Act Declaration of Compliance for Brassieres (19 CFR 10.243(a)(4) and 10.248)	
1. Year beginning date: October 1, ____. Year ending date: September 30, ____.	Official U.S. Customs Use Only Assigned number: _____ Assignment date: _____
2. Identity of preparer (producer or entity controlling production): Full name and address:	Telephone number: _____ Facsimile number: _____ Importer identification number: _____
3. If the preparer is an entity controlling production, provide the following for each producer: Full name and address:	Telephone number: _____ Facsimile number: _____
4. Aggregate cost of fabrics formed in the United States that were used in the production of brassieres that were entered during the year: _____	
5. Aggregate declared customs value of the fabric contained in brassieres that were entered during the year: _____	
6. I declare that the aggregate cost of fabric formed in the United States was at least 75 percent (or 85 percent, if applicable under 19 CFR 10.248(b)(1)(ii)) of the aggregate declared customs value of the fabric contained in brassieres entered during the year.	
7. Authorized signature: _____ Date:	8. Name and title (print or type):

(ii) *Preparation*. The following rules will apply for purposes of completing the declaration of compliance set forth in paragraph (c)(3)(i) of this section:

(A) In block 1, fill in the year commencing October 1 and ending September 30 of the calendar year during which the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was met;

(B) Block 2 should state the legal name and address (including country) of the preparer and should also include the preparer's importer identification number (see §24.5 of this chapter), if the preparer has one;

(C) Block 3 should state the legal name and address (including country) of the ATPDEA beneficiary country producer if that producer is not already identified in block 2. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers;

(D) Blocks 4 and 5 apply only to articles that were entered during the year identified in block 1; and

(E) In block 7, the signature must be that of an authorized officer, employee, agent or other person having knowledge of the relevant facts and the date must be the date on which the declaration of compliance was completed and signed.

(4) *Filing of declaration of compliance*. The declaration of compliance referred to in paragraph (c)(1) of this section:

(i) Must be completed either in the English language or in the language of the country in which the articles covered by the declaration were produced. If the declaration is completed in a language other than English, the producer or the entity controlling production must provide to Customs upon request a written English translation of the declaration; and

(ii) Must be filed with the New York Strategic Trade Center, U.S. Customs Service, 1 Penn Plaza, New York, New York 10119.

(d) *Verification of declaration of compliance*—(1) *Verification procedure*. A declaration of compliance filed under this section will be subject to whatever verification Customs deems necessary. In the event that Customs for any reason is prevented from verifying the statements made on a declaration of compliance, Customs may deny any claim for preferential treatment made under §10.245 that is based on that declaration. A verification of a declaration of compliance may involve, but need not be limited to, a review of:

(i) All records required to be made, kept, and made available to Customs by the importer, the producer, the entity controlling production, or any other person under part 163 of this chapter;

(ii) Documentation and other information regarding all articles that meet the production standards specified in §10.243(a)(4) that were exported to the United States and that were entered during the year in question, whether or not a claim for preferential treatment was made under §10.245. Those records and other information include, but are not limited to, work orders and other production records, purchase orders, invoices, bills of lading and other shipping documents;

(iii) Evidence to document the cost of fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records;

(iv) Evidence to document the cost or value of all fabric other than fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records; and

(v) Accounting books and documents to verify the records and information referred to in paragraphs (d)(1)(ii) through (d)(1)(iv) of this section. The verification of purchase orders, invoices and bills of lading will be accomplished through the review of a distinct audit trail. The audit trail documents must consist of a cash disbursement or purchase journal or equivalent records to establish the purchase of the fabric. The headings in each of these journals or other records must contain the date, vendor name, and amount paid for the fabric. The verification of

production records and work orders will be accomplished through analysis of the inventory records of the producer or entity controlling production. The inventory records must reflect the production of the finished article which must be referenced to the original purchase order or lot number covering the fabric used in production. In the inventory production records, the inventory should show the opening balance of the inventory plus the purchases made during the accounting period and the inventory closing balance.

(2) *Notice of determination.* If, based on a verification of a declaration of compliance filed under this section, Customs determines that the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was not met, Customs will publish a notice of that determination in the FEDERAL REGISTER.

EXTENSION OF ATPA BENEFITS TO TUNA AND CERTAIN OTHER NON-TEXTILE ARTICLES

SOURCE: Sections 10.251 through 10.257 issued by T.D. 03–16, 68 FR 14497, Mar. 25, 2003; 68 FR 67349, Dec. 1, 2003, unless otherwise noted.

§ 10.251 Applicability.

Title XXXI of Public Law 107–210 (116 Stat. 933), entitled the Andean Trade Promotion and Drug Eradication Act (ATPDEA), amended sections 202, 203, 204, and 208 of the Andean Trade Preference Act (the ATPA, 19 U.S.C. 3201–3206) to authorize the President to extend additional trade benefits to ATPA beneficiary countries that have been designated as ATPDEA beneficiary countries. Sections 204(b)(1) and (b)(4) of the ATPA (19 U.S.C. 3203(b)(1) and (b)(4)) provide for the preferential treatment of certain non-textile articles that were not entitled to duty-free treatment under the ATPA prior to enactment of the ATPDEA. The provisions of §§ 10.251–10.257 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to ATPA sections 204(b)(1) and (b)(4).

§ 10.252 Definitions.

When used in §§ 10.251 through 10.257, the following terms have the meanings indicated:

ATPA. ''ATPA'' means the Andean Trade Preference Act, 19 U.S.C. 3201–3206.

ATPDEA beneficiary country. ''ATPDEA beneficiary country'' means a ''beneficiary country'' as defined in § 10.202(a) for purposes of the ATPA which the President also has designated as a beneficiary country for purposes of preferential treatment of products under 19 U.S.C. 3203(b)(1) and (b)(4) and which has been the subject of a finding by the President or his designee, published in the FEDERAL REGISTER, that the beneficiary country has satisfied the requirements of 19 U.S.C. 3203(b)(5)(A)(ii).

ATPDEA beneficiary country vessel. ''ATPDEA beneficiary country vessel'' means a vessel:

(a) Which is registered or recorded in an ATPDEA beneficiary country;

(b) Which sails under the flag of an ATPDEA beneficiary country;

(c) Which is at least 75 percent owned by nationals of an ATPDEA beneficiary country or by a company having its principal place of business in an ATPDEA beneficiary country, of which the manager or managers, chairman of the board of directors or of the supervisory board, and the majority of the members of those boards are nationals of an ATPDEA beneficiary country and of which, in the case of a company, at least 50 percent of the capital is owned by an ATPDEA beneficiary country or by public bodies or nationals of an ATPDEA beneficiary country;

(d) Of which the master and officers are nationals of an ATPDEA beneficiary country; and

(e) Of which at least 75 percent of the crew are nationals of an ATPDEA beneficiary country.

HTSUS. ''HTSUS'' means the Harmonized Tariff Schedule of the United States.

Preferential treatment. ''Preferential treatment'' means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative restrictions in the case of tuna described in § 10.253(a)(1)

and free of duty in the case of any article described in § 10.253(a)(2).

United States vessel. ''United States vessel'' means a vessel having a certificate of documentation with a fishery endorsement under chapter 121 of title 46 of the United States Code.

§ 10.253 Articles eligible for preferential treatment.

(a) *General.* Preferential treatment applies to any of the following articles, provided that the article in question is imported directly into the customs territory of the United States from an ATPDEA beneficiary country within the meaning of paragraph (b) of this section:

(1) Tuna that is harvested by United States vessels or ATPDEA beneficiary country vessels, that is prepared or preserved in any manner, in an ATPDEA beneficiary country, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kilograms each; and

(2) Any of the following articles that the President has determined are not import-sensitive in the context of imports from ATPDEA beneficiary countries, provided that the article in question meets the country of origin and value content requirements set forth in paragraphs (c) and (d) of this section:

(i) Footwear not designated on December 4, 1991, as eligible articles for the purpose of the Generalized System of Preferences (GSP) under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467);

(ii) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTSUS;

(iii) Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply; and

(iv) Handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the GSP.

(b) *Imported directly defined.* For purposes of paragraph (a) of this section, the words ''imported directly'' mean:

(1) Direct shipment from any ATPDEA beneficiary country to the United States without passing through the territory of any country that is not an ATPDEA beneficiary country;

(2) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not an ATPDEA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

(c) *Country of origin criteria*—(1) *General.* Except as otherwise provided in paragraph (c)(2) of this section, an article described in paragraph (a)(2) of this section may be eligible for preferential treatment if the article is either:

(i) Wholly the growth, product, or manufacture of an ATPDEA beneficiary country; or

(ii) A new or different article of commerce which has been grown, produced, or manufactured in an ATPDEA beneficiary country.

(2) *Exceptions*. No article will be eligible for preferential treatment by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The principles and examples set forth in §10.195(a)(2) will apply equally for purposes of this paragraph.

(d) *Value content requirement*—(1) *General*. An article may be eligible for preferential treatment only if the sum of the cost or value of the materials produced in an ATPDEA beneficiary country or countries, plus the direct costs of processing operations performed in an ATPDEA beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(2) *Commonwealth of Puerto Rico, U.S. Virgin Islands and CBI beneficiary countries*. For the specific purpose of determining the percentage referred to in paragraph (d)(1) of this section, the term ''ATPDEA beneficiary country'' includes the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country as defined in §10.191(b)(1). Any cost or value of materials or direct costs of processing operations attributable to the Virgin Islands or any CBI beneficiary country must be included in the article prior to its final exportation to the United States from an ATPDEA beneficiary country as defined in §10.252.

(3) *Materials produced in the United States*. For purposes of determining the percentage referred to in paragraph (d)(1) of this section, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico). The principles set forth in paragraph (d)(4)(i) of this section will apply in determining whether a material is ''produced in the customs territory of the United States'' for purposes of this paragraph.

(4) *Cost or value of materials*—(i) *''Materials produced in an ATPDEA beneficiary country or countries'' defined*. For purposes of paragraph (d)(1) of this section, the words ''materials produced in an ATPDEA beneficiary country or countries'' refer to those materials incorporated in an article which are either:

(A) Wholly the growth, product, or manufacture of an ATPDEA beneficiary country or two or more ATPDEA beneficiary countries; or

(B) Substantially transformed in any ATPDEA beneficiary country or two or more ATPDEA beneficiary countries into a new or different article of commerce which is then used in any ATPDEA beneficiary country as defined in §10.252 in the production or manufacture of a new or different article which is imported directly into the United States. For purposes of this paragraph (d)(4)(i)(B), no material will be considered to be substantially transformed into a new or different article of commerce by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The examples set forth in §10.196(a), and the principles and examples set forth in §10.195(a)(2), will apply for purposes of the corresponding context under paragraph (d)(4)(i) of this section.

(ii) *Failure to establish origin*. If the importer fails to maintain adequate records to establish the origin of a material, that material may not be considered to have been grown, produced, or manufactured in an ATPDEA beneficiary country or in the customs territory of the United States for purposes of determining the percentage referred to in paragraph (d)(1) of this section.

(iii) *Determination of cost or value of materials*. (A) The cost or value of materials produced in an ATPDEA beneficiary country or countries or in the customs territory of the United States includes:

(*1*) The manufacturer's actual cost for the materials;

(*2*) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(*3*) The actual cost of waste or spoilage, less the value of recoverable scrap; and

(*4*) Taxes and/or duties imposed on the materials by any ATPDEA beneficiary country or by the United States, provided they are not remitted upon exportation.

(B) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value will be determined by computing the sum of:

(*1*) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(*2*) An amount for profit; and

(*3*) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

(5) *Direct costs of processing operations*—(i) *Items included.* For purposes of paragraph (d)(1) of this section, the words ''direct costs of processing operations'' mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Those costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported merchandise:

(A) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(B) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(C) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and

(D) Costs of inspecting and testing the specific merchandise.

(ii) *Items not included.* For purposes of paragraph (d)(1) of this section, the words ''direct costs of processing operations'' do not include items which are not directly attributable to the merchandise under consideration or are not costs of manufacturing the product. These include, but are not limited to:

(A) Profit; and

(B) General expenses of doing business which either are not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

(6) *Articles wholly the growth, product, or manufacture of an ATPDEA beneficiary country.* Any article which is wholly the growth, product, or manufacture of an ATPDEA beneficiary country as defined in § 10.252, and any article produced or manufactured in an ATPDEA beneficiary country as defined in § 10.252 exclusively from materials which are wholly the growth, product, or manufacture of an ATPDEA beneficiary country or countries, will normally be presumed to meet the requirement set forth in paragraph (d)(1) of this section.

§ 10.254 Certificate of Origin.

A Certificate of Origin as specified in § 10.256 must be employed to certify that an article described in § 10.253(a) being exported from an ATPDEA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.251. The Certificate of Origin must be prepared by the exporter in the ATPDEA beneficiary country. Where the ATPDEA beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(a) Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(b) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

§ 10.255 Filing of claim for preferential treatment.

(a) *Declaration.* In connection with a claim for preferential treatment for an

article described in § 10.253(a), the importer must make a written declaration that the article qualifies for that treatment. The written declaration should be made by including on the entry summary, or equivalent documentation, the symbol ''J+'' as a prefix to the subheading of the HTSUS in which the article in question is classified. Except in any of the circumstances described in § 10.256(d)(1), the declaration required under this paragraph must be based on a complete and properly executed original Certificate of Origin that covers the article being imported and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

§ 10.256 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.255 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.255(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on an article under § 10.255(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be on Customs Form 449, including privately-printed copies of that Form, or, as an alternative to Customs Form 449, in an approved computerized format or other medium or format as is approved by the Office of Field Operations, U.S. Customs Service, Washington, DC 20229. An alternative format must contain the same information and certification set forth on Customs Form 449;

(2) Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph, ''identical articles'' means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential tariff treatment under the ATPDEA.

Check One:

( ) Producer
( ) Exporter
( ) Importer
( ) Agent

_____
Name

_____
Title

_____
Address

_____
Signature and Date

(2) *Exception*. If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.254 through 10.256, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a ''series of importations'' means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§ 10.257 Verification and justification of claim for preferential treatment.

(a) *Verification by Customs*. A claim for preferential treatment made under § 10.255, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.256, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. or ATPDEA beneficiary country materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements*. In order to make a claim for preferential treatment under § 10.255, the importer:

(1) Must have records that explain how the importer came to the conclusion that the article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it meets the country of origin and value content requirements set forth in § 10.253(c) and (d). A properly completed Certificate of Origin in the form prescribed in § 10.254(b) is a record that would serve this purpose;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificate of Origin or other records

referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the ATPDEA beneficiary country to the United States. If the imported article was shipped through a country other than an ATPDEA beneficiary country and the invoices and other documents from the ATPDEA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in §10.253(b)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

Subpart G—United States-Canada Free Trade Agreement

SOURCE: Sections 10.301 through 10.311 issued by T.D. 89–3, 53 FR 51766, Dec. 23, 1988, unless otherwise noted.

§10.301 Scope and applicability.

The provisions of §§10.302 through 10.311 of this part relate to the procedures for obtaining duty preferences on imported goods under the United States-Canada Free-Trade Agreement (the Agreement) entered into on January 2, 1988, and the United States-Canada Free-Trade Agreement Implementation Act of 1988 (102 Stat. 1851). The United States and Canada agreed to suspend operation of the Agreement with effect from January 1, 1994, to coincide with the entry into force of the North American Free Trade Agreement (see part 181 of this chapter) and, accordingly, the provisions of §§10.302 through 10.311 of this part apply only to goods imported from Canada that were entered for consumption, or withdrawn from warehouse for consumption, during the period January 1, 1989, through December 31, 1993. In situations involving goods subject to bilateral restrictions or prohibitions, or country of origin marking, other criteria for determining origin may be applicable pursuant to Article 407 of the Agreement.

[T.D. 96–35, 61 FR 19835, May 3, 1996]

§10.302 Eligibility criteria in general.

Subject to the more specific explanations of the criteria in §§10.303 and 10.305 of this part, goods classifiable under an HTSUS heading or subheading for which the symbol ''CA'' appears in the ''special'' column are eligible for a preference if:

(a) *Originating goods*. The goods originate in Canada or the United States, or both, and

(b) *Direct shipment required*. Except as provided in §10.306(b), are directly shipped to the United States from Canada.

§10.303 Originating goods.

(a) *General*. For purposes of eligibility for a preference under the Agreement, goods may be regarded as originating goods if:

(1) *Wholly of Canadian or United States origin*. The goods are wholly obtained or produced in the Territory of Canada or the United States, or both, as set forth in General Note 3(c), HTSUS;

(2) *Transformed with a change in classification*. The goods have been transformed by a processing which results in a change in classification and, if required, a sufficient value-content, as set forth in General Note 3(c), HTSUS; or

(3) *Transformed without a change in classification*. An assembly of goods, other than goods of chapters 61 to 63 of the HTSUS, which does not result in a change in classification because the goods were imported in an unassembled or disassembled form and classified as the goods, unassembled or disassembled, pursuant to General Rule of Interpretation 2(a), HTSUS, or because the tariff subheading for the goods provides for both the goods themselves and their parts, shall nonetheless be treated as originating goods if:

(i) The value of originating materials and the direct cost of assembling in Canada or the United States, or both, as defined in §10.305 constitute not less than 50 percent of the value of the goods when exported to the United States;

(ii) The assembled goods are not subsequently processed or further assembled in a third country; and

(iii) The goods satisfy the requirement in § 10.306.

(b) *Originating materials.* For purposes of this section and § 10.305, the term ''materials'' means goods, other than those included as part of the direct cost of processing or assembling, used or consumed in the production of other goods, and the term ''orginating'' when used with reference to such materials means that the materials satisfy one of the criteria for originating goods set forth in paragraph (a) of this section.

(c) *Change in classification.* For purposes of paragraph (a) of this section, the expression ''change in classification'' means a change of classification within the Harmonized Commodity Description and Coding System (Harmonized System) as published and amended from time to time by the Customs Cooperation Council.

(d) *Articles of feather.* The goods are eligible to be treated as originating in Canada pursuant to General Note 3(c)(vii)(R)(12)(ee), HTSUS.

[T.D. 92–8, 57 FR 2453, Jan. 22, 1992]

§ 10.304 Exclusions.

(a) *Changes based on simple processing.* No goods shall be considered originating for purposes of eligibility under the Agreement if they have merely undergone simple packaging or simple combining operations, or have undergone mere dilution with water or with another substance that does not materially alter the characteristics of the goods.

(b) *Other excluded processing.* No goods shall be considered to be originating merely by virtue of having undergone any process or work in which the facts clearly justify the presumption that the sole object was to circumvent the provisions of Chapter 3 of the Agreement.

§ 10.305 Value content requirement.

(a) *Direct cost of processing or assembling.*

(1) *Definition.* For purposes of applying a specific rule of origin under the Agreement which requires a value content determination, the terms ''direct cost of processing'' and ''direct cost of assembling'' mean the costs directly incurred in, or that can be reasonably allocated to, the production of goods, including:

(i) The cost of all labor, including benefits and on-the-job training, labor provided in connection with supervision, quality control, shipping, receiving, storage, packaging, management at the location of the process or assembly, and other like labor, whether provided by employees or independent contractors;

(ii) The cost of inspecting and testing the goods;

(iii) The cost of energy, fuel, dies, molds, tooling, and the depreciation and maintenance of machinery and equipment, without regard to whether they originate within the territory of the United States or Canada;

(iv) Development, design, and engineering costs;

(v) Rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes and the cost of utilities for real property used in the production of the goods; and

(vi) Royalty, licensing, or other like payments for the right to the goods.

(2) *Exclusions from direct costs of processing or assembling.* Excluded from the direct costs of processing or assembling are:

(i) Costs relating to the general expense of doing business, such as the cost of providing executive, financial, sales, advertising, marketing, accounting and legal services, and insurance;

(ii) Brokerage charges relating to the importation and exportation of goods;

(iii) Costs for telephone, mail, and other means of communication;

(iv) Packing costs for exporting the goods;

(v) Royalty payments related to a licensing agreement to distribute or sell the goods;

(vi) Rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes, and the cost of utilities for real property used by personnel charged with administrative functions; and

(vii) Profit on the goods.

(3) *Interpretation*—(i) *Indirect materials.* Under the definition of ''materials'' set forth in § 10.303(b), certain types of materials are treated as direct

costs of processing or assembling under paragraph (a) of this section. This applies principally to materials used or consumed indirectly in the production of exported goods, where no portion of those materials is physically incorporated in the exported goods. In addition to the items specified in paragraph (a)(1)(iii) of this section, such materials include items such as gloves and safety glasses worn by production workers, tape used in painting processes, and tools, materials and spare parts used in the repair and maintenance of machinery and equipment used in the production of the exported goods. Such materials are to be distinguished from waste and spoilage specified in paragraph (b)(1)(ii)(C) of this section, which relate to materials that are physically incorporated in the exported goods.

(ii) *Directly incurred.* In order for costs incurred by a production facility to be treated as direct costs of processing or assembling, those costs must be directly incurred in the production of the exported goods and not merely associated with the production facility as peripheral costs necessary to operate the facility. In addition to the exclusions set forth in paragraph (a)(2) of this section, such peripheral costs include labor costs for nurses tending to employees, for accounting personnel involved in physical inventory taking, for personnel responsible for purchasing or requisitioning materials to be used or consumed in the production process, and for second level supervisors and above who are not directly involved in the production process.

(iii) *Labor costs.* Under paragraph (a)(1)(i) of this section, labor costs includable as direct costs of processing or assembling are limited to labor provided by the producer's employees or by independent contractors. Thus, for example, where processing operations are performed on components in the United States and those components are sold to a manufacturer in Canada where they are incorporated in goods exported to the United States, the cost of those processing operations in the United States cannot be separately counted as a direct cost of processing attributable to the finished goods exported to the United States.

(iv) *Interest expense. Bona fide* interest payments on debt of any form, secured or unsecured, undertaken on arm's length terms in the ordinary course of business to finance the acquisition of fixed assets such as real property, a plant, and/or equipment used in the production of goods in the territory of Canada or the U.S. are includable in the direct cost of processing or direct cost of assembling. Interest will be treated as a direct cost of processing or assembling, but only that portion of the interest which is related to a fixed asset directly used in the production of the goods exported; thus, where a entire production facility is covered by a mortgage and incorporates both production and administrative or other general expense space, an appropriate allocation must be made in order to ensure that only that portion of the interest allocated to the production area is counted toward the value-content requirement. Interest expenses attributable to general and administrative costs or expenses, including interest on funds borrowed to meet the payroll of personnel directly involved in the production of goods, are not considered direct costs of processing or assembly.

(b) *Value of originating materials*—(1) *Definition.* The term ''value of materials originating in the United States or Canada or both'' means the aggregate of:

(i) The price paid by the producer of exported goods for materials originating in either the United States or Canada, or both, or for materials imported from a third country used or consumed in the production of such originating materials; and

(ii) When not included in that price, the following costs related thereto:

(A) Freight, insurance, packing and all other costs incurred in transporting any of the materials referred to in paragraph (b)(1)(i) of this section to the location of the producer;

(B) Duties, taxes and brokerage fees on such materials paid in the United States, or Canada, or both;

(C) The cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or by-product; and

(D) The value of goods and services relating to such materials determined

in accordance with subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.

(2) *Directly attributable.* Whenever a value-content determination is required by the rules of the Agreement and whenever originating materials and materials obtained or produced in a third country are used or consumed together in the production of goods in the United States or Canada, the value of originating materials may be treated as such only to the extent that the value is directly attributable to the goods under consideration.

(3) *Interpretation.* (i) *Price paid.* As provided in paragraph (b)(1) of this section, the ''price paid'' for materials by the producer of exported goods forms the basis for determining the value of such materials when incorporated in the exported goods. The actual price paid for such materials will determine the value of those materials for purposes of the value-content requirement, even though a relationship between the producer and the seller of the materials may have influenced the price, except where the price did not include items specified in paragraph (b)(1)(ii) of this section that relate to the materials. The following examples will illustrate these principles. Notwithstanding these examples, the totality of the facts must be examined in each case to determine whether § 10.304(b) is applicable.

Example 1. Non-originating materials are sold by Company X (a foreign corporation located outside the United States or Canada) to Company Y (a Canadian corporation) for $100; Company X also sold identical materials to Company Z (a U.S. corporation) for $200 which was the price Company Z had paid to Company X for similar materials prior to implementation of the Agreement; and those non-originating materials sold by Company X to Company Y are then incorporated by Company Y into goods exported to the United States. In this case the $100 price paid by Company Y to Company X constitutes the value of those materials for purposes of the value-content requirement.

Example 2. Company X purchased materials for $100, added a four percent mark-up to the price paid to defray purchasing expenses, and then sold the marked-up materials to Company Y (a Canadian corporation) which incorporated the materials in goods exported to the United States. In this case the $104 price paid by Company Y to Company X constitutes the value of the materials for purposes of the value-content requirement.

Example 3. Company X (a foreign corporation located outside the United States) sold non-originating materials to Company Y (a U.S. corporation) for $200, and Company Y then sold those materials for $100 to Company Z (a Canadian corporation) which incorporated the materials in goods which were imported into the United States by Company P (the U.S. parent company of Company Y). In this case, in accordance with paragraph (b)(1)(ii)(D) of this section, $100 would be added to the price paid by Company Z for purposes of the value-content requirement because the materials were sold at a reduced cost within the meaning of subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.

(ii) *Originating materials for which no price paid.* In cases involving a vertically integrated producer (that is, an entity which produces goods for export from materials which that producer has also made) a ''price paid'' for such originating materials normally does not exist. Even in the absence of a ''price paid'', such a vertically integrated producer may still claim the materials as originating materials for purposes of qualifying the finished goods exported to the United States as goods originating in Canada. However, under paragraph (b)(1)(i) of this section the value of those materials for purposes of applying the value-content requirement is limited to the price paid for those materials imported from the third country plus any costs added thereto under paragraph (b)(1)(ii) of this section. The following examples will illustrate these principles.

Example 1. If an automobile producer in the United States or Canada fabricates body panels wholly from third country steel coil, those body panels can qualify as originating materials without having to satisfy a value-content requirement because steel coil is classified in chapter 72 of the Harmonized System and body panels are classified in chapter 87 and the change in classification rules in chapter 87 do not incorporate a value-content requirement in this context. Thus, the producer can claim the body panels fabricated from the third country steel as originating materials for purposes of the value-content requirement applicable to the finished automobile which will be exported to the United States. The value of those originating materials is the price paid for

the steel coil imported from the third country and used or consumed in the production of the body panels.

Example 2. An automobile exporter in Canada purchases and imports body panels fabricated in a third country in order to join them with vertically (locally) fabricated body panels to form an automobile body. If the body qualifies as an originating material, the exporter has two options. Under the first option, the exporter can claim the body as originating material, in which case the value of originating material is the price paid for the foreign body panels. Under the second option, the exporter may elect not to claim the body as originating material; but, rather, the exporter may claim as originating material any domestic steel coil used in producing the vertically (locally) fabricated body panels, in which case the value of originating material is the price paid for the domestic steel coil.

(c) *Value of goods when exported.* The term ''value of the goods when exported to the United States'' means the aggregate of:

(1) The price paid by the producer for all materials, whether or not the materials originate in the United States, or Canada, or both, and, when not included in the price paid for the materials, the following costs related thereto:

(i) Freight, insurance, packing, and all other costs incurred in transporting all materials to the location of the producer;

(ii) Duties, taxes, and brokerage fees on all materials paid in the United States, or Canada, or both;

(iii) The cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or by-product; and

(iv) The value of goods and services relating to all materials determined in accordance with subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs Trade; and

(2) The direct cost of processing or the direct cost of assembling the goods.

[T.D. 92–8, 57 FR 2453, Jan. 22, 1992; 57 FR 4793, Feb. 7, 1992, as amended by T.D. 92–98, 57 FR 46504, Oct. 9, 1992]

§ 10.306 Direct shipment to the United States.

Goods shall be considered as directly shipped to the United States from Canada for the purpose of eligibility for preferences under the Agreement only under the following circumstances:

(a) *Through shipment.* The goods have been shipped directly from Canada to the United States without passage through the territory of any third country; or

(b) *Shipment through a third country.* The goods were shipped through the territory of a third country but:

(1) The goods did not enter the commerce of any third country;

(2) The goods did not undergo any operation other than unloading, reloading, or any operation necessary to transport them to the United States or to preserve them in good condition; and

(3) All shipping and export documents show the United States as the final destination.

§ 10.307 Documentation.

(a) *Claims for a preference.* A preference in accordance with the Agreement may be claimed by including on the entry summary, or equivalent documentation, the symbol ''CA'' as a prefix to the subheading of the HTSUS under which each eligible good is classified.

(b) *Failure to claim a preference.* Failure to make a timely claim for a preference under the Agreement will result in liquidation at the rate which would otherwise be applicable.

(c) *Documentation showing origin.* A claim for a preference under the Agreement shall be based on the Exporter's Certificate of Origin, properly completed and signed by the person who exports or knowingly causes the goods to be exported from Canada. The Exporter's Certificate of Origin must be available at the time the preference is claimed and shall be presented to the port director upon request.

(d) *Exporter's Certificate of Origin*—(1) *General.* The Exporter's Certificate of Origin shall be prepared on Customs Form 353. In lieu of the Customs Form 353, the exporter may use an approved computerized format or such other format as is approved by the Headquarters, U.S. Customs Service, Office of Trade Operations, Washington, DC 20229. Alternative formats must contain the same information and certification set forth on Customs Form 353.

(2) *Blanket certifications*. A blanket Exporter's Certificate of Origin, not to exceed a period of 12 months, issued for goods claimed as originating goods under the Agreement, can only be used if the certifying exporter is able to verify that the goods in each shipment to be covered by the blanket certification actually qualify for treatment under the Agreement. A blanket certification does not allow an exporter to average its costs over the blanket certification period in order to establish that the exported goods meet the criteria for originating goods under the Agreement. Under § 10.308, the exporter must retain supporting records that will permit a review of the eligibility of the goods in each shipment covered by a blanket certification.

(e) *Exceptions to documentation requirements*. Exceptions to the foregoing documentation requirements may be authorized at the discretion of the port director in the following circumstances:

(1) *Exception for informal entries*. As set forth in paragraphs (e)(1) (i) and (ii) of this section, an Exporter's Certificate of Origin may be waived in connection with an entry entitled to informal entry procedures as authorized in §§ 143.21 and 143.22 of this chapter if:

(i) *Commercial goods which qualify for informal entry*. The invoice, or an appropriate Customs release document, for commercial goods which qualify both for informal entry and a preference must include the following statement, on the invoice or appropriate Customs document:

I hereby certify that the goods described herein are eligible for a preference based upon the rules of origin enumerated in the United States-Canada Free-Trade Agreement.

Check One:

( ) Manufacturer
( ) Supplier
( ) Exporter

Signature

Title
Date:

(ii) *Noncommercial goods which qualify for informal entry*. The importation of goods from Canada by a person for noncommercial use may be exempt from documentation requirements if the goods are legally marked ''Made in Canada'', or it can otherwise be shown that they are originating goods under the Agreement and there is no evidence to the contrary.

(2) *Waiver of evidence of direct shipment*. The port director may waive the submission of evidence of direct shipment when otherwise satisfied, taking into consideration the kind and value of the goods, that the goods were, in fact, imported directly from Canada, and that they otherwise qualify for a preference in accordance with the Agreement.

[T.D. 89–3, 53 FR 51766, Dec. 23, 1988, as amended by T.D. 92–8, 57 FR 2455, Jan. 22, 1992]

§ 10.308 Records retention.

(a) *Importer*. The importer of record shall retain the exporter's certificate of origin required by § 10.307(d) for a period of 5 years and it must be made available upon request by the appropriate Customs official.

(b) *Exporter*. Any person who exports, or who knowlingly causes to be exported, any merchandise to Canada shall make, keep, and render for examination and inspection, such records (including certifications of origin or copies thereof), which pertain to such exportation for a period of 5 years from the date of exportation. In the event that the appropriate Customs official requests submission of the records, they shall be submitted directly to the requesting official.

§ 10.309 Verification of documentation.

Any evidence of country of origin or of direct shipment submitted in support of a preference under the Agreement shall be subject to such verification as the appropriate Customs official may deem necessary. If the U.S. importer or U.S. exporter or their agent does not provide the information requested by the appropriate Customs officer, the port director may refuse to grant the claim for preference, in addition to other available sanctions.

§ 10.310 Election to average for motor vehicles.

(a) *Election*. In determining whether a motor vehicle is originating for purposes of the preferences under the Agreement or a Canadian article under the Automotive Products Trade Act of 1965 (APTA), a manufacturer may elect to average, over its 12-month financial year, its calculation of the value-content requirement for vehicles of the same class or sister vehicles which are assembled in the same plant as provided for in the Agreement. A manufacturer must declare its election to average before the importation of any vehicles produced within the identified 12-month period. The election to average is subject to the conditions and requirements set forth in §§ 10.310 and 10.311.

(b) *Effect of election*. An election to average shall be binding at the time of the first entry of vehicles for which the election has been made and shall remain binding for the plant for the entire period covered by the election. If a manufacturer's annual report, required by § 10.311, does not verify the claim that the vehicles are originating goods under the Agreement or Canadian articles under APTA, or if a manufacturer otherwise fails to comply with the reporting requirements, entries of the vehicles identified in the averaging declaration will be subject to liquidation in accordance with the rate of duty which would otherwise apply.

(c) *Election in lieu of certificate of origin*. In lieu of the Exporter's Certificate of Origin required in § 10.307(c), an importer of vehicles covered by an election to average under this section may have its claim for preference based on a copy of the declaration of election.

[T.D. 89–3, 53 FR 51766, Dec. 23, 1988, as amended by T.D. 92–8, 57 FR 2455, Jan. 22, 1992]

§ 10.311 Documentation for election to average for motor vehicles.

A manufacturer who elects to average for motor vehicles shall submit a declaration of election to average, quarterly reports, and an annual report in the form and manner as follows:

(a) *Declaration of election*. A declaration of election to average, signed by an authorized company official, shall be submitted by the manufacturer to the U.S. Customs Service, Regulatory Audit Division, Detroit, Michigan 48226–2568 on Customs Form 355, Declaration of Election to Average.

(b) *Quarterly Report*. A quarterly report shall be submitted to the Regulatory Audit Division, at the above address, on Customs Form 356, Vehicle Cost Report (Quarterly), within 30 days after the end of each quarter. In lieu of the Customs Form 356, the manufacturer may submit the information required on the form in an approved computerized format or such other format as is approved by the U.S. Customs Service, Regulatory Audit Division, Detroit, Michigan 48226–2568. Alternative formats must contain the same information set forth on the Customs Form 356. Negative quarterly reports are required.

(c) *Annual Report*. An annual report shall be submitted to the U.S. Customs Service, Regulatory Audit Division, Detroit, Michigan 48226–2568, on Customs Form 357, Vehicle Cost Report (Annual), within 90 days of the end of the financial year identified in the Election to Average, Customs Form 355. In lieu of the Customs Form 357, Vehicle Cost Report (Annual), the manufacturer may submit the information required on the form in an approved computerized format or such other format as is approved by the U.S. Customs Service, Regulatory Audit Division, Detroit, Michigan 48226–2568. Alternative formats must contain the same information set forth on Customs Form 357.

Subpart H—United States-Chile Free Trade Agreement

SOURCE: CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, unless otherwise noted.

GENERAL PROVISIONS

§ 10.401 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Chile Free Trade Agreement (the US-CFTA) entered into on June 6, 2003, and under the United States-Chile Free Trade Agreement Implementation Act (the

Act; 117 Stat. 909). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the US-CFTA and the Act are contained in parts 12, 24, 162, 163 and 191 of this chapter.

§ 10.402 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Certification.* ''Certification'' means, either when used by itself or in the expression ''certification of origin'', the certification established under article 4.13 of the US-CFTA, that a good qualifies as an originating good under the US-CFTA;

(b) *Claim of origin.* ''Claim of origin'' means a claim that a textile or apparel good is an originating good or a good of a Party;

(c) *Claim for preferential tariff treatment.* ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the US-CFTA to an originating good;

(d) *Customs authority.* ''Customs authority'' means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

(e) *Customs Valuation Agreement.* ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

(f) *Days.* ''Days'' means calendar days;

(g) *Customs duty.* ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but, for purposes of implementing the US-CFTA, does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994; in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty; and

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(h) *Enterprise.* ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(i) *GATT 1994.* ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994*, which is part of the *WTO Agreement;*

(j) *Goods.* ''Goods'' means domestic products as these are understood in the GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party. A good of a Party may include materials of other countries;

(k) *Harmonized System.* ''Harmonized System (HS)'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(l) *Heading.* ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(m) *HTSUS.* ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(n) *Indirect material.* ''Indirect material'' means a good used in the production, testing, or inspection of a good in the territory of the United States or Chile but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good in the territory of the United States or Chile, including—

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment and buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the goods;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

(o) *National*. ''National'' means a natural person who has the nationality of a Party according to Annex 2.1 of the US-CFTA or a permanent resident of a Party;

(p) *Originating*. ''Originating'' means qualifying under the rules of origin set out in Chapter Four (Rules of Origin and Origin Procedures) of the US-CFTA;

(q) *Party*. ''Party'' means the United States or the Republic of Chile;

(r) *Person*. ''Person'' means a natural person or an enterprise;

(s) *Preferential tariff treatment*. ''Preferential tariff treatment'' means the duty rate applicable under the US-CFTA to an originating good;

(t) *Subheading*. ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(u) *Tariff preference level*. ''Tariff preference level'' means a quantitative limit for certain non-originating textiles and textile apparel goods that may be entitled to preferential tariff treatment as if such goods were originating based on the goods meeting the production requirements set forth in § 10.421 of this subpart.

(v) *Textile or apparel good*. ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ATC), which is part of the WTO Agreement;

(w) *Territory*. ''Territory'' means:

(1) With respect to Chile, the land, maritime and air space under its sovereignty, and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law; and

(2) With respect to the United States,

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) The foreign trade zones located in the United States and Puerto Rico, and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(x) *WTO Agreement*. ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

IMPORT REQUIREMENTS

§ 10.410 Filing of claim for preferential tariff treatment upon importation.

(a) *Declaration*. In connection with a claim for preferential tariff treatment for an originating good under the US-CFTA, the U.S. importer must make a written declaration that the good qualifies for such treatment. The written declaration is made by including on the entry summary, or equivalent documentation, the symbol ''CL'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via electronic interchange.

(b) *Corrected declaration*. If, after making the declaration required under paragraph (a) of this section, the U.S. importer has reason to believe that the declaration or the certification on which the declaration was based contains information that is not correct, the importer must, within 30 calendar days after the date of discovery of the error, make a corrected declaration, submit a letter or other written statement to the CBP office where the original declaration was filed specifying the correction and pay any duties that may be due.

§ 10.411 Certification of origin.

(a) *Contents.* An importer who claims preferential tariff treatment on a good must submit, at the request of the port director, a certification that the good qualifies as originating. A certification submitted to CBP under this paragraph:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone and e-mail address of the importer of record of the good (if known);

(ii) The legal name, address, telephone and e-mail address of the exporter of the good (if different from the producer);

(iii) The legal name, address, telephone and e-mail address of the producer of the good (if known);

(iv) A description of the good, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(v) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 26(n), HTSUS;

(vi) The preference criterion as set forth in paragraph (e) of this section;

(vii) For multiple shipments of identical goods, the blanket period in ''mm/dd/yyyy to mm/dd/yyyy'' format (12-month maximum); and

(3) Must include a statement, in substantially the following form:

''I Certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain, and present upon request, documentation necessary to support this certification, and to inform, in writing, all persons to whom the certification was given of any changes that could affect the accuracy or validity of this certification; and

The goods originated in the territory of one or more of the parties, and comply with the origin requirements specified for those goods in the United States-Chile Free Trade Agreement; there has been no further production or any other operation outside the territories of the parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the United States; and

This document consists of _____ pages, including all attachments.''

(b) *Responsible official or agent.* The certification required to be submitted under paragraph (a) of this section must be signed and dated by a responsible official of the importer; exporter; producer; or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts. If the person making the certification is not the producer of the good, or the producer's authorized agent, the person may sign the certification of origin based on:

(1) A certification that the good qualifies as originating issued by the producer; or

(2) Knowledge of the exporter or importer that the good qualifies as an originating good.

(c) *Language.* The certification must be completed either in the English or Spanish language. If the certification is completed in Spanish, the importer must also provide to the port director, upon request, a written English translation of the certification.

(d) *Applicability of certification.* A certification may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification. For purposes of this paragraph, ''identical goods'' means goods that are the same in all respects relevant to the production that qualifies the goods as originating.

(e) *Preference criteria.* The preference criterion to be included on the certification as required in paragraph (a)(2)(vi) of this section is as follows:

(1) Preference criterion ''A'', refers to a good that is wholly obtained or produced entirely in the territory of Chile or of the United States, or both (see General Note 26(b)(i), HTSUS);

(2) Preference criterion ''B'', refers to a good that is produced entirely in the territory of Chile or the United States, or both (*see* General Note 26(b)(ii), HTSUS), and

(i) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 26(n), HTSUS, or

(ii) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 26(n), HTSUS;

(3) Preference criterion ''C'' refers to a good that is produced entirely in the territory of Chile or the United States, or both, exclusively from originating materials (see General Note 26(b)(iii), HTSUS).

§ 10.412 Importer obligations.

(a) *General*. An importer who makes a declaration under § 10.410(a) is responsible for the truthfulness of the declaration and of all the information and data contained in the certification, for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents.

(b) *Compliance*. In order to make a claim for preferential treatment under § 10.410 of this subpart, the importer:

(1) Must have records that explain how the importer came to the conclusion that the good qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it meets the applicable rules of origin set forth in General Note 26, HTSUS, and in this subpart. Those records may include a properly completed certification as set forth in § 10.411 of this subpart; and

(2) May be required to demonstrate that the conditions set forth in § 10.463 of this subpart were met if the imported article was shipped through an intermediate country.

(c) *Information provided by exporter or producer*. The fact that the importer has issued a certification based on information provided by the exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section. A U.S. importer who voluntarily makes a corrected declaration will not be subject to penalties for having made an incorrect declaration (*see* § 10.481 of this subpart).

(d) *Internal controls*. In accordance with Part 163 of this chapter, importers are expected to establish and implement internal controls which provide for the periodic review of the accuracy of the certifications or other records referred to in paragraph (b)(1) of this section.

§ 10.413 Validity of certification.

A certification that is completed, signed and dated in accordance with the requirements listed in § 10.411 will be accepted by CBP as valid for four years from the date on which the certification was signed. If the port director determines that a certification is illegible or defective or has not been completed in accordance with § 10.411, the importer will be given a period of not less than five business days to submit a corrected certification.

§ 10.414 Certification not required.

(a) *General*. Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a certification that the good qualifies for preferential tariff treatment for:

(1) A non-commercial importation of a good; or

(2) A commercial importation of a good whose value does not exceed U.S. $2,500, or the equivalent amount in Chilean currency.

(b) *Exception*. If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the US-CFTA, the port director will notify the importer in writing that for that importation the importer must submit to CBP a valid certification that the good qualifies as originating. The importer must submit such a certification within 30 calendar days from the date of the written notice. Failure to timely submit the certification or information

will result in denial of the claim for preferential tariff treatment.

§ 10.415 Maintenance of records.

(a) *General*. An importer claiming preferential treatment for a good imported into the United States must maintain in the United States, for five years after the date of importation of the good, a certification (or a copy thereof) that the good qualifies as originating, and any records and documents that the importer has relating to the origin of the good, including records and documents associated with:

(1) The purchase of, cost of, value of, and payment for, the good;

(2) Where appropriate, the purchase of, cost of, value of, and payment for, all materials, including recovered goods and indirect materials, used in the production of the good; and,

(3) Where appropriate, the production of the good in the form in which the good was exported.

(b) *Method of maintenance*. The records referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.416 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *Effect of noncompliance*. If the importer fails to comply with any requirement under this subpart, including submission of a certification of origin under § 10.411(a) or submission of a corrected certification under § 10.413, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment*. Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than Chile or the United States, and the importer of the good does not provide, at the request of the port director, copies of documents demonstrating to the satisfaction of the port director that the requirements set forth in § 10.463 were met.

TARIFF PREFERENCE LEVEL

§ 10.420 Filing of claim for tariff preference level.

A cotton or man-made fiber fabric or apparel good described in § 10.421 that does not qualify as an originating good under § 10.451 may nevertheless be entitled to preferential tariff treatment under the US-CFTA under an applicable tariff preference level (TPL). To make a TPL claim, the importer must include on the entry summary, or equivalent documentation, the applicable subheading in Chapter 99 of the HTSUS (9911.99.20 for a good described in § 10.421(a) or (b) or 9911.99.40 for a good described in § 10.421(c)) immediately above the applicable subheading in Chapter 52 through 62 of the HTSUS under which each non-originating cotton or man-made fiber fabric or apparel good is classified.

§ 10.421 Goods eligible for tariff preference claims.

The following goods are eligible for a TPL claim filed under § 10.420:

(a) *Woven fabrics*. Certain woven fabrics of Chapters 52, 54 and 55 of the HTS (Headings 5208 to 5212; 5407 and 5408; 5512 to 5516) that meet the applicable conditions for preferential tariff treatment under the US-CFTA other than the condition that they are originating goods, if they are wholly formed in the U.S. or Chile regardless of the origin of the yarn used to produce these fabrics.

(b) *Cotton or man-made fabric goods*. Certain cotton or man-made fabric goods of Chapters 58 and 60 of the HTS that meet the applicable conditions for preferential tariff treatment under the US-CFTA other than the condition that they are originating goods if they are wholly formed in the U.S. or Chile regardless of the origin of the fibers used to produce the spun yarn or the yarn used to produce the fabrics.[1]

[1] The relevant HTS subheadings for fabric goods in Chapters 58 or 60 eligible under HTS 9911.99.20 are as follows: 5801.21, 5801.22, 5801.23, 5801.24, 5801.25, 5801.26, 5801.31, 5801.32, 5801.33, 5801.34, 5801.35, 5801.36, 5802.11, 5802.19, 5802.20.0020, 5802.30.0030, 5803.10, 5803.90.30, 5804.10.10, 5804.21, 5804.29.10, 5804.30.0020, 5805.00.30, 5805.00.4010, 5806.10.10, 5806.10.24, 5806.10.28, 5806.20, 5806.31, 5806.32, 5807.10.05,

Continued

(c) *Cotton or man-made apparel goods.* Cotton or man-made apparel goods in Chapters 61 and 62 of the HTS that are both cut (or knit-to-shape) and sewn or otherwise assembled in the U.S. or Chile regardless of the origin of the fabric or yarn, provided that they meet the applicable conditions for preferential tariff treatment under the US-CFTA, other than the condition that they are originating goods.

§ 10.422 Submission of certificate of eligibility.

(a) *Contents.* An importer who claims preferential tariff treatment on a non-originating cotton or man-made fiber fabric or apparel good must submit, at the request of the port director, a certificate of eligibility containing information demonstrating that the good satisfies the requirements for entry under the applicable TPL, as set forth in § 10.421. A certificate of eligibility submitted to CBP under this section:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone and e-mail address of the importer of record of the good;

(ii) The legal name, address, telephone and e-mail address of the exporter of the good (if different from the producer);

(iii) The legal name, address, telephone and e-mail address of the producer of the good (if known);

(iv) A description of the good, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(v) The HTSUS tariff classification of the good, to six or more digits, as well as the applicable subheading in Chapter 99 of the HTSUS (9911.99.20 or 9911.99.40);

(vi) For a single shipment, the commercial invoice number;

(vii) For multiple shipments of identical goods, the blanket period in ''mm/dd/yyyy to mm/dd/yyyy'' format (12-month maximum); and

(3) Must include a statement, in substantially the following form:

''I Certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain and present upon request, documentation necessary to support this certificate, and to inform, in writing, all persons to whom the certificate was given of any changes that could affect the accuracy or validity of this certificate; and

The goods were produced in the territory of one or more of the parties, and comply with the preference requirements specified for those goods in the United States-Chile Free Trade Agreement and Chapter 99, subchapter XI of the HTSUS. There has been no further production or any other operation outside the territories of the parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the United States; and

This document consists of ____ pages, including all attachments.''

(b) *Responsible official or agent.* The certificate of eligibility required to be submitted under this section must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The certificate of eligibility must be completed either in the English or Spanish language. If the certificate is completed in Spanish, the importer must also provide to the port director, upon request, a written English translation of the certificate;

(d) *Applicability of certificate of eligibility.* A certificate of eligibility may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

5807.10.2010, 5807.10.2020, 5807.90.05, 5807.90.2010, 5807.90.2020, 5808.10.40, 5808.10.70, 5808.90.0010, 5809.00, 5810.10, 5810.91, 5810.92, 5811.00.20, 5811.00.30, 6001.10, 6001.21, 6001.22, 6001.91, 6001.92, 6002.40, 6002.90, 6003.20, 6003.30, 6003.40, 6004.10, 6004.90, 6005.21, 6005.22, 6005.23, 6005.24, 6005.31, 6005.32, 6005.33, 6005.34, 6005.41, 6005.42, 6005.43, 6005.44, 6006.21, 6006.22, 6006.23, 6006.24, 6006.31, 6006.32, 6006.33, 6006.34, 6006.41, 6006.42, 6006.43, 6006.44.

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification. For purposes of this paragraph, ''identical goods'' means goods that are the same in all respects relevant to the production that qualifies the goods for preferential tariff treatment under an applicable TPL.

§ 10.423 Certificate of eligibility not required.

(a) *General*. Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a certificate of eligibility for:

(1) A non-commercial importation of a good; or

(2) A commercial importation of a good whose value does not exceed U.S. $2,500, or the equivalent amount in Chilean currency.

(b) *Exception*. If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing TPL claims for preference under the US-CFTA, the port director will notify the importer in writing that for that importation the importer must submit to CBP a valid certificate of eligibility. The importer must submit such a certificate within 30 calendar days from the date of the written notice. Failure to timely submit the certificate will result in denial of the claim for preferential tariff treatment.

§ 10.424 Effect of noncompliance; failure to provide documentation regarding transshipment of non-originating cotton or man-made fiber fabric or apparel goods.

(a) *Effect of noncompliance*. If the importer fails to comply with any requirement under this subpart, including submission of a certificate of eligibility under § 10.422, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment*. Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to a good for which a TPL claim is made if the good is shipped through or transshipped in a country other than Chile or the United States, and the importer of the good does not provide, at the request of the port director, copies of documents demonstrating to the satisfaction of the port director that the requirements set forth in § 10.425 were met.

§ 10.425 Transit and transshipment of non-originating cotton or man-made fiber fabric or apparel goods.

(a) *General*. A good will not be considered eligible for preferential tariff treatment under an applicable TPL by reason of having undergone production that occurs entirely in the territory of Chile, the United States, or both, that would enable the good to qualify for preferential tariff treatment if subsequent to that production the good undergoes further production or any other operation outside the territories of Chile and the United States, other than unloading, reloading, or any other process necessary to preserve the good in good condition or to transport the good to the territory of Chile or the United States.

(b) *Documentary evidence*. An importer making a claim for preferential tariff treatment may be required to demonstrate, to CBP's satisfaction, that no further production or subsequent operation, other than permitted under paragraph (a) of this section, occurred outside the territories of Chile or the United States. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, packing lists, commercial invoices, and customs entry and exit documents.

EXPORT REQUIREMENTS

§ 10.430 Export requirements.

(a) *Submission of certification to CBP*. An exporter or producer in the United States that signs a certification of origin for a good exported from the United States to Chile must provide a copy of the certification (or such other medium or format approved by the Chile customs authority for that purpose) to CBP upon request.

(b) *Notification of errors in certification.* An exporter or producer in the United States who has completed and signed a certification of origin, and who has reason to believe that the certification contains or is based on information that is not correct, must immediately after the date of discovery of the error notify in writing all persons to whom the certification was given by the exporter or producer of any change that could affect the accuracy or validity of the certification.

(c) *Maintenance of records*—(1) *General.* An exporter or producer in the United States that signs a certification of origin for a good exported from the United States to Chile must maintain in the United States, for a period of at least five years after the date the certification was signed, all records and supporting documents relating to the origin of a good for which the certification was issued, including records and documents associated with:

(i) The purchase of, cost of, value of, and payment for, the good;

(ii) Where appropriate, the purchase of, cost of, value of, and payment for, all materials, including recovered goods and indirect materials, used in the production of the good; and

(iii) Where appropriate, the production of the good in the form in which the good was exported.

(2) *Method of maintenance.* The records referred to in paragraph (c) of this section must be maintained in accordance with the Generally Accepted Accounting Principles applied in the country of production and in the case of exporters or producers in the United States must be maintained in the same manner as provided in § 163.5 of this chapter.

(3) *Availability of records.* For purposes of determining compliance with the provisions of this part, the exporter's or producer's records required to be maintained under this section must be stored and made available for examination and inspection by the port director or other appropriate CBP officer in the same manner as provided in part 163 of this chapter.

§ 10.431 Failure to comply with requirements.

The port director may apply such measures as the circumstances may warrant where an exporter or a producer in the United States fails to comply with any requirement of this part. Such measures may include the imposition of penalties pursuant to 19 U.S.C. 1508(g) for failure to retain records required to be maintained under § 10.430.

POST-IMPORTATION DUTY REFUND CLAIMS

§ 10.440 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 10.441 of this part. Subject to the provisions of § 10.416 of this part, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.442(c) of this part.

§ 10.441 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund under § 10.440 of this part must be filed with the director of the port at which the entry covering the good was filed.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) Subject to § 10.413 of this part, a copy of a certification that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether or not the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement

must identify each recipient by name, CBP identification number and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether or not any person has filed a protest or a petition or request for reliquidation relating to the good under any provision of law; and if any such protest or petition or request for reliquidation has been filed, the statement must identify the protest, petition or request by number and date.

§ 10.442 CBP processing procedures.

(a) *Status determination*. After receipt of a post-importation claim under § 10.441 of this part, the port director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest, petition or request for reliquidation or judicial review*. If the port director determines that any protest or any petition or request for reliquidation relating to the good has not been finally decided, the port director will suspend action on the claim filed under this subpart until the decision on the protest, petition or request becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director will suspend action on the claim filed under this subpart until judicial review has been completed.

(c) *Allowance of claim*—(1) *Unliquidated entry*. If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has not been liquidated, the port director will take into account the claim for refund under this subpart in connection with the liquidation of the entry.

(2) *Liquidated entry*. If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties pursuant to this subpart. If the entry is otherwise to be reliquidated based on administrative review of a protest or petition for reliquidation or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund under this subpart.

(d) *Denial of claim*—(1) *General*. The port director may deny a claim for a refund filed under § 10.441 of this part if the claim was not filed timely, if the importer has not complied with the requirements of § 10.441 of this part, if the certification submitted under § 10.441(b)(2) of this part cannot be accepted as valid (see § 10.413 of this part), or if, following initiation of an origin verification under § 10.470 of this part, the port director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 10.470 of this part.

(2) *Unliquidated entry*. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry, and written notice of the denial and the reason for the denial will be given to the importer.

(3) *Liquidated entry*. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or petition for reliquidation or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director will give written notice of the denial and the reason for the denial to the importer.

RULES OF ORIGIN

§ 10.450 Definitions.

For purposes of §§ 10.450 through 10.463:

(a) *Adjusted value*. ''Adjusted value'' means the value determined in accordance with Articles 1 through 8, Article

15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation and the value of packing materials and containers for shipment as defined in §10.450(m) of this subpart;

(b) *Exporter*. ''Exporter'' means a person who exports goods from the territory of a Party;

(c) *Fungible goods or materials*. ''Fungible goods or materials'' means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

(d) *Generally Accepted Accounting Principles*. ''Generally Accepted Accounting Principles'' means the principles, rules, and procedures, including both broad and specific guidelines, that define the accounting practices accepted in the territory of a Party;

(e) *Good*. ''Good'' means any merchandise, product, article, or material;

(f) *Goods wholly obtained or produced entirely in the territory of one or both of the Parties*. ''Goods wholly obtained or produced entirely in the territory of one or both of the Parties'' means:

(1) Mineral goods extracted in the territory of one or both of the Parties;

(2) Vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of one or both of the Parties;

(3) Live animals born and raised in the territory of one or both of the Parties;

(4) Goods obtained from hunting, trapping, or fishing in the territory of one or both of the Parties;

(5) Goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(6) Goods produced on board factory ships from the goods referred to in paragraph (f)(5) provided such factory ships are registered or recorded with that Party and fly its flag;

(7) Goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

(8) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(9) Waste and scrap derived from:

(i) Production in the territory of one or both of the Parties, or

(ii) Used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(10) Recovered goods derived in the territory of a Party from used goods, and utilized in the Party's territory in the production of remanufactured goods; and

(11) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in paragraphs (f)(1) through (f)(10) of this section, or from their derivatives, at any stage of production;

(g) *Importer*. ''Importer'' means a person who imports goods into the territory of a Party;

(h) *Issued*. ''Issued'' means prepared by and, where required under a Party's domestic law or regulation, signed by the importer, exporter, or producer of the good;

(i) *Location of the producer*. ''Location of the producer'' means site of production of a good;

(j) *Material*. ''Material'' means a good that is used in the production of another good, including a part, ingredient, or indirect material;

(k) *Non-originating good*. ''Non-originating good'' means a good that does not qualify as originating under this subpart;

(l) *Non-originating material*. ''Non-originating material'' means a material that does not qualify as originating under this subpart;

(m) *Packing materials and containers for shipment*. ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(n) *Producer*. ''Producer'' means a person who engages in the production of a good in the territory of a Party;

(o) *Production.* ''Production'' means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(p) *Recovered goods.* ''Recovered goods'' means materials in the form of individual parts that are the result of:

(1) The complete disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition by one or more of the following processes: welding, flame spraying, surface machining, knurling, plating, sleeving, and rewinding in order for such parts to be assembled with other parts, including other recovered parts in the production of a remanufactured good of Annex 4.18, US-CFTA;

(q) *Remanufactured goods.* ''Remanufactured goods'' means industrial goods assembled in the territory of a Party, listed in Annex 4.18, US-CFTA, that:

(1) Are entirely or partially comprised of recovered goods;

(2) Have the same life expectancy and meet the same performance standards as new goods; and

(3) Enjoy the same factory warranty as such new goods; and

(r) *Self-produced material.* ''Self-produced material'' means a material that is produced by the producer of a good and used in the production of that good; and

(s) *Value.* ''Value'' means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

§ 10.451 Originating goods.

A good imported into the customs territory of the United States will be considered an originating good under the US-CFTA only if:

(a) The good is wholly obtained or produced entirely in the territory of Chile or of the United States, or both; or

(b) The good is produced entirely in the territory of Chile or of the United States, or both, satisfies all other applicable requirements of this subpart, and

(1) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 26(n), HTSUS, and

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 26(n), HTSUS; or

(c) The good is produced entirely in the territory of Chile or the United States, or both, exclusively from originating materials.

§ 10.452 Exclusions.

A good will not be considered to be an originating good and a material will not be considered to be an originating material by virtue of having undergone:

(a) Simple combining or packaging operations; or

(b) Mere dilution with water or with another substance that does not materially alter the characteristics of the good or material.

§ 10.453 Treatment of textile and apparel sets.

Notwithstanding the specific rules specified in General Note 26(n), HTSUS, textile and apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be regarded as originating goods unless each of the goods in the set is an originating good or the non-originating goods in the set do not exceed 10 percent of the adjusted value of the set.

§ 10.454 Regional value content.

Where General Note 26, subdivision (n), HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good may be calculated, at the choice of the person claiming the tariff treatment authorized by this note for such good, on the basis of the build-down method or the build-up method described in this section, unless otherwise specified in the note.

(a) *Build-down method.* For the build-down method, the regional value content must be calculated on the basis of the formula RVC = ((AV–VNM)/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value; and VNM is the value of non-originating materials used

by the producer in the production of the good; or

(b) *Build-up method*. For the build-up method, the regional value content must be calculated on the basis of the formula RVC = (VOM/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value; and VOM is the value of originating materials used by the producer in the production of the good.

§ 10.455 Value of materials.

(a) *Calculating the regional value content*. For purposes of calculating the regional value content of a good under General Note 26(n), HTSUS, and for purposes of applying the *de minimis* (see § 10.459) provisions of subdivision (e) of the note, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material;

(2) In the case of a material acquired in the territory where the good is produced, except for a material to which paragraph (a)(3) of this section applies, the producer's price actually paid or payable for the material;

(3) In the case of a material provided to the producer without charge, or at a price reflecting a discount or similar reduction, the sum of—

(i) All expenses incurred in the growth, production or manufacture of the material, including general expenses, and

(ii) A reasonable amount for profit; or

(4) In the case of a material that is self-produced, the sum of—

(i) All expenses incurred in the production of the material, including general expenses, and

(ii) A reasonable amount for profit.

(b) *Adjustments to value*. The value of materials may be adjusted as follows:

(1) For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight, insurance, packing and all other costs incurred in transporting the material within or between the territory of Chile, the United States, or both, to the location of the producer;

(ii) Duties, taxes and customs brokerage fees on the material paid in the territory of Chile or of the United States, or both, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product; and

(2) For non-originating materials, if included under paragraph (a) of this section, the following expenses may be deducted from the value of the non-originating material:

(i) The costs of freight, insurance, packing and all other costs incurred in transporting the material within or between the territory of Chile, the United States, or both, to the location of the producer;

(ii) Duties, taxes and customs brokerage fees on the material paid in the territory of Chile or of the United States, or both, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and

(iv) The cost of originating materials used in the production of the non-originating material in the territory of Chile or of the United States.

(c) *Accounting method*. Any cost or value referenced in General Note 26(n), HTSUS and this subpart, must be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the country in which the good is produced (whether Chile or the United States).

§ 10.456 Accessories, spare parts or tools.

Accessories, spare parts or tools that form part of the good's standard accessories, spare parts or tools and are delivered with the good will be treated as a material used in the production of the good, if—

(a) The accessories, spare parts or tools are classified with and not invoiced separately from the good; and

(b) The quantities and value of the accessories, spare parts or tools are customary for the good.

§ 10.457 Fungible goods and materials.

(a) A person claiming preferential tariff treatment under the US-CFTA for a good may claim that a fungible good or material is originating either based on the physical segregation of each fungible good or material or by using an inventory management method. For purposes of this subpart, the term ''inventory management method'' means—

(1) Averaging,

(2) ''Last-in, first-out,''

(3) ''First-in, first-out,'' or

(4) Any other method that is recognized in the generally accepted accounting principles of the country in which the production is performed (whether Chile or the United States) or otherwise accepted by that country.

(b) A person selecting an inventory management method under paragraph (a) of this section for particular fungible goods or materials must continue to use that method for those fungible goods or materials throughout the fiscal year of that person.

§ 10.458 Accumulation.

(a) Originating goods or materials of Chile or the United States that are incorporated into a good in the territory of the other country will be considered to originate in the territory of the other country for purposes of determining the eligibility of the goods or materials for preferential tariff treatment under the US-CFTA.

(b) A good that is produced in the territory of Chile, the United States, or both, by one or more producers, will be considered as an originating good if the good satisfies the applicable requirements of § 10.451 and General Note 26, HTSUS.

§ 10.459 De minimis.

(a) Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 26(n), HTSUS, will nonetheless be considered to be an originating good if—

(1) The value of all non-originating materials that are used in the production of the good and do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(2) The value of such non-originating materials is included in calculating the value of non-originating materials for any applicable regional value-content requirement under this note; and

(3) The good meets all other applicable requirements of General Note 26(n), HTSUS.

(b) Paragraph (a) of this section does not apply to:

(1) A non-originating material provided for in Chapter 4 of the Harmonized System, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheadings 1901.90 or 2106.90 of the Harmonized System, that is used in the production of a good provided for in Chapter 4 of the Harmonized System;

(2) A non-originating material provided for in Chapter 4 of the Harmonized System, or non-originating dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 of the Harmonized System, that are used in the production of the following goods: infant preparations containing over 10 percent in weight of milk solids provided for in subheading 1901.10 of the Harmonized System; mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20 of the Harmonized System; dairy preparations containing over 10 percent by weight of milk solids provided for in subheadings 1901.90 or 2106.90 of the Harmonized System; goods provided for in heading 2105 of the Harmonized System; beverages containing milk provided for in subheading 2202.90 of the Harmonized System; or animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90 of the Harmonized System;

(3) A non-originating material provided for in heading 0805 of the Harmonized System or subheadings 2009.11

through 2009.30 of the Harmonized System that is used in the production of a good provided for in subheadings 2009.11 through 2009.30 of the Harmonized System, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheadings 2106.90 or 2202.90 of the Harmonized System;

(4) A non-originating material provided for in Chapter 15 of the Harmonized System that is used in the production of a good provided for in headings 1501 through 1508, 1512, 1514, or 1515 of the Harmonized System;

(5) A non-originating material provided for in heading 1701 of the Harmonized System that is used in the production of a good provided for in headings 1701 through 1703 of the Harmonized System;

(6) A non-originating material provided for in Chapter 17 or in heading 1805 of the Harmonized System that is used in the production of a good provided for in subheading 1806.10 of the Harmonized System;

(7) A non-originating material provided for in headings 2203 through 2208 of the Harmonized System that is used in the production of a good provided for in heading 2207 or 2208 of the Harmonized System; and

(8) A non-originating material used in the production of a good provided for in Chapters 1 through 21 of the Harmonized System unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this section.

(c) A textile or apparel good provided for in Chapters 50 through 63 of the Harmonized System that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 26(n), HTSUS, shall nonetheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than seven percent of the total weight of that component. A good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of a Party. For purposes of this paragraph, if a good is a fiber, yarn or fabric, the component of the good that determines the tariff classification of the good is all of the fibers in the yarn, fabric or group of fibers.

§ 10.460 Indirect materials.

An indirect material, as defined in § 10.402(n), will be considered to be an originating material without regard to where it is produced.

Example. Chilean Producer C produces good C using non-originating material A. Producer C imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in § 10.451(b)(1) and General Note 26(n), each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material A must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

§ 10.461 Retail packaging materials and containers.

Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the US-CFTA is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 26(n), HTSUS. If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Chilean Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in § 10.455(a)(1), the value of the blister packages is their adjusted value, which in this case is $10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, RVC = ((AV–VNM)/AV) ×

100 (*see* § 10.454(a)), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their $10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, but the blister packages are originating. In this case, the adjusted value of the originating blister packages would not be included as part of the VNM of good C under the build-down method. However, if the United States importer had used the build-up method, RVC = (VOM/AV) × 100 (*see* § 10.454(b)), the adjusted value of the blister packaging would be included as part of the VOM, value of originating material.

§ 10.462 Packing materials and containers for shipment.

(a) Packing materials and containers for shipment, as defined in § 10.450(m), are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 26(n), HTSUS. Accordingly, such materials and containers do not have to undergo the applicable change in tariff classification even if they are non-originating.

(b) Packing materials and containers for shipment, as defined in § 10.450(m), are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying either the build-down or build-up method for determining the regional value content of the good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, or VOM, value of originating materials.

Example. Chilean Producer A produces good C. Producer A ships good C to the United States in a shipping container which it purchased from Company B in Chile. The shipping container is originating. The value of the shipping container determined under section § 10.455(a)(2) is $3. Good C is subject to a regional value content requirement. The transaction value of good C is $100, which includes the $3 shipping container. The U.S. importer decides to use the build-up method, RVC = (VOM/AV) × 100 (*see* § 10.454(b)), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section requires a $3 deduction for the value of the shipping container. Therefore, the AV is $97 ($100–$3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§ 10.463 Transit and transshipment.

(a) *General.* A good will not be considered an originating good by reason of having undergone production that occurs entirely in the territory of Chile, the United States, or both, that would enable the good to qualify as an originating good if subsequent to that production the good undergoes further production or any other operation outside the territories of Chile and the United States, other than unloading, reloading, or any other process necessary to preserve the good in good condition or to transport the good to the territory of Chile or the United States.

(b) *Documentary evidence.* An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that no further production or subsequent operation, other than permitted under paragraph (a) of this section, occurred outside the territories of Chile or the United States. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, packing lists, commercial invoices, and customs entry and exit documents.

ORIGIN VERIFICATIONS AND DETERMINATIONS

§ 10.470 Verification and justification of claim for preferential treatment.

(a) *Verification by CBP.* A claim for preferential treatment made under § 10.410, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification

of a claim for preferential treatment may involve, but is not limited to, a review of:

(1) All records required to be made, kept, and made available to CBP by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, supporting accounting and financial records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence that documents the use of U.S. or Chilean materials in the production of the article subject to the verification, such as purchase orders, invoices, bills of lading and other shipping documents, customs import and clearance documents, and bills of material and inventory records.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.471 Special rule for verifications in Chile of U.S. imports of textile and apparel products.

(a) *Procedures to determine whether a claim of origin is accurate.* For the purpose of determining that a claim of origin for a textile or apparel good is accurate, CBP may request that the government of Chile conduct a verification, regardless of whether a claim is made for preferential tariff treatment. While a verification under this paragraph is being conducted, CBP may take appropriate action, as directed by The Committee for the Implementation of Textile Agreements (CITA), which may include suspending the application of preferential treatment to the textile or apparel good for which a claim of origin has been made. If CBP is unable to make the determination described in this paragraph within 12 months after a request for a verification, CBP may take appropriate action with respect to the textile and apparel good subject to the verification, and with respect to similar goods exported or produced by the entity that exported or produced the good, if directed by CITA.

(b) *Procedures to determine compliance with applicable customs laws and regulations of the U.S.* For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures in cases in which CBP has a reasonable suspicion that a Chilean exporter or producer is engaging in unlawful activity relating to trade in textile and apparel goods, CBP may request that the government of Chile conduct a verification, regardless of whether a claim is made for preferential tariff treatment. A ''reasonable suspicion'' for the purpose of this paragraph will be based on relevant factual information, including information of the type set forth in Article 5.5 of the US-CFTA, that indicates circumvention of applicable laws, regulations or procedures regarding trade in textile and apparel goods. CBP may undertake or assist in a verification under this paragraph by conducting visits in Chile, along with the competent authorities of Chile, to the premises of an exporter, producer or any other enterprise involved in the movement of textile or apparel goods from Chile to the United States. While a verification under this paragraph is being conducted, CBP may take appropriate action, as directed by CITA, which may include suspending the application of preferential tariff treatment to the textile and apparel goods exported or produced by the Chilean entity where the reasonable suspicion of unlawful activity relates to those goods. If CBP is unable to make the determination described in this paragraph within 12 months after a request for a verification, CBP may take appropriate action with respect to any textile or apparel goods exported or produced by the entity subject to the verification, if directed by CITA.

(c) *Assistance by CBP to Chilean authorities.* CBP may undertake or assist in a verification under this section by conducting visits in Chile, along with the competent authorities of Chile, to

the premises of an exporter, producer or any other enterprise involved in the movement of textile or apparel goods from Chile to the United States.

(d) *Treatment of documents and information provided to CBP*. Any production, trade and transit documents and other information necessary to conduct a verification under this section, provided to CBP by the government of Chile consistent with the laws, regulations, and procedures of Chile, will be considered confidential as provided for in Article 5.6 of the US-CFTA.

(e) *Notification to Chile*. Prior to commencing appropriate action under paragraph (a) or (b) of this section, CBP will notify the government of Chile. CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it receives information sufficient to enable it to make the determination described in paragraphs (a) and (b) of this section.

(f) *Retention of authority by CBP*. If CBP requests a verification before Chile fully implements its obligations under Article 3.21 of the US-CFTA, the verification will be conducted principally by CBP, including through means described in paragraphs (a) and (b) of this section. CBP retains the authority to exercise its rights under paragraphs (a) and (b) of this section.

§ 10.472 Verification in the United States of textile and apparel goods.

(a) *Procedures to determine whether a claim of origin is accurate*. CBP will endeavor, at the request of the government of Chile, to conduct a verification for the purpose of determining that a claim of origin for a textile or apparel good is accurate. A verification will be conducted under this paragraph regardless of whether a claim is made for preferential tariff treatment. If the government of Chile is unable to make the determination described in this paragraph within 12 months after a request for a verification, Chile may take appropriate action with respect to the textile and apparel good subject to the verification, and with respect to similar goods exported or produced by the entity that exported or produced the good.

(b) *Procedures to determine compliance with applicable customs laws and regulations of Chile*. CBP will endeavor to conduct a verification at the request of the government of Chile for purposes of enabling Chile to determine that the U.S. exporter or producer is complying with applicable customs laws, regulations, and procedures, if Chile has a reasonable suspicion that a U.S. exporter or producer is engaging in unlawful activity relating to trade in textile and apparel goods. A verification will be conducted under this paragraph regardless of whether a claim is made for preferential tariff treatment. A ''reasonable suspicion'' for the purpose of this paragraph will be based on relevant factual information, including information of the type set forth in Article 5.5 of the US-CFTA, that indicates circumvention of applicable laws, regulations or procedures regarding trade in textile and apparel goods. If the government of Chile is unable to make the determination described in this paragraph within 12 months after a request for a verification, it may take action as permitted under its laws with respect to any textile or apparel goods exported or produced by the entity subject to the verification.

(c) *Visits by CBP*. CBP may conduct visits to the premises of a U.S. exporter or producer or any other enterprise involved in the movement of textile or apparel goods from the United States to Chile in order to undertake or assist in a verification pursuant to paragraphs (a) and (b) of this section.

(d) *Initiation of verification by CBP*. CBP may conduct, on its own initiative, a verification for the purpose of determining that a claim of origin for a textile or apparel good is accurate.

(e) *Treatment of documents and information*. CBP will endeavor to provide to the government of Chile, consistent with U.S. laws, regulations, and procedures, production, trade, and transit documents and other information necessary to conduct a verification under paragraphs (a) and (b) of this section. Such information will be considered confidential as provided for in Article 5.6 of the US-CFTA.

§ 10.473 Issuance of negative origin determinations.

If CBP determines, as a result of an origin verification initiated under this

section, that the good which is the subject of the verification does not qualify as an originating good, it will issue a written determination that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the export and import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based;

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 26, HTSUS, and in the ''Rules of Origin'' heading under this subpart, the legal basis for the determination; and,

(d) A notice of intent to deny preferential tariff treatment on the good which is the subject of the determination.

§ 10.474 Repeated false or unsupported preference claims.

Where CBP finds indications of a pattern of conduct by an importer of false or unsupported representations that a good imported into the United States qualifies as originating, CBP may deny subsequent claims for preferential tariff treatment on identical goods imported by that person until compliance with the rules applicable to originating goods as set forth in General Note 26, HTSUS is established to the satisfaction of CBP.

PENALTIES

§ 10.480 General.

Except as otherwise provided in this subpart, all criminal, civil or administrative penalties which may be imposed on U.S. importers, exporters and producers for violations of the customs and related laws and regulations will also apply to U.S. importers, exporters and producers for violations of the laws and regulations relating to the US-CFTA.

§ 10.481 Corrected declaration by importers.

A U.S. importer who makes a corrected declaration under § 10.410(b) will not be subject to civil or administrative penalties for having made an incorrect declaration, provided that the corrected declaration was voluntarily made.

§ 10.482 Corrected certifications of origin by exporters or producers.

Civil or administrative penalties provided for under the U.S. customs laws and regulations will not be imposed on an exporter or producer in the United States who voluntarily provides written notification pursuant to § 10.430(b) with respect to the making of an incorrect certification.

§ 10.483 Framework for correcting declarations and certifications.

(a) *''Voluntarily'' defined.* For purposes of this subpart, the making of a corrected declaration or the providing of written notification of an incorrect certification will be deemed to have been done voluntarily if:

(1) Done before the commencement of a formal investigation; or

(2) Done before any of the events specified in § 162.74(i) of this part have occurred; or

(3) Done within 30 calendar days after either the U.S. importer, exporter or producer had reason to believe that the declaration or certification was not correct; and is

(4) Accompanied by a written statement setting forth the information specified in paragraph (c) of this section; and

(5) In the case of a corrected declaration, accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (e) of this section.

(b) *Cases involving fraud.* Notwithstanding paragraph (a) of this section, a person who acted fraudulently in making an incorrect declaration or certification may not make a voluntary correction. For purposes of this paragraph, the term ''fraud'' will have the meaning set forth in paragraph (B)(3) of appendix B to part 171 of this chapter.

(c) *Written statement.* For purposes of this subpart, each corrected declaration or notification of an incorrect certification must be accompanied by a written statement which:

(1) Identifies the class or kind of good to which the incorrect declaration or certification relates;

(2) In the case of a corrected declaration, identifies each affected import transaction, including each port of importation and the approximate date of each importation, and in the case of a notification of an incorrect certification, identifies each affected exportation transaction, including each port of exportation and the approximate date of each exportation. A U.S. producer who provides written notification that certain information in a certification of origin is incorrect and who is unable to identify the specific export transactions under this paragraph must provide as much information concerning those transactions as the producer, by the exercise of good faith and due diligence, is able to obtain;

(3) Specifies the nature of the incorrect statements or omissions regarding the declaration or certification; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the declaration or certification, and states that the person will provide any additional pertinent information or data which is unknown at the time of making the corrected declaration or certification within 30 calendar days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) *Substantial compliance*. For purposes of this section, a person will be deemed to have voluntarily corrected a declaration or certification even though that person provides corrected information in a manner which does not conform to the requirements of the written statement specified in paragraph (c) of this section, provided that:

(1) CBP is satisfied that the information was provided before the commencement of a formal investigation; and

(2) The information provided includes, orally or in writing, substantially the same information as that specified in paragraph (c) of this section.

(e) *Tender of actual loss of duties*. A U.S. importer who makes a corrected declaration must tender any actual loss of duties at the time of making the corrected declaration, or within 30 calendar days thereafter, or within any extension of that 30-day period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

(f) *Applicability of prior disclosure provisions*. Where a person fails to meet the requirements of this section because the correction of the declaration or the written notification of an incorrect certification is not considered to be done voluntarily as provided in this section, that person may nevertheless qualify for prior disclosure treatment under 19 U.S.C. 1592(c)(4) and § 162.74 of this chapter.

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.490 Goods re-entered after repair or alteration in Chile.

(a) *General*. This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Chile as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Chile, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for treatment*. The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Chile, are incomplete for their intended use and for which the processing operation performed in Chile constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation*. The provisions of § 10.8(a), (b), and (c) of this part, relating to the documentary requirements

for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Chile after having been exported for repairs or alterations and which are claimed to be duty free.

PART 11—PACKING AND STAMPING; MARKING

PACKING AND STAMPING

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MARKING

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AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Notes 23 and 24, Harmonized Tariff Schedule of the United States), 1624.

PACKING AND STAMPING

§ 11.1 Cigars, cigarettes, medicinal preparations, and perfumery.

(a) All cigars and cigarettes imported into the United States, except importations by mail and in baggage, shall be placed in the public stores or in a designated bonded warehouse to remain until inspected, weighed, and repacked, if necessary, under the Customs and internal-revenue laws. However, if the invoice and entry presented specify all of the information necessary for prompt determination of the estimate duty and tax on the packages of cigars and cigarettes covered thereby, the port director may permit designation of less than the entire importation for examination.

(b) After the cigars and cigarettes have been examined, weighed, and appraised, before release the inspecting officer shall verify that they are in properly constructed packages, conforming to the requirements of the regulations of the Bureau of Alcohol, Tobacco and Firearms, bearing a legible imprint or a securely affixed label stating the quantity, kind, and classification for tax purposes as required by such regulations. Cigars or cigarettes must be in compliance with such requirements before being released for consumption unless specifically exempted therefrom as indicated in § 11.3.

(c) The immediate containers of all domestic cigars, cigarettes, medicinal preparations, and perfumery, which are returned to the United States and are subject to a duty equal to an internal-revenue tax, shall be stamped by Customs. The packaging requirements set forth in paragraph (b) of this section apply to returned cigars and cigarettes of domestic origin.

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 78–329, 43 FR 43454, Sept. 26, 1978]

§ 11.2 Manufactured tobacco.

(a) If the invoice and entry presented for manufactured tobacco specify all the information necessary for prompt determination of the estimated duty on the manufactured tobacco covered thereby, the port director may permit designation of less than the entire importation for examination.

(b) In the case of returned American manufactured tobacco, the packages shall be marked or stamped by Customs with the inscription ''American goods returned.''

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 67–193, 32 FR 11764, Aug. 16, 1967]

§ 11.2a Release from Customs custody without payment of tax on cigars, cigarettes and cigarette papers and tubes.

Cigars, cigarettes, and cigarette papers and tubes may be released from Customs custody without payment of any applicable internal revenue tax upon presentation of the Customs entry or withdrawal form and three

copies of Alcohol, Tobacco and Firearms Form 2145 (5200.11) or 3072 (5210.14), certified by the appropriate regional regulatory administrator, Bureau of Alcohol, and Tobacco and Firearms. The Customs officer shall complete the notice of release, retain one copy, send one copy to the regional regulatory administrator, and return one copy to the manufacturer. The release may not be made under a mail entry. See § 145.13(b) of this chapter.

[T.D. 78–329, 43 FR 43454, Sept. 26, 1978]

§ 11.3 Package and notice requirements for cigars and cigarettes; package requirements for cigarette papers and tubes.

Exemptions from tax on cigars, cigarettes, and cigarette papers and tubes apply in accordance with the regulations of the Bureau of Alcohol, Tobacco, and Firearms (27 CFR part 275) upon release from Customs custody of such articles imported by consular officers and employees of foreign states. Cigars, cigarettes, cigarette papers, and tubes may also be released without payment of tax as provided in § 11.2a and for exhibition in accordance with part 147 of this chapter. Additionally, cigars, cigarettes, or cigarette papers and tubes may be admitted free of duty and tax under the provisions of Subchapter IV, Chapter 98, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), or section 321, Tariff Act of 1930, as amended (19 U.S.C. 1321), §§ 148.63, 148.74, and subpart I of part 148 of this chapter. Except in the foregoing instances and in any instance in which such articles are imported in passengers' baggage or are to be released under a mail entry for the personal consumption of the importer or for disposition as his bona fide gift, the provisions in Part 275 of the regulations of the Bureau of Alcohol, Tobacco, and Firearms (27 CFR part 275) as to packages and notices thereon apply.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 73–227, 38 FR 22548, Aug. 22, 1973; T.D. 78–329, 43 FR 43454, Sept. 26, 1978; T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

§ 11.5 [Reserved]

§ 11.6 Distilled spirits, wines, and malt liquors in bulk.

(a) The port director, in his discretion, may require marks, brands, stamps, labels, or similar devices to be placed on any bulk container used for holding, storing, transferring, or conveying imported distilled spirits, wines, and malt liquors, in accordance with 19 U.S.C. 467.

(b) Marks, brands, stamps, labels, or similar devices required by Federal, State, or local statute or regulation may be affixed, and Customs inspection, gauging, marking, or measurement may be done, at the place of unlading or other suitable place, unless the port director determines that inspection, gauging, marking, or measurement shall be done at a public store, warehouse, or other appropriate facility.

(c) Marks, brands, stamps, labels, or similar devices shall be permanent in nature and not subject to obliteration or removal as a result of handling or other condtions. The port director shall determine whether a mark, brand, stamp, label, or similar device is acceptable, based on the nature, surface, and composition of the container.

[T.D. 79–221, 44 FR 46813, Aug. 9, 1979; T.D. 80–26, 45 FR 3901, Jan. 21, 1980; T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

§ 11.7 Distilled spirits and other alcoholic beverages imported in bottles and similar containers; regulations of the Bureau of Alcohol, Tobacco, and Firearms.

The importation of distilled spirits and other alcoholic beverages in bottles and similar containers is subject to regulations of the Bureau of Alcohol, Tobacco and Firearms relating to strip stamps and other matters. (27 CFR parts 5, 201, and 251). Customs officers and employees shall perform such functions as are necessary or proper on their part to carry out such regulations.

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 78–329, 43 FR 43454, Sept. 26, 1978]

MARKING

§ 11.9 Special marking on certain articles.

(a) No movement, case, or dial provided for in Chapter 91, Harmonized Tariff Schedule of the United States (HTSUS), shall be released for consumption until marked in exact compliance with the requirements of additional U.S. Note 4, Chapter 91. If any article so required to be marked is found not to be marked to indicate the country of origin, the 10 percent marking duty shall be assessed, unless such marking is accomplished or the merchandise is exported or destroyed under Customs supervision prior to the liquidation of the entry, in accordance with the provisions of 19 U.S.C. 1304(f).

(b) The name of the manufacturer or purchaser which must appear on articles provided for Chapter 91, Harmonized Tariff Schedule of the United States (HTSUS), and specified in Additional U.S. Note 4, Chapter 91, may be either the actual name of the manufacturer or purchaser or a duly registered trade name under which such manufacturer or purchaser carries on his business. A trade-mark shall not be accepted as meeting any such special marking requirement unless it includes the full name of the manufacturer or purchaser. The term ''Purchaser'' as used in this paragraph means the purchaser in the United States by whom or for whose account the articles are imported.

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 89–1, 53 FR 51253, Dec. 21, 1988; T.D. 90–51, 55 FR 28190, July 10, 1990; T.D. 97–82, 62 FR 51770, Oct. 3, 1997; 62 FR 55512, Oct. 27, 1997]

§ 11.12 Labeling of wool products to indicate fiber content.

(a) Wool products imported into the United States, except those made more than 20 years prior to importation, and except carpets, rugs, mats, and upholsteries, shall have affixed thereto a stamp, tag, label, or other means of identification, as required by the Wool Products Labeling Act of 1939 (54 Stat. 1129; 15 U.S.C. 68 *et seq.)* and the rules and regulations promulgated thereunder by the Federal Trade Commission (16 CFR part 300). The term ''wool product'' means any product, or any portion of a product, which contains, purports to contain, or in any way is represented as containing wool, reprocessed wool, or reused wool.

(b) If imported wool products are not correctly labeled and the port director is satisfied that the error or omission involved no fraud or willful neglect, the importer shall be afforded a reasonable opportunity to label the merchandise under Customs supervision to conform with the requirements of such act and the rules and regulations of the Federal Trade Commission. The compensation and expenses of Customs officers and employees assigned to supervise the labeling shall be reimbursed to the Government and shall be assessed in the same manner as in the case of marking of country of origin, § 134.55 of this chapter.

(c) Packages of wool products subject to the provisions of this section which are not designated for examination may be released pending examination of the designated packages, but only if there shall have been filed in connection with the entry bonds on Customs Form 301, containing the bond conditions set forth in § 113.62 and/or § 113.68 of this chapter, as appropriate, in such amount as the port director may require.

(d) The port director shall give written notice to the importer of any lack of compliance with the Wool Products Labeling Act of 1939 in respect of an importation of wool products, and pursuant to § 141.113 of this chapter shall demand the immediate return of the involved products to Customs custody, unless the lack of compliance is forthwith corrected.

(e) If the products covered by a notice and demand given pursuant to paragraph (d) of this section are not promptly returned to Customs custody and the port director is not fully satisfied that they have been brought into compliance with the Wool Products Labeling Act of 1939, appropriate action shall be taken to effect the collection of liquidated damages in an amount equal to the entered value of the merchandise not redelivered, plus the estimated duty thereon as determined at the time of entry, unless the owner or consignee shall file with the appropriate Customs officer an application

for cancellation of the liability incurred under the bond upon the payment as liquidated damages of a lesser amount than the full amount of the liquidated damages incurred, or upon the basis of such other terms and conditions as the Secretary of the Treasury may deem sufficient. The application shall contain a full statement of the reasons for the requested cancellation and shall be in duplicate.

(f) If any fraudulent violation of the act with respect to imported articles comes to the attention of the port director, the involved merchandise shall be placed under seizure, or a demand shall be made for the redelivery of the merchandise if it has been released from Customs custody, and the case shall be reported to the Federal Trade Commission, Washington, D.C.

(Sec. 8, 54 Stat. 1132; 15 U.S.C. 68f; R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 72–262, 37 FR 20318, Sept. 29, 1972; T.D. 73–175, 38 FR 17446, July 2, 1973; T.D. 84–213, 49 FR 41167, Oct. 19, 1984]

§ 11.12a Labeling of fur products to indicate composition.

(a) Fur products imported into the United States shall have affixed thereto a label as required by section 4 of the Fur Products Labeling Act (15 U.S.C. 69b) and the rules and regulations promulgated thereunder by the Federal Trade Commission (16 CFR 301.1—301.49). The term ''fur product'' means any article of wearing apparel made in whole or in part of fur or used fur; except that such term shall not include such articles as the Federal Trade Commission shall exempt by reason of the relatively small quantity or value of the fur or used fur contained therein.

(b) If imported fur products are not correctly labeled and the port director is satisfied that the error or omission involved no fraud or willful neglect, the importer shall be afforded a reasonable opportunity to label the merchandise under Customs supervision to conform with the requirements of such act and the rules and regulations of the Federal Trade Commission. The compensation and expenses of Customs officers and employees assigned to supervise the labeling shall be reimbursed to the Government and shall be assessed in the same manner as in the case of marking of country of origin, § 134.55 of this chapter.

(c) Packages of fur products subject to the provisions of this section which are not designated for examination may be released pending examination of the designated packages, but only if there shall have been filed in connection with the entry bonds on Customs Form 301, containing the bond conditions set forth in § 113.62 and/or § 113.68 of this chapter, as appropriate, in such amount as the port director may require.

(d) The port director shall give written notice to the importer of any lack of compliance with the Fur Products Labeling Act in respect of an importation of fur products, and pursuant to § 141.113 of this chapter shall demand the immediate return of the involved products to Customs custody, unless the lack of compliance is forthwith corrected.

(e) If the products covered by a notice and demand given pursuant to paragraph (d) of this section are not promptly returned to Customs custody and the port director is not fully satisfied that they have been brought into compliance with the Fur Products Labeling Act, appropriate action shall be taken to effect the collection of liquidated damages in an amount equal to the entered value of the merchandise not redelivered, plus the estimated duty thereon as determined at the time of entry, unless the owner or consignee shall file with the appropriate Customs officer an application for cancellation of the liability incurred under the bond upon the payment as liquidated damages of a lesser amount than the full amount of the liquidated damages incurred, or upon the basis of such other terms and conditions as the Secretary of the Treasury may deem sufficient. The application shall contain a full statement of the reasons for the requested cancellation and shall be in duplicate.

(f) If any fraudulent violation of the act with respect to imported articles comes to the attention of a port director, the involved merchandise shall be placed under seizure, or a demand shall

be made for the redelivery of the merchandise if it has been released from Customs custody, and the case shall be reported to the Federal Trade Commission, Washington, DC 20580.

(Sec. 6, 65 Stat. 178; 15 U.S.C. 69d; R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 72–262, 37 FR 20318, Sept. 29, 1972; T.D. 73–175, 38 FR 17446, July 2, 1973; T.D. 84–213, 49 FR 41167, Oct. 19, 1984]

§ 11.12b Labeling textile fiber products.

(a) Textile fiber products imported into the United States shall be labeled or marked in accordance with the Textile Fiber Products Identification Act (15 U.S.C. 70 through 70k) and the rules and regulations promulgated thereunder by the Federal Trade Commission (16 CFR part 303) unless exempt from marking or labeling under section 12 of the Act (15 U.S.C. 70i). An invoice or other paper, containing the specified information may be used in lieu of a label where the textile product is not in the form intended for sale, delivery to, or for use by the ultimate consumer. Rule 31 of the Federal Trade Commission (16 CFR 303.31).

(b) If imported fiber products are not correctly labeled and the port director is satisfied that the error or omission involved no fraud or willful neglect, the importer shall be afforded a reasonable opportunity to label the merchandise under customs supervision to conform with the requirements of such Act and the rules and regulations of the Federal Trade Commission. The compensation and expenses of Customs officers and employees assigned to supervise the labeling shall be reimbursed to the Government and shall be assessed in the same manner as in the case of marking of country of origin, § 134.55 of this chapter.

(c) Packages of fiber products subject to the provisions of this section which are not designated for examination may be released pending examination of the designated packages, but only if there shall have been filed in connection with the entry bonds on Customs Form 301, containing the bond conditions set forth in § 113.62 and/or § 113.68 of this chapter, as appropriate, in such amount as the port director may require.

(d) The port director shall give written notice to the importer of any lack of compliance with the Fiber Products Identification Act in respect of an importation of fiber products, and pursuant to § 141.113 of this chapter shall demand the immediate return of the involved products to customs custody, unless the lack of compliance is forthwith corrected.

(e) If the products covered by a notice and demand given pursuant to the preceding paragraph are not promptly returned to Customs custody and the port director is not fully satisfied that they have been brought into compliance with the Fiber Products Identification Act, appropriate action shall be taken to effect the collection of liquidated damages in an amount equal to the entered value of the merchandise not redelivered, plus the estimated duty thereon as determined at the time of entry, unless the owner or consignee shall file with the appropriate Customs officer an application for cancellation of the liability incurred under the bond upon the payment as liquidated damages of a lesser amount than the full amount of the liquidated damages incurred, or upon the basis of such other terms and conditions as the Secretary of the Treasury may deem sufficient. The application shall contain a full statement of the reasons for the requested cancellation and shall be in duplicate.

(f) If any willful or flagrant violation of the Act with respect to the importation of articles comes to the attention of a port director, the involved merchandise shall be placed under seizure, or a demand shall be made for the redelivery of the merchandise if it has been released from Customs custody, and the case shall be reported to the Federal Trade Commission, Washington DC 20580.

(Sec. 501, 65 Stat. 290, secs. 2–12, 14, 72 Stat. 1717; 15 U.S.C. 70–70k, 31 U.S.C. 483a; R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 72–262, 37 FR 20318, Sept. 29, 1972; T.D. 73–175, 38 FR 17446, July 2, 1973; T.D. 84–213, 49 FR 41167, Oct. 19, 1984]

§ 11.13 False designations of origin and false descriptions; false marking of articles of gold or silver.

(a) Articles which bear, or the containers which bear, false designations of origin, or false descriptions or representations, including words or other symbols tending falsely to describe or represent the articles, are prohibited importation under 15 U.S.C. 294, 295, 296, 1124, 1125 or 48 U.S.C. 1405q, and shall be detained.

(b) Articles made in whole or in part of gold or silver or alloys thereof imported for sale by manufacturers or dealers which are marked or labeled in a manner indicating a greater degree of fineness than the actual fineness of the gold or silver or alloys thereof, and any plated or filled articles so imported which are marked or labeled to indicate the fineness of the gold or silver and are not also marked or labeled to indicate the plated or filled condition or are marked or labeled with the word ''sterling'' or the word ''coin'', are prohibited importation and shall be detained, and the facts shall be reported to the United States attorney.

(c) Whenever any articles are detained in accordance with the foregoing provisions of this section, and the case of any articles detained under paragraph (b) of this section the United States attorney has indicated that he does not intend to prosecute, the articles shall be seized and forfeited in the usual manner, except that, upon the filing of a petition therefor by the importer prior to final disposition of the articles, the port director may release the articles upon the condition that the prohibited marking be removed or obliterated or that the articles and containers be properly marked to indicate their origin, contents, or condition, or may permit the articles to be exported or destroyed under Customs supervision, and without expense to the Government.

(d) Articles forfeited for violation of section 294, 1124, or 1125, Title 15 and section 545, Title 18, U.S. Code, may be disposed of in accordance with the procedure applicable to other Customs forfeitures, but may not be released from Customs custody except upon the removal by and at the expense of the party in interest of the prohibited marking by reason of which the articles were seized, except articles disposed of under § 133.52 (a) or (b) of this chapter.

(Secs. 1–5, 34 Stat. 260–262, secs. 42, 43, 60 Stat. 440, 441, sec. 1, 62 Stat. 716, sec. 618, 46 Stat. 757; 15 U.S.C. 294–298, 1124, 1125, 18 U.S.C. 545, 19 U.S.C. 1618)

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 79–159, 44 FR 31967, June 4, 1979; T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

PART 12—SPECIAL CLASSES OF MERCHANDISE

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AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

Section 12.1 also issued under 21 U.S.C. 371(b);

Section 12.3 also issued under 7 U.S.C. 135h, 21 U.S.C. 381;

Section 12.4 also issued under 21 U.S.C. 381(b);

Section 12.6 also issued under 7 U.S.C. 1854;

Section 12.10 also issued under 7 U.S.C. 151–162;

Section 12.15 also issued under 19 U.S.C. 1558;

Section 12.16 also issued under 7 U.S.C. 1592(b);

Sections 12.21 through 12.23 also issued under 42 U.S.C. 262;

Section 12.26 also issued under 18 U.S.C. 42;

Section 12.28 also issued under 18 U.S.C. 42, 19 U.S.C. 1527;

Section 12.34 also issued under 19 U.S.C. 1202 (additional U.S. Note to Chapter 36, HTSUS);

Section 12.37 also issued under 27 U.S.C. 203;

Section 12.39 also issued under 19 U.S.C. 1337, 1623;

Sections 12.40 and 12.41 also issued under 19 U.S.C. 1305;

Sections 12.42 through 12.44 also issued under 19 U.S.C. 1307 and Pub. L. 105–61 (111 Stat. 1272);

Sections 12.73 and 12.74 also issued under 19 U.S.C. 1484, 42 U.S.C. 7522, 7601;

Section 12.85 also issued under 19 U.S.C. 1623, 46 U.S.C. 4302, 4306, 4310;

Sections 12.95 through 12.103 also issued under 15 U.S.C. 1241–1245;

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

Sections 12.105 through 12.109 also issued under 19 U.S.C. 2094;

Sections 12.110 through 12.117 also issued under 7 U.S.C. 136 *et seq.*;

Sections 12.118 through 12.127 also issued under 15 U.S.C. 2601 *et seq.;*

Sections 12.130 and 12.131 also issued under 7 U.S.C. 1854;

Section 12.140 also issued under 19 U.S.C. 1484, 2416(a), 2171;

Section 12.150 also issued under 19 U.S.C. 1595a and 1618; 22 U.S.C. 401.

SOURCE: 28 FR 14710, Dec. 31, 1963, unless otherwise noted.

FOOD, DRUGS, AND COSMETICS, ECONOMIC POISONS, HAZARDOUS SUBSTANCES, AND DANGEROUS CAUSTIC OR CORROSIVE SUBSTANCES

§ 12.1 Cooperation with certain agencies; joint regulations.

(a) *Federal Food, Drug, and Cosmetic Act.* The importation into the United States of food, drugs, devices, and cosmetics as defined in section 201 (f), (g), (h), and (i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 (f), (g), (h), (i)) is governed by section 801 of the

Act, as amended (21 U.S.C. 381) and regulations issued under authority of section 701(b) of the Act (21 U.S.C. 371(b)) by the Secretary of Health and Human Services and the Secretary of the Treasury (21 CFR 1.83 through 1.99).

(b) *Federal Insecticide, Fungicide, and Rodenticide Act*. The importation of pesticides and devices is governed by section 17(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136*o*(c)), and regulations issued under the authority of section 17(e) of that Act (7 U.S.C. 1360(e)) by the Secretary of the Treasury, in consultation with the Administrator of the Environmental Protection Agency, as set forth below (§ 12.110 *et seq*.).

(c) *Federal Hazardous Substances Act*. The importation of hazardous substances, misbranded hazardous substances, or banned hazardous substances as defined in section 2 of the Federal Hazardous Substances Act, as amended (15 U.S.C. 1261), is governed by regulations issued under the authority of sections 10(b) and 14 of the Act, as amended (15 U.S.C. 1269, 1273), by the Consumer Product Safety Commission (16 CFR 1500.265 through 1500.272).

[T.D. 68–191, 33 FR 11019, Aug. 2, 1968, as amended by T.D. 75–194, 40 FR 32321, Aug. 1, 1975; T.D. 82–145, 47 FR 35475, Aug. 16, 1982]

§ 12.3 Release under bond; liquidated damages.

(a) *Release*. No food, drug, device, cosmetic, pesticide, hazardous substance or dangerous caustic or corrosive substance that is the subject of § 12.1 will be released except in accordance with the laws and regulations applicable to the merchandise. When any merchandise that is the subject of § 12.1 is to be released under bond pursuant to regulations applicable to that merchandise, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, will be required.

(b) *Bond amount*. The bond referred to in paragraph (a) of this section must be in a specific amount prescribed by the port director based on the circumstances of the particular case that is either:

(1) Equal to the domestic value (see § 162.43(a) of this chapter) of the merchandise at the time of release as if the merchandise were admissible and otherwise in compliance; or

(2) Equal to three times the value of the merchandise as provided in § 113.62(l)(1) of this chapter.

(c) *Liquidated damages*. Whenever liquidated damages arise with regard to any food, drug, device or cosmetic subject to § 12.1(a) for failure to redeliver merchandise into Customs custody or for failure to rectify any noncompliance with the applicable provisions of admission, including the failure to export or destroy the merchandise within the time period prescribed by law after the merchandise has been refused admission pursuant to the provisions of the Food, Drug and Cosmetic Act, those liquidated damages will be assessed pursuant to § 113.62(l)(1) of this chapter in the amount of the bond prescribed under paragraph (b) of this section.

[T.D. 01–26, 66 FR 16853, Mar. 28, 2001]

§ 12.4 Exportation.

The exportation of merchandise, the subject of § 12.1, refused admission into the United States in accordance with regulations applicable thereto shall be under Customs supervision in accordance with the regulations set forth in §§ 18.25 and 18.26 of this chapter.

[T.D. 68–191, 33 FR 11019, Aug. 2, 1968]

§ 12.5 Shipment to other ports.

When imported merchandise, the subject of § 12.1, is shipped to another port for reconditioning or exportation, such shipment shall be under a Customs carrier's manifest, Customs Form 7512, in the same manner as shipments in bond.

[T.D. 68–191, 33 FR 11019, Aug. 2, 1968]

IMPORTATION OF CERTAIN CHEESES

§ 12.6 Affidavits required to accompany entry.

(a) Cheeses produced in the member states of the European Communities shall not be permitted entry into the Customs territory of the United States (excluding Puerto Rico) if exported from any country or area other than the country of origin, or into Puerto Rico, unless accompanied by:

(1) An affidavit, in the event of shipments into the Customs territory of

the United States (excluding Puerto Rico), of the producer or exporter that the cheese has not received and will not receive restitution payments of the type referred to in Executive Order No. 11851, dated April 10, 1975 (40 FR 16645); or

(2) An affidavit, in the event of shipments into Puerto Rico, of the importer that the cheese will be consumed in Puerto Rico or areas outside the Customs territory of the United States. Proof of actual consumption shall be furnished to the appropriate Customs officer within three years after the date such cheese is entered or withdrawn from warehouse, for consumption.

(b) These affidavits shall not be required to accompany importations of cheese produced in the member states of the European Communities if such cheese is shipped directly to the United States (excluding Puerto Rico) from the country of origin on a through bill of lading.

[T.D. 75–210, 40 FR 36767, Aug. 22, 1975]

MILK AND CREAM

§ 12.7 Permits required for importation.

(a) Under the Act of February 15, 1927 (44 Stat. 1101, as amended, 21 U.S.C. 141–149), commonly known as the Federal Import Milk Act, the importation into the United States of milk and cream is prohibited unless the person by whom such milk or cream is shipped or transported into the United States holds a valid permit from the Department of Health and Human Services. Such permits become invalid at the end of one year unless applications for renewal are filed prior to the date of expiration.

(b) The regulations of the Department of Health and Human Services under the said act require that each container of milk or cream shipped or transported into the United States by a permittee shall have firmly attached thereto a tag showing in clear and legible type the product (raw milk, pasteurized milk, raw cream, or pasteurized cream) the permit number and the name and address of the shipper; except that in case of unit shipments consisting of milk only or cream only under one permit number, each container need not be so marked if the vehicle of transportation is sealed and tagged with the above-mentioned tag. In such case the tag is required to show, in addition to the other required information, the number of containers and the contents of each. Customs officers shall not permit the importation of any milk or cream that is not tagged in accordance with such regulations.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 82–145, 47 FR 35475, Aug. 16, 1982; T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

MEAT AND MEAT-FOOD PRODUCTS

§ 12.8 Inspection; bond; release.

(a) All imported meat, meat-food products horse meat and horse meat-food products offered for entry into the United States are subject to the regulations prescribed by the Secretary of Agriculture under section 306, Tariff Act of 1930. The term ''meat and meat-food products,'' for the purpose of this section, shall include any imported article of food or any imported article which enters or may enter into the composition of food for human consumption, which is derived or prepared in whole or in part from any portion of the carcass of any cattle, sheep, swine, or goat, if such portion is all or a considerable and definite portion of the article, except such articles as organotherapeutic substances, meat juice, meat extract, and the like, which are only for medicinal purposes and are advertised only to the medical profession. Such meat, meat-food products, horse meat and horse meat-food products shall not be released from Customs custody prior to inspection by an inspector of the Food Safety and Inspection Service, Meat and Poultry Inspection, except when authority is given by such inspector for inspection at the importer's premises or other place not under Customs supervision. In such case a bond for the return to Customs custody of the merchandise shall be given by the consignee or agent on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, and the conveyances or packages in which such merchandise is removed to the place of examination shall be sealed or corded and sealed by

a customs officer or an inspector of the Food Safety and Inspection Service, Meat and Poultry Inspection, with import-meat seals furnished by the Department of Agriculture unless bearing United States Customs seals, or in the case of packages otherwise identified as provided for in this section. When cording is necessary for proper sealing, the cords shall be furnished and affixed by the importer or his agent. Import-meat seals or cords and seals may be broken only by a Customs officer or inspector of the Meat Inspection Division, Agricultural Research Service.

In lieu of cording and sealing packages, the carrier or importer may furnish and attach to each package of product a warning notice on bright yellow paper, not less than 5 by 8 inches in size, containing the following legend in black type of a conspicuous size:

(Name of Truck Line or Carrier)

NOTICE

This package of meat or meat product must be delivered intact to an inspector of the Meat Inspection Division, U.S. Department of Agriculture.

WARNING

Failure to comply with these instructions will result in penalty action being taken against the holder of the Customs entry bond.

If the product is found to be acceptable upon inspection the package will be marked ''U.S. Inspected and Passed'' and this warning notice defaced.

(b) Liquidated damages assessed for breach of a bond taken under this section, if not in excess of the Fines, Penalties, and Forfeitures Officer's delegated authority, and if a written application for relief is filed, may be canceled by the port director upon the payment of less than the full amount as he shall deem appropriate, or without the payment of any amount, as may be deemed appropriate, but the Fines, Penalties, and Forfeitures Officer shall not act under this paragraph unless the officer in charge of the local office of the Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture, is in full agreement with the proposed action. If there is no local inspector of the Food Safety and Inspection Service, Meat and Poultry Inspection, the port director shall not act unless he has obtained the full agreement of the Food Safety and Inspection Service, Meat and Poultry Inspection in Washington.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978; T.D. 82–145, 47 FR 35476, Aug. 16, 1982; T.D. 84–213, 49 FR 41167, Oct. 19, 1984; T.D. 89–1, 53 FR 51253, Dec. 21, 1988; T.D. 99–27, 64 FR 13675, Mar. 22, 1999; T.D. 99–64, 64 FR 43265, Aug. 10, 1999; T.D. 00–57, 65 FR 53574, Sept. 5, 2000]

§ 12.9 Release for final delivery to consignee.

No meat, meat-food products, or animal casings shall be released for final delivery to the consignee until the port director is advised by the Department of Agriculture, or its representative, that the merchandise is admissible.

PLANTS AND PLANT PRODUCTS

§ 12.10 Regulations and orders of the Department of Agriculture.

The importation into the United States of plants and plant products is subject to regulations and orders of the Department of Agriculture restricting or prohibiting the importation of such plants and plant products. Customs officers and employees shall perform such functions as are necessary or proper on their part to carry out such regulations and orders of the Department of Agriculture and the provisions of law under which they are made.

§ 12.11 Requirements for entry and release.

(a) The importer or his representative shall submit to the director of the port of first arrival, for each entry of plants or plant products requiring a plant quarantine permit, a notice of arrival for any type of entry except rewarehouse and informal mail entries. Such notice shall be on a form provided for the purpose by the Department of Agriculture. The director of the port of arrival shall compare the notice of arrival which he receives from the importer or his representative with the shipping documents, certify its agreement therewith, and transmit it, together with any accompanying certificates or other documents pertaining to the sanitary status of the shipment, to the Department of Agriculture. The

merchandise may not be moved, stored, or otherwise disposed of until the notice of arrival has been submitted and release for the intended purpose has been authorized by an inspector of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs.

(b) Where plant or plant products are shipped from the port of first arrival to another port or place for inspection or other treatment by a representative of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs and all Customs requirements for the release of the merchandise have been met, the merchandise shall be forwarded under a special manifest (Customs Form 7512) and in-bond labels or Customs seals to the representative of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs at the place at which the inspection or other treatment is to take place. No further release by the port director shall be required.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978]

§ 12.12 Release under bond.

Plants or plant products which require fumigation, disinfection, sterilization, or other treatment as a condition of entry may be released to the permittee for treatment at a plant approved by the Department of Agriculture upon the giving of a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter to insure that the merchandise is treated under the supervision and to the satisfaction of an inspector of the Department of Agriculture or returned to Customs custody when demanded by the port director.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 84–213, 49 FR 41167, Oct. 19, 1984]

§ 12.13 Unclaimed shipments.

(a) If plants or plant products enterable into the United States under the rules and regulations promulgated by the Secretary of Agriculture are unclaimed, they may be sold subject to the provisions of subparts C and D of part 127 of this chapter to any person to whom a permit has been issued who can comply with the requirements of the regulations governing the material involved.

(b) Unclaimed plants and plant products not complying with the requirements mentioned in this section shall be destroyed, by burning or otherwise, under Customs supervision.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 74–114, 39 FR 12091, Apr. 3, 1974]

§ 12.14 Detention.

(a) Port directors shall refuse release of all plants or plant products with respect to which a notice of prohibition has been promulgated by the Secretary of Agriculture under any of the various quarantines. If an importer refuses to export a prohibited shipment immediately, the port director shall report the facts to the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs and the United States attorney and withhold delivery pending advice from that Department.

(b) In case of doubt as to whether any plant or plant product is prohibited, the port director shall detain it pending advice from the Department of Agriculture.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978]

§ 12.15 Disposition; refund of duty.

Plants or plant products which are prohibited admission into the United States under Federal law or regulations and are exported or destroyed under proper supervision are exempt from duty and any duties collected thereon shall be refunded. (See §§ 158.41 and 158.45(c) of this chapter.)

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 72–258, 37 FR 20174, Sept. 27, 1972]

AGRICULTURAL AND VEGETABLE SEEDS

§ 12.16 Joint regulations of the Secretary of the Treasury and the Secretary of Agriculture.

(a) The importation into the United States of agricultural and vegetable seeds and screenings thereof is governed by rules and regulations prescribed jointly by the Secretary of the

Treasury and the Secretary of Agriculture under section 402(b) of the Federal Seed Act of August 9, 1939 (7 CFR part 201).

(b) Under the said joint rules and regulations, port directors are required to draw samples of such seeds and screenings, forward them to the seed laboratories, and notify the owner or consignee that such samples have been drawn and that the shipment shall be held intact pending a decision of the Livestock, Meat, Grain, and Seed Division, Agricultural Marketing Service, in the matter.

(c) It is further provided in said joint rules and regulations that after samples have been drawn such seeds and screenings shall be admitted into the commerce of the United States only if they have been found to meet the requirements of the Federal Seed Act of August 9, 1939, and the said regulations, but if the containers bear sufficient marks of identification the port director may release the shipment, pending examination and decision in the matter, upon the giving of a bond. The bond shall be filed with the port director on Customs Form 301 and contain the bond conditions set forth in § 113.62 of this chapter. In case of default the port director shall issue a claim for liquidated damages under the bond.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 82–145, 47 FR 35476, Aug. 16, 1982; T.D. 84–213, 49 FR 41167, Oct. 19, 1984; T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

VIRUSES, SERUMS, AND TOXINS FOR TREATMENT OF DOMESTIC ANIMALS

§ 12.17 Importation restricted.

The importation into the United States of viruses, serums, toxins, and analogous products for use in the treatment of domestic animals is prohibited unless the importer holds a permit from the Department of Agriculture covering the specific product. The port director shall notify the Animal and Plant Health Inspection Service, Veterinary Services, Washington, D.C., of the arrival of any such product, and detain it until he shall receive notice from that Department that a permit to import the shipment has been issued.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978; T.D. 82–145, 47 FR 35476, Aug. 16, 1982; T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

§ 12.18 Labels.

Each separate container of such virus, serum, toxin, or analogous product imported is required by the regulations of the Department of Agriculture to bear the true name of the product and the permit number assigned by the Department of Agriculture in the following form: ''U.S. Veterinary Permit No. _____,'' or an abbreviation thereof authorized by the Animal and Plant Health Inspection Service, Veterinary Services. Each separate container also shall bear a serial number affixed by the manufacturer for identification of the product with the records of preparation thereof, together with a return date.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978]

§ 12.19 Detention; samples.

(a) The port director shall detain all shipments of such products for which no permit to import has been issued pending instructions from the Department of Agriculture.

(b) Samples shall be furnished to the Department of Agriculture upon its request, and the port director shall immediately notify the consignee of any such request.

§ 12.20 Disposition.

Viruses, serums, or toxins rejected by the Department of Agriculture shall be released by the port director to that Department for destruction, or exported under Customs supervision at the expense of the importer if exportation is authorized by the Department of Agriculture.

VIRUSES, SERUMS, TOXINS, ANTITOXINS, AND ANALOGOUS PRODUCTS FOR THE TREATMENT OF MAN

§ 12.21 Licensed establishments.

The bringing into the United States for sale, barter, or exchange, of any

virus, therapeutic serum, toxin, antitoxin, or analogous product, or arsphenamine or its derivatives (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of diseases or injuries of man is prohibited unless such virus, serum, toxin, antitoxin, or other product has been manufactured at an establishment holding an unsuspended and unrevoked license issued by the Secretary of Health and Human Services for such manufacture.

[T.D. 69–201, 34 FR 14328, Sept. 12, 1969, as amended by T.D. 82–145, 47 FR 35476, Aug. 16, 1982]

§ 12.22 Labels; samples.

Each package of such products imported for sale, barter, or exchange shall be labeled or plainly marked with the name, address, and license number of the manufacturer, and the date beyond which the contents cannot be expected to yield their specific results. From each lot of product the port director shall select at random at least two final containers. The random sample together with a copy of the associated documents which describe and identify the shipment shall be forwarded to the Director, Bureau of Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, Md. 20014. For shipments of 20 or less final containers, samples need not be forwarded, provided a copy of an official release from the Bureau of Biologics accompanies each shipment.

[T.D. 69–201, 34 FR 14328, Sept. 12, 1969, as amended by T.D. 82–145, 47 FR 35476, Aug. 16, 1982]

§ 12.23 Detention; examination; disposition.

(a) Port directors shall detain all importations of unlicensed viruses, therapeutic serums, toxins, antitoxins, and analogous products, and arsphenamines or its derivatives (or any other trivalent organic arsenic compound) for the treatment or cure of diseases or injuries of man pending examination by the Director, Bureau of Biologics, unless satisfied from evidence furnished at the time of entry that the products are intended solely for purposes of controlled investigation and not for sale, barter, or exchange, as evidenced by a copy of a filed ''Notice of Claimed Investigational Exemption for a New Drug,'' pursuant to § 312.1 of the Food, Drug, and Cosmetic Act Regulations (21 CFR 312.1), or are being imported under the short supply provisions of § 601.22 of the Public Health Service Regulations (42 CFR 601.22).

(b) If the shipment is imported for sale, barter, or exchange and is found by the Director, Division of Biologics Standards, to be admissible, the port director shall release it upon receipt of a report from him that the shipment is admissible.

(c) If the Director, Division of Biologics Standards, reports that the shipment was found upon examination not to conform to the law and the regulations, the port director shall not release the shipment but shall permit the exportation or destruction thereof under Customs supervision at the option of the importer.

(d) Shipments of such products for use in the treatment of man but made from or with material of animal origin other than human, shall, unless accompanied by a Department of Agriculture, Veterinary Services, Animal and Plant Health Inspection Service (APHIS) permit, be detained until proof is presented to the port director that their importation is not prohibited under 9 CFR part 94 or part 122.

[T.D. 69–201, 34 FR 14328, Sept. 12, 1969, as amended by T.D. 82–145, 47 FR 35476, Aug. 16, 1982]

DOMESTIC ANIMALS, ANIMAL PRODUCTS, AND ANIMAL FEEDING MATERIALS

§ 12.24 Regulations of the Department of Agriculture.

(a) The importation into the United States of domestic animals, animal products, and animal feeding materials is subject to inspection and quarantine regulations of the Department of Agriculture, Customs officers and employees are authorized and directed to perform such functions as are necessary or proper on their part to carry out such regulations of the Department of Agriculture.

(b) Inspection by an inspector of the Animal and Plant Health Inspection Service, Veterinary Services is required for all horses, cattle, sheep,

other ruminants, and swine as a prerequisite to their entry from any foreign country. Orders listing the ports designated as quarantine stations for the inspection and quarantine of animals will be issued by the Secretary of Agriculture, with the approval of the Secretary of the Treasury, whenever conditions warrant.

(c) The entry of domestic animals may be made, but shall not be required, before the expiration of the quarantine period. Such animals, if not entered at the time of arrival, shall be considered as under general order while under quarantine and shall not be released except upon notice from the port director that the importer has complied with all the requirements for entry.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978; T.D. 82–145, 47 FR 35476, Aug. 16, 1982; T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

WILD ANIMALS, BIRDS, AND INSECTS

§ 12.26 Importations of wild animals, fish, amphibians, reptiles, mollusks, and crustaceans; prohibited and endangered and threatened species; designated ports of entry; permits required.

(a)(1) The importation into the United States, the Commonwealth of Puerto Rico, and the territories and possessions of the United States of live specimens of:

(i) Any species of the so-called ''flying fox'' or fruit bat of the genus Pteropus;

(ii) Any species of mongoose or meerkat of the genera Atilax, Cynictis, Helogale, Herpestes, Ichneumia, Mungos, and Suricata;

(iii) Any species of European rabbit the genus Oryctolagus;

(iv) Any species of Indian wild dog, red dog, or dhole of the genus Cuon;

(v) Any species of multimammate rat or mouse of the genus Mastomys;

(vi) Any live specimens or egg of the species of so-called ''pink starling'' or ''rosy pastor'' Sturnus roseus;

(vii) The species of dioch (including the subspecies black-fronted, red-billed, or Sudan dioch) Quelea quelea;

(viii) Any species of Java sparrow, Padda oryzivora;

(ix) The species of red-whiskered bulbul, Pycnonotus jocosus;

(x) Any live fish or viable eggs of the family *Clariidae;*

(xi) Any other species of wild mammals, wild birds, fish (including mollusks and crustacea), amphibians, reptiles, or the offspring or eggs of any of the foregoing which the Secretary of the Interior may prescribe by regulations to be injurious to human beings, to the interest of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States, is prohibited, except as may be authorized by the issuance of a permit by the Director, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, DC 20240, or his authorized representative. If any such prohibited specimen is imported, or if any specie or subspecie of other live or dead fish or wildlife, including any parts, products, or eggs thereof, appearing on the Endangered Species List published by the U.S. Fish and Wildlife Service, is imported, Customs release of the prohibited specimen or endangered fish or wildlife shall be refused unless there has been issued and presented in connection with entry a proper U.S. Fish and Wildlife Service permit authorizing the import transaction. In the absence of such permit, injurious specimens prohibited entry shall be required to be immediately exported or destroyed. Changes in injurious species and endangered species or subspecies which are prohibited or restricted importation may be published from time to time in 50 CFR part 13—Importation of Wildlife or Eggs Thereof or in part 17—Conservation of Endangered Species and Other Fish or Wildlife. Unreleased species or subspecies of live or dead endangered fish or wildlife, including parts, products, or eggs thereof, shall remain under detention subject to seizure and delivery to an appropriate regional director or other agent of the U.S. Fish and Wildlife Service for disposition as appropriate pursuant to 50 CFR part 17.

(2) Fish and eggs of salmonids of the fish family Salmonidae are prohibited entry into the United States for any purpose unless such importations are by direct shipment, accompanied by the signed certification of a qualified fish pathologist in substantially the form as prescribed in 50 CFR 13.7. The

following are excepted from the certification requirements:

(i) Salmon landed in North America and brought into the United States for processing or sale;

(ii) Any salmonid caught in the wild in North America under a sport or a commercial fishing license; and

(iii) Fish or eggs of the family Salmonidae when processed or prepared in accordance with 50 CFR 13.7(c), or otherwise exempted from the requirement of certification.

(3) Regulations (50 CFR part 17) require the importer or his agent to file a Declaration for the Importation of Fish or Wildlife, unless it is an import transaction exempted from the requirement by 50 CFR part 13 or part 17. Such declaration on U.S. Fish and Wildlife Service Form 3–177, available to importers through Customs ports of entry, shall be filed with the appropriate Customs officer at the port of entry conducting the actual Customs clearance and release of the declared fish, wild mammal, or bird, amphibian, reptile, mollusk, crustacean, or dead body or egg thereof. The declaration on Form 3–177 shall show the common and scientific names, number, and country of origin of all species or subspecies declared, designate and identify any species listed on the U.S. List of Endangered Foreign Fish and Wildlife, 50 CFR part 17, appendix A, and indicate whether any species is subject to laws and regulations in any foreign country regarding its taking, transportation, or sale. See paragraph (g) of this section for special documentation requirements.

(4) Federal agencies, subject to requirements in paragraph (a)(2) of this section, may import solely for their own use live wildlife except migratory birds, or their eggs, without a permit from the U.S. Fish and Wildlife Service, upon filing the declaration on Form 3–177. Importation of bald or golden eagles, or their eggs is prohibited.

(5) Customs entry for consumption or bonded warehousing of fish and wildlife, as defined in 50 CFR 17.2 (e) and (f), intended for importation into the United States, or admission into a foreign trade zone, shall be filed at a port of entry among those designated for Customs entry in 50 CFR part 17, appendix B. However, Customs entry for consumption or bonded warehousing of shipments subject to emergency diversion or otherwise authorized under regulations or by permit issued by the U.S. Fish and Wildlife Service pursuant to 50 CFR part 17, appendices B and C, may be filed for examination and release at the ports of entry so named or permitted, but no consumption or bonded warehouse entry shall be filed or accepted at an undesignated port for any endangered specie or subspecie permitted importation pursuant to 50 CFR 17.12 except in the case of an emergency diversion of live endangered fish or wildlife accepted for such entry in accordance with item 2(b) of 50 CFR part 17, appendix B. Importations of fish and wildlife subject to regulations of the U.S. Fish and Wildlife Service which arrive from abroad at any place in the United States not designated as an authorized port for Customs entry, unless occurring under conditions or circumstances in which Customs entry for consumption or bonded warehousing and final clearance has been authorized by U.S. Fish and Wildlife Service regulations or permit, may be entered only for immediate transportation without appraisement for movement under Customs bond to one of the designated ports of entry. Customs entry, release, and delivery of any shipment of shellfish and fishery products defined in 50 CFR 17.2(j) imported for commercial purposes is authorized at any port of entry, except insofar as such items include any species or subspecies which appears on the Endangered Species List in 50 CFR part 17, appendix A.

(b) Permits are required for the importation of wild animals and birds as follows:

(1) Wild birds protected by the Migratory Bird Treaty Act (16 U.S.C. 703 through 711) and the regulations promulgated thereunder (50 CFR part 10), may be imported from foreign countries for scientific, propagating, or other limited purposes only under permits issued by the U.S. Fish and Wildlife Service, United States Department of the Interior, Washington, DC, 20240. State game departments, municipal

game farms or parks, and public museums, zoological parks or societies, and scientific or educational institutions may import migratory birds without a permit. Such migratory birds, when imported from Mexico, must be accompanied by Mexican export permits (50 CFR 16.3 and 16.5).

(2) Game mammals (antelopes, mountain sheep, deer, bears, peccaries, squirrels, rabbits, and hares), protected by the Migratory Bird Treaty Act (16 U.S.C. 703 through 711), dead or alive, or their parts or products, must be accompanied by Mexican export permits (50 CFR 15.3) when imported from Mexico.

(3) Wild ruminants (all animals which chew the cud, such as cattle, buffaloes, sheep, goats, deer, antelopes, camels, llamas, and giraffes) and swine (various varieties of wild hogs), except from Canada and certain northern States of Mexico may be imported only under a permit from the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, Washington, DC 20250. Such permits must be obtained before the animals are shipped from the country of exportation. All wild ruminants and swine must be inspected at designated ports of entry by veterinarians of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture.

(4) Psittacine birds, which include all birds commonly known as parrots, Amazons, African grays, cockatoos, macaws, parrotlets, beebees, parakeets, lovebirds, lories, lorikeets, and all other birds of the order Psittaciformes, when destined for a zoological park or medical research institution without having had prior confinement and treatment abroad at an approved treatment center, and psittacine birds taken out of the United States but inadmissible under paragraph (c) of this section, may be imported when accompanied by a permit issued by the Surgeon General. Application for such a permit may be made to the Chief, Foreign Quarantine Program, National Communicable Disease Center, U.S. Public Health Service, Atlanta, Ga. 30333, or to a Public Health Service quarantine station established at a port of entry in the United States.

(5) Ducks, geese, swans, turkeys, pigeons, doves, pheasants, grouse, partridges, quail, guinea fowl, and pea fowl, except from Canada, may be imported only under a permit from the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, Washington, DC 20250. Such permits must be obtained before the birds are shipped from the country of origin. Such birds from Canada must be accompanied by a certificate issued by a Canadian Government veterinarian. All such birds must be inspected at designated ports of entry by veterinarians of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture.

(c) Psittacine birds as defined in paragraph (b)(4) of this section, not to exceed two such birds by members of a family comprising a single household in any 12-month period, may be imported under prescribed conditions (see 42 CFR 71.164(e)) without permit and without prior confinement and treatment, to be kept as pets by the owner, who will be required to comply with the Foreign Quarantine Regulations of the U.S. Public Health Service. Birds taken out of the United States and being returned may be admitted, without permit, upon full compliance with prescribed conditions of those regulations for admission of birds imported as pets. No such birds shall be released until the importer has complied with applicable requirements of the Public Health regulations.

(d) Cats, dogs, and monkeys are subject to the Foreign Quarantine Regulations of the United States Public Health Service, Department of Health, Education, and Welfare, Washington, D.C. Such animals shall not be released until the Public Health regulations are complied with by the importer.

(e) If a shipment contains migratory birds for which a permit is required by the Fish and Wildlife Service of the Department of the Interior, and such permit is not at hand when the birds arrive, an examination thereof shall be made at once by the port director and any duties estimated to be due shall be

collected. A stipulation shall be filed with the port director within 24 hours of the entry to produce the necessary permit within 30 days from the date of entry, whereupon final liquidation shall be suspended until the permit is produced or the 30-day period expires. The shipment may be immediately released if a bond is filed with the port director on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in an amount equal to the entered value plus estimated duties. If the bond conditions are violated the port director shall issue a claim for liquidated damages under the bond. In lieu of filing a bond the merchandise may be left in Customs custody at the risk and expense of the importer pending issuance of the permit.

(f) If the permit referred to in paragraph (e) of this section is refused by the Fish and Wildlife Service, or if the permit is not produced within the said 30 days, the port director shall promptly recall the property, if delivered under bond, and shall require its immediate exportation at the expense of the importer or consignee.

(g)(1) All import shipments of fish and wildlife subject to the regulations or permit requirements of the U.S. Fish and Wildlife Service, published pursuant to the Endangered Species Act of 1973, 16 U.S.C. 1531, or other statutory authority, shall be subject to examination or inspection by that agency's officer serving the port of entry, for determination as to permissible release or such other disposition as he may direct. Customs officers performing examinations of such fish and wildlife in accordance with regulations of the U.S. Fish and Wildlife Service in 50 CFR part 10 and parts 13 through 17, shall release shipments only upon submission by the importer of evidence sufficient to establish compliance with those regulations, any applicable permit requirements, and compliance with applicable identification and package or container marking requirements as specified by 50 CFR 17.6(a) and 17.9. In case of doubt as to whether fish, birds, or other wildlife belong to prohibited or endangered species or subspecies or whether an entry permit is required, or in case of suspicion on the part of officers of the Customs that the species sought to be entered are prohibited or endangered species or subspecies imported under other names or descriptions, the importation shall be refused Customs release, and the importer shall be responsible for concluding arrangements acceptable to the regional director or other agent of the U.S. Fish and Wildlife Service for proper handling, custody, and care, at the importer's expense and risk, of the unreleased fish, birds, or other wildlife. No Customs disposition of the importation shall be concluded pending the determination by the U.S. Fish and Wildlife Service of the true nature of the species or subspecies. In case of refusal or neglect of the importer or consignee, or agent of either, to have the identity so established, final disposition of the importation shall be required as determined by the U.S. Fish and Wildlife Service. In addition to U.S. Fish and Wildlife Service Form 3–177, required to be filed as prescribed in 50 CFR 17.4 upon entry of importations of fish and wildlife, entrants shall present appropriate foreign export permits, other acceptable foreign documentary evidence of lawful taking, transportation, or sale, or appropriate American consular certificates upon importation of fish and wildlife species or subspecies subject to such documentation requirements of 50 CFR 17.4 (c) and (d).

(2) Any antique article imported under § 10.53(g) of this chapter shall be entered at one of the following ports:

Boston, Massachusetts
New York, New York
Baltimore, Maryland, Philadelphia, Pennsylvania
Miami, Florida, San Juan, Puerto Rico
New Orleans, Louisiana
Houston, Texas
Los Angeles, California
San Francisco, California
Anchorage, Alaska, Honolulu, Hawaii
O'Hare International Airport, Chicago, Illinois

(h) All invoices of animals and birds shall specify the species covered thereby and the number of each species. In the event of the return to the port director of any importation under the bond given under paragraph (e) of this section, if the number and species of birds does not correspond with the description stated in the invoice and if no

satisfactory explanation of any discrepancy is furnished, a claim for liquidated damages shall be issued under the bond.

(i) The privilege of entry for immediate transportation granted by section 552, Tariff Act of 1930, shall not be allowed for importations of fish, birds, or other wildlife which are confirmed at the port of first arrival or discharge to be injurious prohibited species, or which require permits issued prior to importation, or which are subject to quarantine regulations or inspection at the ports of first arrival or discharge or other specified place of veterinary inspection. However, entry for immediate transportation properly is allowed for any importation of fish, birds, or other wildlife which at the place of first arrival or discharge is not confirmed to be an injurious prohibited specie and which, following compliance with any applicable quarantine regulations or required veterinary inspection, is being transported by means of an in-bond movement to a port of entry designated in 50 CFR part 17, appendix B, for Customs entry (see paragraphs (a) and (b) of this section). Ports of designated entry, inspection, quarantine, and related enforcement procedures covering certain animals and poultry and certain animal and poultry products imported into the United States are regulated by requirements and standards prescribed in regulations of the Secretary of Agriculture, Department of Agriculture (see 9 CFR parts 92–96; 19 CFR 12.8 and 12.24).

(j) Wild animals and birds shall be imported under humane and healthful conditions, due regard being given to the accommodations and facilities necessary for the species transported.

(k) When any Customs officer has good reason to believe that wild animals or birds have been imported under inhumane or unhealthful conditions in violation of 18 U.S.C. 42, an immediate investigation shall be made to ascertain whether they have in fact been transported under such conditions. The investigation shall determine the provisions made on the vessel or other conveyance for the accommodation of the animals or birds, the suitability of the boxes, cages, stalls, etc., the space, ventilation, and protection from the elements accorded the animals or birds, the facilities for cleaning, feeding, watering, bedding, and such other services as may be required for the species imported. The investigation shall also determine, the physical condition of such animals or birds and the ratio of dead, crippled, diseased, or starving animals or birds. If necessary, officers of the Animal and Plant Health Inspection Service, Veterinary Services, or Fish and Wildlife Service, or other officers or experts, may be called upon to assist customs officers in the matter.

(l) Unless the port director is satisfied that the provisions of 18 U.S.C. 42 have not been violated, he shall report the matter to the United States attorney for appropriate action.

[28 FR 14710, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 12.26, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 12.27 Importation or exportation of wild animals or birds, or the dead bodies thereof illegally captured or killed, etc.

Customs officers shall perform all duties required of them under statutory provisions that prohibit or restrict the importation or exportation of wild animals or birds, or the dead bodies thereof, or the eggs of such birds, killed, captured, taken, transported, etc., contrary to law. Such laws and statutory provisions include 18 U.S.C. 43, 44, 3054, 3112.

[T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

§ 12.28 Importation of wild mammals and birds in violation of foreign law.

No imported wild mammal or bird, or part or product thereof, shall be released from Customs custody, except as permitted under § 12.26(i) relating to an in-bond movement to a port designated for wildlife entry, if the port director has knowledge of a foreign law or regulation obliging enforcement of section 527(a), Tariff Act of 1930 (19 U.S.C. 1527(a)), unless the importation is an excepted transaction entitled to entry under the provisions of section 527(c) of the Tariff Act or, in connection with

the entry, there is presented documentation in the manner specified in 50 CFR 17.4(c) (1) or (2) required for import transactions subject to foreign laws or regulations regarding taking, transportation, or sale of wildlife including wild mammals and birds or parts or products thereof (see § 12.26).

[T.D. 70–242, 35 FR 17994, Nov. 24, 1970, as amended by T.D. 82–145, 47 FR 35476, Aug. 16, 1982]

§ 12.29 Plumage and eggs of wild birds.

(a) The provisions of Chapter 5, Additional U.S. Note 1, relating to the plumage of any bird, apply to all such plumage, whether imported separately or upon the bird itself, except (1) the feathers of birds specifically excepted by Additional U.S. Note 1 to Chapter 5, Harmonized Tariff Schedule of the United States (HTSUS), (2) plumage imported for scientific or educational purposes, (3) fully-manufactured artificial flies used for fishing, (4) plumage on game birds killed in foreign countries by residents of the United States and not imported for sale or other commercial purposes, and (5) plumage on live wild birds.

(b) The feathers or skins of certain birds may be imported for use in the manufacture of artificial flies used for fishing or for millinery purposes only under a permit issued by the Fish and Wildlife Service, United States Department of Interior, Washington DC 20240. No feathers or skins of the pro-species provided for by Additional U.S. Note 1, Chapter 5, HTSUS, shall be permitted to be entered, or withdrawn from warehouse, for consumption, unless the requisite permit is presented with the entry or withdrawal.

(c) The importation of the eggs of wild nongame birds is prohibited except as dead natural history specimens for museum or scientific collection purposes. The eggs of migratory birds may be imported for propagating purposes or for scientific and other limited purposes under permits issued by the Fish and Wildlife Service, U.S. Department of the Interior, Washington, DC 20240. State game departments, municipal game farms or parks, and public museums, zoological parks or societies, and scientific or educational institutions may import the eggs of migratory birds without a permit (50 CFR 16.3). The eggs of certain game or migratory birds imported for hatching, such as ducks, geese, swans, turkeys, pigeons, doves, pheasant, grouse, partridges, quail, guinea fowl, and pea fowl, are subject to the regulations of the Animal and Plant Health Inspection Service, Veterinary Services, U.S. Department of Agriculture, Washington, DC 20250. Such regulations require that permits, except for eggs from Canada offered for entry at certain land border ports, must be obtained before the eggs are shipped from the country of origin and that all eggs shall be accompanied by a certificate issued by a national government veterinarian of the country of origin and inspected at a designated port of entry.

(d) Upon the attempted importation of eggs of wild birds, the importation of which is prohibited by Chapter 4, Additional U.S. Note 26, the eggs shall be seized and the importer accorded an opportunity to assent to forfeiture. In the event the importer refuses or fails to assent to the forfeiture of the prohibited eggs, the port director shall proceed to forfeit them under the provisions of the tariff act applicable to seizure and forfeiture of merchandise valued at less than $2,500.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 66–68, 31 FR 5358, Apr. 5, 1966; T.D. 78–99, 43 FR 13060, Mar. 29, 1978; T.D. 82–145, 47 FR 35476, Aug. 16, 1982; T.D. 89–1, 53 FR 51253, Dec. 21, 1988; T.D. 97–82, 62 FR 51770, Oct. 3, 1997]

§ 12.30 Whaling.

The importation and exportation of whales or whale products taken or processed in violation of the International Convention for the Regulation of Whaling signed at Washington under date of December 2, 1946 (Publication No. 3383, Department of State, Whaling Convention), or of the Whaling Convention Act of 1949 (16 U.S.C. 916 through 916(1)), or of any regulation issued under the Act (50 CFR part 351) is unlawful. Customs officers and employees shall perform all functions required of them by the above-mentioned convention, law and regulation.

[T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

§ 12.31 Plant pests.

The importation in a live state of insects which are injurious to cultivated crops, including vegetables, field crops, bush fruits, and orchard, forest or shade trees, and of the eggs, pupae, or larvae of such insects, except for scientific purposes under regulations prescribed by the Secretary of Agriculture, is prohibited. All packages containing live insects or their eggs, pupae, or larvae arriving from abroad, unless accompanied by a permit issued by the Department of Agriculture, shall be detained and submitted to the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs of that Department for inspection and determination of their admissibility into the United States.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978; T.D. 82–145, 47 FR 35476, Aug. 16, 1982; T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

§ 12.32 Honeybees and honeybee semen.

(a) Honeybees from any country may be imported into the U.S. by the Department of Agriculture for experimental or scientific purposes. All other importations of honeybees are prohibited except those from a country which the Secretary of Agriculture has determined to be free of diseases dangerous to honeybees.

(b) Honeybee semen may be imported into the U.S. only from countries determined by the Secretary of Agriculture to be free of undesirable honeybees, and which take adequate precautions to prevent the importation of undersirable honeybees and their semen.

(c) The importation of honeybees and honeybee semen is governed by joint regulations of the Secretary of Agriculture and the Secretary of the Treasury published in Treasury Decisions and the FEDERAL REGISTER from time to time.

[T.D. 85–3, 50 FR 1044, Jan. 9, 1985, as amended by T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

TEA

§ 12.33 Importation of tea; entry; examination for customs purposes.

(a) The importation of any merchandise as tea which is inferior in purity, quality, and fitness for consumption to the standards prescribed by the Act of March 2, 1897, as amended (21 U.S.C. 41 through 50), is prohibited. Customs officers and employees shall perform all duties required of them by the said act and regulations.

(b) The importation of tea is subject also to the provisions of the Federal Food, Drug, and Cosmetic Act and the regulations thereunder. See §§ 12.1 to 12.5.

(c) [Reserved]

(d) The port director may order such an examination of packages containing tea as will satisfy him that no dutiable goods are packed therein. For this purpose the customary designation shall be made of packages for examination in public stores.

(e) If the invoice has not been received, the importer may use an additional copy of the chop list and release permit required by the regulations of the Department of Health and Human Services as a pro forma invoice, marking ''Pro forma invoice'' across the face thereof.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978; T.D. 82–145, 47 FR 35477, Aug. 16, 1982; T.D. 84–213, 49 FR 41167, Oct. 19, 1984; T.D. 89–1, 53 FR 51253, Dec. 21, 1988; T.D. 97–82, 62 FR 51770, Oct. 3, 1997]

WHITE PHOSPHORUS MATCHES

§ 12.34 Importation prohibited; certificate of inspection; importer's declaration.

(a) The importation into the United States of white phosphorus matches is prohibited.

(b) Invoices covering matches imported into the United States shall be accompanied by a certificate of official inspection of the Government of the country of manufacture in the following form:

CERTIFICATE OF OFFICIAL INSPECTION OF MATCHES

I, _____ (Name), do hereby certify that I am the _____ (Official title),

that according to the chemical analysis made by me the matches described below do not contain white or yellow phosphorus and that therefore they are not white phosphorus matches as defined in the Act of Congress of the United States of America approved April 9, 1912;

Number of case mark	Description of matches	Name and address of manufacturer	Name of consignee and address, vessel, and date of shipment
	.....	.....	.....
	.....	.....	.....
	.....	.....	.....

(Signature)

(Official title)

(c) In the absence of such certificate, the matches shall be detained until a certificate is produced or the importer submits satisfactory evidence to show that the matches were not in fact manufactured with the use of poisonous white or yellow phosphorus.

(d) The production of the above certificate shall not be required on the entry of matches manufactured in countries which prohibit the use of white or yellow phosphorus in the manufacture of matches.

(e) At the time of filing an entry for imported matches, the importer shall make a declaration that to the best of his knowledge and belief no matches included in the invoice and entry are white phosphorus matches.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 82–145, 47 FR 35477, Aug. 16, 1982; T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

§ 12.35 [Reserved]

NARCOTIC DRUGS

§ 12.36 Regulations of Bureau of Narcotics.

The importation and exportation of narcotic drugs are governed by regulations of the Drug Enforcement Administration Bureau of Narcotics. Customs officers and employees shall perform all duties imposed upon them by such regulations and the laws under which they are issued. Such regulations are in addition to, and not in lieu of, the Customs, internal-revenue, and other pertinent laws and regulations.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978; T.D. 82–145, 47 FR 35477, Aug. 16, 1982; T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

LIQUORS

§ 12.37 Restricted importations.

(a) The basic permit requirements prescribed by the act of August 29, 1935 (27 U.S.C. 203), shall not be deemed applicable when the port director is satisfied that the liquor is for personal use or for experimental purposes in the making of analyses, tests, or comparisons.

(b) The production of a basic permit shall not be required when spirits are withdrawn from warehouse under any form of withdrawal entry.

(c) Blending or rectifying of wines or distilled spirits in class 6 manufacturing warehouses, or the bottling of imported distilled spirits in class 8 manipulation warehouses, shall not be permitted unless the proprietor has obtained an appropriate permit from the Bureau of Alcohol, Tobacco and Firearms.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78–329, 43 FR 43454, Sept. 26, 1978; T.D. 82–145, 47 FR 35477, Aug. 16, 1982; T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

§ 12.38 Labeling requirements; shipments.

All shipments of liquor not labeled as required by 18 U.S.C. 1263 214 and any vessel or vehicle, other than a common carrier, used in the transportation of such liquor shall be seized and disposed of in accordance with 18 U.S.C. 3615 .

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 70–249, 35 FR 18265, Dec. 1, 1970; T.D. 82–145, 47 FR 35477, Aug. 16, 1982; T.D. 89–1, 53 FR 51253, Dec. 21, 1988; CBP Dec. 04–28, 69 FR 52599, Aug. 27, 2004]

UNFAIR COMPETITION

§ 12.39 Imported articles involving unfair methods of competition or practices.

(a) *Determinations of the International Trade Commission*. Under section 337 of the Tariff Act of 1930, as amended (19

U.S.C. 1337), unfair methods of competition and unfair practices in the importation or sale of articles, the effect or tendency of which is to destroy, substantially injure, or prevent the establishment of an efficiently and economically operated United States industry, or to restrain or monopolize trade and commerce in the United States, are unlawful. After an investigation of an alleged violation of section 337, the U.S. International Trade Commission (''the Commission'') may determine that section 337 has been violated. The Commission also may determine during the course of its investigation that there is reason to believe that a violation of section 337 exists. The Commission's determination in either case is effective on the date of its publication in the FEDERAL REGISTER and is referred to the President, who may disapprove the determination for policy reasons on or before the close of a 60-day period beginning on the day after the day he receives a copy of the determination. A Commission determination disapproved by the President shall have no force or effect as of the date the Commission is notified of his disapproval. If the Commission's determination is not disapproved by the President during the 60-day period, or if he notifies the Commission before the close of the period that he approves the determination, the determination becomes final on the day after the close of the period or the day of the notification, whichever is earlier.

(b) *Exclusion from entry; entry under bond; notice of exclusion order*. (1) If the Commission finds a violation of section 337, or reason to believe that a violation exists, it may direct the Secretary of the Treasury to exclude from entry into the United States the articles concerned which are imported by the person violating or suspected of violating section 337. The Commission's exclusion order remains in effect until the Commission determines, and notifies the Secretary of the Treasury, that the conditions which led to the exclusion no longer exist, or until the determination of the Commission on which the order is based is disapproved by the President.

(2) During the period the Commission's exclusion order remains in effect, excluded articles may be entered under a single entry bond in an amount determined by the International Trade Commission to be sufficient to protect the complainant from any injury. On or after the date that the Commission's determination of a violation of section 337 becomes final, as set forth in paragraph (a) of this section, articles covered by the determination will be refused entry. If a violation of section 337 is found, the bond may be forfeited to the complainant under terms and conditions prescribed by the Commission. To enter merchandise that is the subject of a Commission exclusion order, importers must:

(i) File with the port director prior to entry a bond in the amount determined by the Commission that contains the conditions identified in the special importation and entry bond set forth in appendix B to part 113 of this chapter; and

(ii) Comply with the terms set forth in 19 CFR 210.50(d) in the event of a forfeiture of this bond.

(3) Port directors shall notify each importer or consignee of articles released under bond pursuant to paragraph (b)(2) of this section when the Commission's determination of a violation of section 337 becomes final and that entry of the articles is refused. The importer or consignee shall export or destroy the released articles under customs supervision within 30 days after the date of notification. The port director who released the articles shall assess liquidated damages in the full amount of the bond if the importer or consignee fails to export or destroy the released articles under Customs supervision within the 30-day period.

(4) In addition to the notice given to importers or consignees of articles released under bond, port directors shall provide written notice to all owners, importers or consignees of articles which are denied entry into the United States pursuant to an exclusion order that any future attempt to import such articles may result in the articles being seized and forfeited. Copies of all such notices are to be forwarded to the

Commercial Enforcement, Trade Compliance Division, at Customs Headquarters, and to the Office of The General Counsel, USITC, 500 E Street, SW., Washington, DC 20436 by port directors.

(c) *Seizure and Forfeiture Orders.* (1) In addition to issuing an exclusion order under paragraph (b)(1) of this section, the Commission may issue an order providing that any article determined to be in violation of § 337 be seized and forfeited to the United States. Such order may be issued if:

(i) The owner, importer, or consignee of the article previously attempted to import the article or like articles into the United States;

(ii) The article or like articles were previously denied entry into the United States by reason of an exclusion order issued under paragraph (b)(1) of this section; and

(iii) Upon such previous denial of entry, the port director of the port in which the entry was attempted had notified the owner, importer, or consignee of the article in writing of both the exclusion order and that seizure and forfeiture would result from any further attempt to import the article or like articles into the United States.

(2) Upon receipt of any seizure order issued by the Commission in accordance with this paragraph, Customs shall immediately notify all ports of entry of the property subject to the seizure order and identify the persons notified under paragraph (b)(4) of this section.

(3) The port director in the port in which the article was seized shall issue a notice of seizure to parties known to have an interest in the seized property. All interested parties to the property shall have an opportunity to petition for relief under the provisions of 19 CFR part 171. All petitions must be filed within 30 days of the date of issuance of the notice of seizure, and failure of a claimant to petition will result in the commencement of administrative forfeiture proceedings. All petitions will be decided by the appropriate Customs officer, based upon the value of the articles under seizure.

(4) If seized articles are found to be not includable in an order for seizure and forfeiture, then the seizure and the forfeiture shall be remitted in accordance with standard Customs procedures.

(5) Forfeited merchandise shall be disposed of in accordance with the Customs laws.

(d) *Certain importations by or for the United States.* Any exclusion from entry under section 337 based on claims of United States letters patent shall not apply to articles imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

(e) *Importations of semiconductor chip products.* (1) In accordance with the Semiconductor Chip Protection Act of 1984 (17 U.S.C. 901 *et seq.*), if the owner of a mask work which is registered with the Copyright Office seeks to have Customs deny entry to any imported semiconductor chip products which infringe his rights in such mask work, the owner must obtain a court order enjoining, or an order of the U.S. International Trade Commission (USITC), under section 337, Tariff Act of 1930, as amended (19 U.S.C.1337), excluding, importation of such products. Exclusion orders issued by the USITC are enforceable by Customs under paragraph (b) of this section. Court orders or exclusion orders issued by the USITC shall be forwarded, for enforcement purposes, to the Director, International Trade Compliance Division, U.S. Customs Service, Washington, DC 20229.

(2) The port director shall enforce any court order or USITC exclusion order based upon a mask work registration in accordance with the terms of such order. Court orders may require either denial of entry or the seizure of violative semiconductor chip products. Forfeiture proceedings in accordance with part 162 of this chapter shall be instituted against any such products so seized.

(3) This regulation will be effective against all importers regardless of whether they have knowledge that their importations are in violation of

the Semiconductor Chip Protection Act of 1984 (17 U.S.C. 901 through 904).

[T.D. 79–231, 44 FR 49247, Aug. 22, 1979, as amended by T.D. 84–213, 49 FR 41167, Oct. 19, 1984; T.D. 87–132, 52 FR 39221, Oct. 21, 1987; T.D. 95–87, 60 FR 54941, Oct. 27, 1995; T.D. 99–27, 64 FR 13675, Mar. 22, 1999; T.D. 00–87, 65 FR 77815, Dec. 13, 2000; 65 FR 80497, Dec. 21, 2000]

IMMORAL ARTICLES

§ 12.40 Seizure; disposition of seized articles; reports to United States attorney.

(a) Any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, seized under section 305, Tariff Act of 1930, shall be transmitted to the United States attorney for his consideration and action.

(b) Upon the seizure of articles or matter prohibited entry by section 305, Tariff Act of 1930 (with the exception of the matter described in paragraph (a) of this section), a notice of the seizure of such articles or matter shall be sent to the consignee or addressee.

(c) When articles of the class covered by paragraph (b) of this section are of small value and no criminal intent is apparent, a blank assent to forfeiture, Customs Form 4607, shall be sent with the notice of seizure. Upon receipt of the assent to forfeiture duly executed, the articles shall be destroyed if not needed for official use and the case closed.

(d) In the case of a repeated offender or when the facts indicate that the importation was made deliberately with intent to evade the law, the facts and evidence shall be submitted to the United States attorney for consideration of prosecution of the offender as well as an action in rem under section 305 for condemnation of the articles.

(e) All cases in which articles have been seized pursuant to 19 U.S.C. 1305(a) should be referred to the U.S. Attorney, for possible institution of condemnation proceedings, within 4 days, but in no event more than 14 days, after the date of Customs initial examination. The referral to the U.S. Attorney should be initiated simultaneously with the mailing to the importer of the seizure notice and the assent to forfeiture form. If the importer declines to execute an assent to forfeiture of the articles other than those mentioned in paragraph (a) of this section and fails to submit, within 30 days after being notified of his privilege to do so, a petition under section 618, Tariff Act of 1930 (19 U.S.C. 1618), for remission of the forfeiture and permission to export the seized articles, then the U.S. Attorney, who has already received information concerning the seizure pursuant to this paragraph, may proceed with the condemnation action.

(f) If seizure is made of books or other articles which do not contain obscene matter but contain information or advertisements relative to means of causing unlawful abortion, the procedure outlined in paragraphs (b), (c), (d), and (e) of this section shall be followed.

(g) In any case when a book is seized as being obscene and the importer declines to execute an assent to forfeiture on the ground that the book is a classic, or of recognized and established literary or scientific merit, a petition addressed to the Secretary of the Treasury with evidence to support the claim may be filed by the importer for release of the book. Mere unsupported statements or allegations will not be considered. If the ruling is favorable, release of such book shall be made only to the ultimate consignee.

(h) Whenever it clearly appears from information, instructions, advertisements enclosed with or appearing on any drug or medicine or its immediate or other container, or otherwise that such drug or medicine is intended for inducing unlawful abortion, such drug or medicine shall be detained or seized.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 71–165, 36 FR 12209, June 29, 1971; T.D. 76–261, 41 FR 39022, Sept. 14, 1976; T.D. 82–145, 47 FR 35477, Aug. 16, 1982; T.D. 85–186, 50 FR 47207, Nov. 15, 1985; T.D. 93–66, 58 FR 44130, Aug. 19, 1993]

§ 12.41 Prohibited films.

(a) Importers of films, shall certify on Customs Form 3291 that the imported films contain no obscene or immoral matter, nor any matter advocating or urging treason or insurrection against the United States or forcible resistance to any law of the United States, nor any threat to take the life or inflict bodily harm upon any person in the United States. When imported films are claimed to be free of duty as American goods returned, this certification may be made on Customs Form 3311 in the space designated ''Remarks'' in lieu of on Form 3291.

(b) Films exposed abroad by a foreign concern or individual shall be previewed by a qualified employee of the Customs Service before release. In case such films are imported as undeveloped negatives exposed abroad, the approximate number of feet shall be ascertained by weighing before they are allowed to be developed and printed and such film shall be previewed by a qualified employee of the Customs Service after having been developed and printed.

(c) Any objectionable film shall be detained pending instructions from Headquarters, U.S. Customs Service or a decision of the court as to its final disposition.

MERCHANDISE PRODUCED BY CONVICT, FORCED, OR INDENTURED LABOR

§ 12.42 Findings of Commissioner of Customs.

(a) If any port director or other principal Customs officer has reason to believe that any class of merchandise that is being, or is likely to be, imported into the United States is being produced, whether by mining, manufacture, or other means, in any foreign locality with the use of convict labor, forced labor, or indentured labor under penal sanctions, including forced child labor or indentured child labor under penal sanctions, so as to come within the purview of section 307, Tariff Act of 1930, he shall communicate his belief to the Commissioner of Customs. Every such communication shall contain or be accompanied by a statement of substantially the same information as is required in paragraph (b) of this section, if in the possession of the port director or other officer or readily available to him.

(b) Any person outside the Customs Service who has reason to believe that merchandise produced in the circumstances mentioned in paragraph (a) of this section is being, or is likely to be, imported into the United States and, if the production is with the use of forced labor or indentured labor under penal sanctions, that merchandise of the same class is being produced in the United States in such quantities as to meet the consumptive demands of the United States may communicate his belief to any port director or the Commissioner of Customs. Every such communication shall contain, or be accompanied by, (1) a full statement of the reasons for the belief, (2) a detailed description or sample of the merchandise, and (3) all pertinent facts obtainable as to the production of the merchandise abroad. If the foreign merchandise is believed to be mined, produced, or manufactured with the use of forced labor or indentured labor under penal sanctions, such communication shall also contain (4) detailed information as to the production and consumption of the particular class of merchandise in the United States and the names and addresses of domestic producers likely to be interested in the matter.

(c) If any information filed with a port director pursuant to paragraph (b) of this section does not conform with the requirements of that paragraph, the communication shall be returned promptly to the person who submitted it with detailed written advice as to the respects in which it does not conform. If such information is found to comply with the requirements, it shall be transmitted by the port director within 10 days to the Commissioner of Customs, together with all pertinent additional information available to the port director.

(d) Upon receipt by the Commissioner of Customs of any communication submitted pursuant to paragraph (a) or (b) of this section and found to comply with the requirements of the pertinent paragraph, the Commissioner will cause such investigation to be made as

appears to be warranted by the circumstances of the case and the Commissioner or his designated representative will consider any representations offered by foreign interests, importers, domestic producers, or other interested persons.

(e) If the Commissioner of Customs finds at any time that information available reasonably but not conclusively indicates that merchandise within the purview of section 307 is being, or is likely to be, imported, he will promptly advise all port directors accordingly and the port directors shall thereupon withhold release of any such merchandise pending instructions from the Commissioner as to whether the merchandise may be released otherwise than for exportation.

(f) If it is determined on the basis of the foregoing that the merchandise is subject to the provisions of the said section 307, the Commissioner of Customs, with the approval of the Secretary of the Treasury, will publish a finding to that effect in a weekly issue of the Customs Bulletin and in the FEDERAL REGISTER.

(g) Any merchandise of a class specified in a finding made under paragraph (f) of this section, which is imported directly or indirectly from the locality specifed in the findings and has not been released from Customs custody before the date of publication of such finding in the FEDERAL REGISTER shall be considered and treated as an importation prohibited by section 307, Tariff Act of 1930, unless the importer establishes by satisfactory evidence that the merchandise was not mined, produced, or manufactured in any part with the use of a class of labor specified in the finding.

(h) The following findings made under the authority of section 307, Tariff Act of 1930 are currently in effect with respect to the merchandise listed below:

Merchandise	Country	T.D.
Furniture, clothes hampers, and palm leaf bags.	Ciudad Victoria, Tamaulipas, Mexico.	53408 54725

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 89–1, 53 FR 51253, Dec. 21, 1988; T.D. 00–52, 65 FR 45875, July 26, 2000]

§ 12.43 Proof of admissibility.

(a) If an importer of any article detained under § 12.42(e) or (g) desires to contend that the article was not mined, produced, or manufactured in any part with the use of a class of labor specified in section 307, Tariff Act of 1930, he shall submit to the Commissioner of Customs within 3 months after the date the article was imported a certificate of origin in the form set forth below, signed by the foreign seller or owner of the article. If the article was mined, produced, or manufactured wholly or in part in a country other than that from which it was exported to the United States, an additional certificate in such form and signed by the last owner or seller in such other country, substituting the facts of transportation from such other country for the statements with respect to shipment from the country of exportation, shall be so submitted.

CERTIFICATE OF ORIGIN

I, _____, foreign seller or owner of the merchandise hereinafter described, certify that such merchandise, consisting of _____ (Quantity) of _____ (Description) in _____ (Number and kind of packages) bearing the following marks and numbers _____ was mined, produced, or manufactured by _____ (Name) at or near _____, and was laden on board _____ (Carrier to the United States) at _____ (Place of lading) (Place of final departure from country of exportation) which departed from on _____; (Date); and that _____ (Class of labor specified in finding) was not employed in any stage of the mining, production, or manufacture of the merchandise or of any component thereof.

Dated _____

_____
(Signature)

(b) The importer shall also submit to the Commissioner of Customs within such 3-month period a statement of the ultimate consignee of the merchandise, showing in detail that he had made every reasonable effort to determine the source of the merchandise and of every component thereof and to ascertain the character of labor used in the production of the merchandise and each of its components, the full results

of his investigation, and his belief with respect to the use of the class of labor specified in the finding in any stage of the production of the merchandise or of any of its components.

(c) If the certificate or certificates and statements specified in paragraphs (a) and (b) of this section are submitted within the time prescribed and the Commissioner finds that the merchandise is admissible, the port director concerned will be advised to that effect, whereupon he shall release the merchandise upon compliance with the usual entry requirements.

§ 12.44 Disposition.

(a) *Export and abandonment*. Merchandise detained pursuant to § 12.42(e) may be exported at any time prior to seizure pursuant to paragraph (b) of this section, or before it is deemed to have been abandoned as provided in this section, whichever occurs first. Provided no finding has been issued by the Commissioner of Customs under § 12.42(f) and the merchandise has not been exported within 3 months after the date of importation, the port director will ascertain whether the proof specified in § 12.43 has been submitted within the time prescribed in that section. If the proof has not been timely submitted, or if the Commissioner of Customs advises the port director that the proof furnished does not establish the admissibility of the merchandise, the port director will promptly advise the importer in writing that the merchandise is excluded from entry. Upon the expiration of 60 days after the delivery or mailing of such advice by the port director, the merchandise will be deemed to have been abandoned and will be destroyed, unless it has been exported or a protest has been filed as provided for in section 514, Tariff Act of 1930.

(b) *Seizure and summary forfeiture*. In the case of merchandise covered by a finding under § 12.42(f), if the Commissioner of Customs advises the port director that the proof furnished under § 12.43 does not establish the admissibility of the merchandise, or if no proof has been timely furnished, the port director shall seize the merchandise for violation of 19 U.S.C. 1307 and commence forfeiture proceedings pursuant to part 162, subpart E, of this chapter.

(c) *Prison-labor goods*. Nothing in this chapter precludes Customs from seizing for forfeiture merchandise imported in violation of 18 U.S.C. 1761 and 1762 concerning prison-labor goods.

[T.D. 00–52, 65 FR 45875, July 26, 2000]

§ 12.45 Transportation and marketing of prison-labor products.

If any apparent violation of section 1761 or 1762, title 18, United States Code, with respect to any imported article comes to the attention of a port director, he shall detain the article and report the facts to the appropriate United States attorney. If the United States attorney advises the port director that action should be taken against the article, it shall be seized and held pending the receipt of further instructions from the United States attorney or the court.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

COUNTERFEIT COINS, OBLIGATIONS, AND OTHER SECURITIES; ILLUSTRATIONS OR REPRODUCTIONS OF COINS OR STAMPS

§ 12.48 Importation prohibited; exceptions to prohibition of importation; procedure.

(a) In accordance with Chapter 25, Title 18, United States Code, any token, disk, or device in the likeness or similitude of any coin of the United States or of a foreign country; counterfeits of coins in circulation in the United States; counterfeited, forged, or altered obligations or other securities of the United States or of any foreign government; or plates, dies, or other apparatus which may be used in making any of the foregoing, when brought into the United States, shall be seized, and delivered to the nearest representative of the United States Secret Service, together with a report of the facts, for appropriate disposition.

(b) In accordance with section 504 of title 18, United States Code, the printing, publishing, or importation or the making or importation of the necessary plates for such printing or publishing for philatelic, numismatic, educational, historical, or newsworthy purposes in articles, books, journals, newspapers, or albums (but not for advertising purposes, except illustrations

of stamps and paper money in philatelic or numismatic advertising of legitimate numismatists and dealers in stamps or publishers of or dealers in philatelic or numismatic articles, books, journals, newspapers, or albums) of black and white illustrations of canceled and uncanceled United States postage stamps shall be permitted.

(c) The importation (but not for advertising purposes except philatelic advertising) of motion-picture films, microfilms, or slides, for projection upon a screen or for use in telecasting, of postage and revenue stamps and other obligations and securities of the United States and postage and revenue stamps, notes, bonds, and other obligations or securities of any foreign government, bank, or corporation shall be permitted.

(d) Printed matter of the character described in section 504, title 18, United States Code,[32] containing reproductions of postage or revenue stamps, executed in accordance with any exception stated in section 504, or colored reproductions of canceled foreign postage stamps may be admitted to entry. Printed matter containing illustrations or reproductions not executed in accordance with such exceptions shall be treated as prohibited importations. If no application for exportation or assent to forfeiture and destruction is received by the port director within 30 days from the date of notification to the importer that the articles are prohibited, the articles shall be reported to the United States attorney for forfeiture.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 82–145, 47 FR 35477, Aug. 16, 1982; T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

FUR-SEAL OR SEA-OTTER SKINS

§ 12.60 Importation prohibited.

The transportation, importation, sale, or possession of the skins of fur seals or sea otters is prohibited if such skins were taken contrary to the provisions of section 2 of the act of February 26, 1944 (58 Stat. 100–104) or, the case of such skins taken under the authority of the act or any fur-seal agreement, if the skins are not officially marked and

[32] Notwithstanding any other provision of this chapter, the following are permitted:

(1) The printing, publishing, or importation, or the making or importation of the necessary plates for such printing or publishing, of illustrations of:

(A) Postage stamps of the United States,

(B) Revenue stamps of the United States,

(C) Any other obligation or other security of the United States, and

(D) Postage stamps, revenue stamps, notes, bonds, and any other obligation or other security of any foreign government, bank, or corporation, for philatelic, numismatic, educational, historical, or newsworthy purposes in articles, books, journals, newspapers, or albums (but not for advertising purposes, except illustrations of stamps and paper money in philatelic or numismatic advertising of legitimate numismatists and dealers in stamps or publishers of or dealers in philatelic or numismatic articles, books, journals, newspapers, or albums). Illustrations permitted by the foregoing provisions of this section shall be made in accordance with the following conditions—

(i) All illustrations shall be in black and white, except that illustrations of postage stamps issued by the United States or by any foreign government may be in color;

(ii) All illustrations (including illustrations of uncanceled postage stamps in color) shall be of a size less than three-fourths or more than one and one-half, in linear dimension, of each part of any matter so illustrated which is covered by subparagraph (A), (B), (C), or (D) of this paragraph, except that black and white illustrations of postage and revenue stamps issued by the United States or by any foreign government and colored illustrations of canceled postage stamps issued by the United States may be in the exact linear dimension in which the stamps were issued; and

(iii) The negatives and plates used in making the illustrations shall be destroyed after their final use in accordance with this section.

(2) The making or importation, but not for advertising purposes except philatelic advertising, of motion-picture films, microfilms, or slides, for projection upon a screen or for use in telecasting, of postage and revenue stamps and other obligations and securities of the United States, and postage and revenue stamps, notes, bonds, and other obligations or securities of any foreign government, bank, or corporation. No prints or other reproductions shall be made from such films or slides, except for the purposes of paragraph (1), without the permission of the Secretary of the Treasury.

For the purposes of this section the term ''postage stamp'' includes ''postage meter stamps.'' (18 U.S.C. 504).

certified as required by section 2 of the act. Section 16 makes the act inapplicable to skins taken for scientific purposes under a special permit.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

§ 12.61 Fur-seal or sea-otter skins permitted entry.

(a) Fur-seal or sea-otter skins taken by Indians, Aleuts, or other aborigines under the authority of section 3 of the act, fur-seal skins taken under the authority of the Canadian Government, and fur-seal skins taken on the Pribilof Islands and other specified areas under the authority of section 4 of the act shall be admitted to entry if officially marked and certified as having been lawfully taken and if accompanied by a declaration of the shipper identifying the skins by marks and numbers as those covered by the official certificate.

(b) Fur-seal or sea-otter skins taken in waters or on land not specified in the act or in the fur-seal agreement with Canada or other fur-seal agreement shall be admitted to entry upon the production of evidence satisfactory to the port director that they have been so taken.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

§ 12.62 Enforcement; duties of Customs officers.

(a) In accordance with the authority contained in sections 10 and 12 of the act, Customs officers shall arrest or cause to be arrested persons violating the provisions of the act or of any regulation made pursuant thereto; shall search vessels when there is reasonable cause to believe that such vessels are subject to seizure under the act, shall seize any vessel used or employed or which it appears has been or is about to be used or employed in violation of the act or any regulation made pursuant thereto; and shall seize fur seals and sea otters, or the skins thereof, killed, captured, transported, imported, offered for sale, or possessed by any person contrary to the provisions of the act or of any regulation made pursuant thereto.

(b) All articles, including vessels and equipment, seized by Customs officers for violation of the act shall be turned over to the nearest officer or agent of the Fish and Wildlife Service, Department of the Interior, for appropriate disposition under the act, receipts to be taken in duplicate therefor. One copy of each such receipt shall be transmitted to Headquarters, U.S. Customs Service with a detailed report of the facts in the particular case involved.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

§ 12.63 Seal-skin or sea-otter-skin waste.

Seal-skin or sea-otter-skin waste composed of small pieces not large enough to be sewed together and utilized as dressed fur shall not be subject to the requirements of the regulations in this part.

ENTRY OF MOTOR VEHICLES, MOTOR VEHICLE ENGINES AND NONROAD ENGINES UNDER THE CLEAN AIR ACT, AS AMENDED

§ 12.73 Motor vehicle and engine compliance with Federal antipollution emission requirements.

(a) *Applicability of EPA requirements.* This section is ancillary to the regulations of the U.S. Environmental Protection Agency (EPA) issued under the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), and found in 40 CFR parts 85 and 86. Those regulations should be consulted for more detailed information concerning EPA emission requirements. The requirements apply to imported motor vehicles, but do not apply to separately imported non-chassis mounted engines to be used in light-duty trucks or other light-duty vehicles. Other separately imported engines for heavy-duty motor vehicles are covered, and all references in this section to motor vehicles should be deemed to include motor vehicles as well as these heavy-duty engines. Nothing in this section should be construed as limiting or changing in any way the applicability of the EPA regulations.

(b) *Importation of complying vehicles*—(1) *Labeled vehicles.* Vehicles which in their condition as imported are covered by an EPA certificate of conformity and which bear the manufacturer's

label showing such conformity and other EPA-required information shall be deemed in compliance with applicable emission requirements for the purpose of Customs admissibility and entry liquidation determinations. This paragraph does not apply to importations of ICI's covered by paragraph (d) of this section.

(2) *Pending certification*. Vehicles otherwise covered by paragraph (b)(1) of this section which were manufactured for compliance with applicable emission requirements, but for which an application for a certificate of conformity is pending with the EPA may be conditionally released from Customs custody pending production of the certificate of conformity within 120 days of release.

(c) *Importation of vehicles previously in compliance*—(1) *Vehicles of returning residents*. Vehicles of residents returning from Canada, Mexico or other countries as EPA may designate are not covered by this section.

(2) *Vehicles of commuting nonresidents and tourists*. A port director through the issuance of an appropriate means of identification to be affixed to a vehicle may waive all of the requirements of this section for a nonresident regularly crossing the Canadian or Mexican border, or waive the requirements for Mexico or Canadian-registered vehicles of tourists or other travelers.

(3) *Participants in EPA-approved catalytic converter or oxygen sensor control programs*. Further evidence of emissions compliance will not be required for catalytic converter or oxygen sensor-equipped vehicles imported for participating in EPA-approved catalytic converter or oxygen sensor control programs and subject to the requirements of those programs.

(4) *Previously labeled, modified or imported vehicles*. Any other vehicle of United States or foreign origin manufactured with a catalytic converter or oxygen sensor, or any previously imported vehicle subsequently modified with a catalytic converter or oxygen sensor, will not be deemed in compliance with applicable emission requirements if used outside of the United States, Canada, Mexico, or other countries as EPA may designate, until the catalytic converter and/or oxygen sensor is replaced. Conditional release from Customs custody for the purpose of the modification is subject to a 120-day period for completion. Subject to special documentation at the time of export from the United States and approval and other requirements of EPA, replacement of a catalytic converter or oxygen sensor may be avoided if the equipment is disconnected before export from the United States and reconnected after subsequent importation.

(d) *Importation of vehicles by ICI's*. Except for motor vehicles imported in the applicable circumstances covered by paragraphs (c), (e), (f), (g) or (h) of this section, an individual or business other than an independent commercial importer (ICI) holding a currently valid EPA certificate of conformity may not enter a motor vehicle which does not conform with EPA emission requirements. An ICI, subject to the more specific definition in EPA regulations, is an importer which does not have a contract with a foreign or domestic motor vehicle manufacturer for distributing products into the United States market. However, a motor vehicle may not be conditionally admitted unless it falls within one of the categories provided for in 40 CFR 85.1505 or 85.1509. Before the vehicle is deemed to be in compliance with applicable emission requirements and, therefore, finally admitted into the United States, the ICI must keep the vehicle in storage for a 15-working day period. This period follows notice to EPA of completion of the compliance work to give EPA the opportunity to conduct confirmatory testing and inspect the vehicle and records. The 15-working day period is part of the 120-day period in which an ICI must bring the vehicle into emissions compliance. Individuals and businesses not entitled to enter nonconforming motor vehicles may arrange for their importation through an ICI certificate holder. In these circumstances, the ICI will not act as an agent or broker for Customs transaction purposes unless otherwise licensed or authorized to do so.

(e) *Exemptions and exclusions from emission requirements based on age of vehicle*. The following motor vehicles, except as shown, may be imported by any person and do not have to be shown to

be in compliance with emission requirements or modified before entitled to admissibility:

(1) Gasoline-fueled light-duty trucks and light-duty motor vehicles manufactured before January 1, 1968;

(2) Diesel-fueled light-duty motor vehicles manufactured before January 1, 1975;

(3) Diesel-fueled light-duty trucks manufactured before January 1, 1976;

(4) Motorcycles manufactured before January 1, 1978;

(5) Gasoline-fueled and diesel-fueled heavy-duty engines manufactured before January 1, 1970; and

(6) Motor vehicles not otherwsie exempt from EPA emission requirements and more than 20 years old. Age is determined by subtracting the year of production (as opposed to model year) from the year of importation. The exemption under this subparagraph is available only if the vehicle is imported by an ICI.

(f) *Exemption for exports.* A motor vehicle intended solely for export to a country not having the same emission standards applicable in the United States, and both the vehicle and its container bear a label or tag indicating that it is intended solely for export, is exempt from applicable United States emission requirements. 40 CFR 85.1709.

(g) *Exemptions for diplomats, foreign military personnel and nonresidents.* Subject to the condition that they are not resold in the United States, the following motor vehicles are exempt from applicable emission requirements:

(1) A motor vehicle imported solely for the personal use of a nonresident importer or consignee and the use will be for a period not to exceed one year; and

(2) A motor vehicle of a member of the armed forces of a foreign country on assignment in the United States, or of a member of the personnel of a foreign government on assignment in the United States or other individual who comes within the class of persons for whom free entry of motor vehicles has been authorized by the Department of State in accordance with general principles of international law. For special documentation requirements see paragraph (i)(4) of this section.

(h) *Exemptions and exclusions based on prior EPA authorization.* The following motor vehicles are exempt or excluded from applicable emission requirements if prior approval has been obtained in writing from EPA:

(1) *Importations for repairs.* Any motor vehicle which is imported solely for repairs or alterations and which is not sold, leased, registered or licensed for use or operated on public roads or highways in the United States. 40 CFR 85.1511(b)(1);

(2) *Importations for testing.* Any motor vehicle imported solely for testing. Test vehicles may be operated on and registered for use on public roads or highways provided that the operation is an integral part of the test. 40 CFR 85.1511(b)(2). This exemption is limited to a period not exceeding one year from the date of importation unless a request is made under 40 CFR 85.1705(f) for a one-year extension;

(3) *Prototype vehicles.* Any motor vehicle imported for use as a prototype in applying for EPA certification. 40 CFR 85.1511(b)(3) and 85.1706. In the case of an ICI, unless the vehicle is brought into conformity within 180 days from the date of entry it shall be exported or otherwise disposed of subject to paragraph (1) of this section;

(4) *Display vehicles.* Any motor vehicle which is imported solely for display and which will not be sold, leased, registered or licensed for use on or operated on the public roads or highways in the United States. 40 CFR 85.1511(b)(4);

(5) *Racing cars.* Any motor vehicle which qualifies as a racing vehicle meeting one or more of the criteria found at 40 CFR 85.1703(a), and which will not be registered or licensed for use on or operated on public roads or highways in the United States. See also 40 CFR 85.1511(c)(1);

(6) *National security importations.* Any motor vehicle imported for purposes of national security by a manufacturer. 40 CFR 85.1511(c)(2), 85.1702(a)(2) and 85.1708; and

(7) *Hardship exemption.* Any motor vehicle imported by anyone qualifying for a hardship exemption. 40 CFR 85.1511(c)(3).

(i) *Documentation requirements*—(1) *Exception for manufacturers.* The special documentation requirements of this

paragraph do not apply to the entry of any motor vehicles shown to be in compliance with applicable emission requirements under paragraph (b)(1) of this section relating to labeling.

(2) *Declarations of other importers.* Release from Customs custody shall be refused with respect to all other entries unless there is filed with the entry in duplicate a declaration in which the importer or consignee declares or affirms its status as an original equipment manufacturer, an ICI holding an applicable certificate of conformity, or other status, and further declares or affirms the status or condition of the imported vehicles and the circumstances concerning importation including a citation to the specific paragraph or subparagraph in this section upon which application for conditional or final release from Customs custody is applied for.

(3) *Other documentation and information.* An importer's declaration shall include or be submitted with the following further information and documentation:

(A) The importer's name and address and telephone number;

(B) Identification of the vehicle or engine number, the vehicle owner's taxpayer identification number, and his or her current address and telephone number in the United States if different than as provided for in paragraph (3)(A) of this paragraph;

(C) Identification, where applicable, of the place where the vehicle will be stored until EPA approval of the importer's application to EPA for final admission as required for vehicles imported under 40 CFR 85.1505, 85.1509, or 85.1512 having reference to certain importations under paragraphs (c)(4) or (d)(1) of this section;

(D) Authorization for EPA enforcement officers to conduct inspections or testing otherwise permitted by the Clean Air Act and regulations promulgated thereunder;

(E) Identification, where applicable, of the certificate of conformity by means of which the vehicle is being imported;

(F) The date of manufacture of the vehicle;

(G) The date of entry;

(H) Identification of the vessel or carrier on which the merchandise was shipped;

(I) The entry number where applicable;

(J) Where prior EPA authorization is required for an exemption or exclusion, a copy of that authorization; and

(K) Such other further information as may be required by the EPA or the Customs Service.

(4) *Documentation from diplomats and foreign military personnel.* For entries for which an exemption is claimed under paragraph (g)(2) of this section, there must also be attached to the declaration required under paragraph (i)(2) of this section a copy of the motor vehicle importer's official orders, if any, or if a qualifying member of the personnel of a foreign government on assignment in the United States, the name of the embassy to which the importer is accredited.

(j) *Release under bond.* If a declaration filed in accordance with paragraph (i)(2) of this section states that the entry is being filed under circumstances described in either paragraph (c)(4), (h)(1), (h)(2), (h)(3) or (h)(4) of this section, the entry shall be accepted only if the importer or consignee gives a bond on Customs Form 301, containing the bond condition set forth in § 113.62 of this chapter for the production of an EPA statement that the vehicle or engine is in conformity with Federal emission requirements. Within the period in paragraph (h)(2), (h)(3) or (c)(4) of this section, or in the case of paragraph (h)(1) or (h)(4) of this section, the period specified by EPA in its authorization for an exemption, or such additional period as the port director may allow for good cause shown, the importer or consignee shall deliver to the port director the prescribed statement. If the statement is not delivered to the director of the port of entry within the specified period, the importer or consignee shall deliver or cause to be delivered to the port director those vehicles which were released under a bond required by this paragraph. In the event that the vehicle or engine is not redelivered within five days following the date specified in the preceding sentence, liquidated damages shall be assessed in the full amount of

the bond, if it is a single entry bond, or if a continuous bond is used, the amount that would have been taken under a single entry bond.

(k) *Notices of inadmissibility or detention*. If a motor vehicle is determined to be inadmissible before release from Customs custody, or inadmissible after release from Customs custody, the importer or consignee shall be notified in writing of the inadmissibility determination and/or redelivery requirement. However, if a motor vehicle cannot be released from Customs custody merely because the importer has failed to attach to the entry the documentation required by paragraph (i) of this section, the vehicle shall be held in detention by the director of a period not to exceed 30 days after filing of the entry at the risk and expense of the importer pending submission of the missing documentation. An additional 30-day extension may be granted by the port director upon application for good cause shown. If at the expiration of a period not over 60 days the documentation has not been filed, a notice of inadmissibility will be issued.

(l) *Disposal of vehicles not entitled to admission*. A motor vehicle denied admission under any provision of this section shall be disposed of in accordance with applicable Customs laws and regulations. However, a motor vehicle or engine will not be disposed of in a manner in which it may ultimately either directly or indirectly reach a consumer in a condition in which it is not in conformity with applicable EPA emission requirements.

(m) *Prohibited importations*. The importation of motor vehicles otherwise than in accordance with this section and the regulations of EPA in 40 CFR parts 80, 85, 86 and 600 is prohibited.

[T.D. 88–40, 53 FR 26240, July 12, 1988, as amended by T.D. 01–14, 66 FR 8767, Feb. 2, 2001]

§ 12.74 Nonroad engine compliance with Federal antipollution emission requirements.

(a) *Applicability of EPA regulations*. The requirements governing the importation of nonroad engines subject to conformance with applicable emissions standards of the U.S. Environmental Protection Agency (EPA) are contained in EPA regulations, issued under the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*). These EPA regulations should be consulted for detailed information as to the admission requirements for subject nonroad engines, as follows:

(1) For nonroad compression-ignition engines at or above 37 kilowatts, see 40 CFR part 89, subpart G;

(2) For nonroad spark-ignition engines at or below 19 kilowatts, see 40 CFR part 90, subpart G; and

(3) For marine spark-ignition engines, see 40 CFR part 91, subpart H.

(b) *Admission of nonconforming nonroad engines*. (1) *EPA declaration required*. EPA Form 3520–21, ''Importation of Nonroad Engines and Nonroad Engines Incorporated Into Nonroad Equipment or Vehicles, Subject to Federal Air Pollution Regulations'', must be completed by the importer and retained on file by him before making a customs entry for such nonroad engines/equipment/vehicles.

(2) *Retention and submission of records to Customs*. Documents supporting the information required in the EPA declaration must be retained by the importer for a period of at least 5 years in accordance with § 163.4 of this chapter and shall be provided to Customs upon request.

(c) *Release under bond*. (1) *Conditional admission*. If the EPA declaration states that the entry for a nonconforming nonroad engine is being filed under one of the exemptions described in paragraphs (c)(3)(i) through (c)(3)(iv) of this section, under which the engine must be conditionally admitted under bond, the entry for such engine shall be accepted only if a bond is given on Customs Form 301 containing the conditions set forth in § 113.62 of this chapter for the presentation of an EPA statement that the engine has been brought into conformity with Federal emissions requirements.

(2) *Final admission*. Should final admission be sought and granted pursuant to EPA regulations for an engine conditionally admitted initially under one of the exemptions described in paragraphs (c)(3)(i) through (c)(3)(iv) of this section, the importer or consignee shall deliver to the port director the prescribed statement. The statement

shall be delivered within the period authorized by EPA for the specific exemption, or such additional period as the port director of Customs may allow for good cause shown. Otherwise, the importer or consignee shall deliver or cause to be delivered to the port director the subject engine, either for export or other disposition under applicable Customs laws and regulations (see paragraph (e) of this section). If such engine is not redelivered within 5 days following the allotted period, liquidated damages shall be assessed in the full amount of the bond, if a single entry bond, or if a continuous bond, the amount that would have been taken under a single entry bond (see 40 CFR 89.612–96(d), 90.613(c) & (d), 91.705(c) & (d)).

(3) *Exemptions*. The specific exemptions under which a nonconforming nonroad engine may be conditionally admitted, and for which a Customs bond is required, are as follows:

(i) Repairs or alterations (see 40 CFR 89.611–96(b)(1), 90.612(b)(1), 91.704(b)(1));

(ii) Testing (see 40 CFR 89.611–96(b)(2), 90.612(b)(2), 91.704(b)(2));

(iii) Precertification (see 40 CFR 89.611–96(b)(3), 89.906); and

(iv) Display (see 40 CFR 89.611–96(b)(4), 90.612(b)(3), 91.704(b)(3)).

(d) *Notice of inadmissibility or detention*. If an engine is found to be inadmissible either before or after release from Customs custody, the importer or consignee shall be notified in writing of the inadmissibility determination and/or redelivery requirement. However, an engine which cannot be released merely due to a failure to furnish with the entry any documentary information as required by EPA shall be held in detention by the port director for a period not to exceed 30 days after filing of the entry at the risk and expense of the importer pending submission of the missing information. An additional 30-day extension may be granted by the port director upon application for good cause shown. If at the expiration of a period not over 60 days the required documentation has not been filed, a notice of inadmissibility will be issued.

(e) *Disposal of engines not entitled to admission; prohibited importations*. A nonroad engine denied admission under EPA regulations shall be disposed of consistent with such EPA regulations and in accordance with applicable Customs laws and regulations. The importation of nonroad engines otherwise than as prescribed under EPA regulations is prohibited.

[T.D. 98–50, 63 FR 29122, May 28, 1998, as amended by T.D. 01–14, 66 FR 8767, Feb. 2, 2001]

MOTOR VEHICLES AND MOTOR VEHICLE EQUIPMENT MANUFACTURED ON OR AFTER JANUARY 1, 1968

§ 12.80 Federal motor vehicle safety standards.

(a) *Standards prescribed by the Department of Transportation*. Motor vehicles and motor vehicle equipment manufactured on or after January 1, 1968, offered for sale, or introduction or delivery for introduction in interstate Commerce, or importation into the United States are subject to Federal motor vehicle safety standards (''safety standards'') prescribed by the Secretary of Transportation under sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1392, 1407) (''the Act''), and set forth in 49 CFR part 571. A motor vehicle (''vehicle'') or item of motor vehicle equipment (''equipment item''), manufactured on or after January 1, 1968, is not permitted entry into the Customs territory of the United States unless (with certain exceptions set forth in paragraph (b) of this section) it is in conformity with applicable safety standards in effect at the time the vehicle or equipment item was manufactured.

(b) *Requirements for entry and release*. (1) Unless the requirement for filing is waived by the port director as provided for in paragraph (f) of this section, each vehicle or equipment item offered for introduction into the Customs territory of the United States shall be denied entry unless the importer or consignee files with the entry a declaration, in duplicate, which declares or affirms one of the following:

(i) The vehicle or equipment item was manufactured on a date when no applicable safety standards were in effect.

(ii) The vehicle or equipment item conforms to all applicable safety standards (or, the vehicle does not conform solely because readily attachable equipment items which will be attached to the vehicle before it is offered for sale to the first purchaser for purposes other than resale are not attached) and bears a certification label or tag to that effect permanently affixed by the original manufacturer to the vehicle or to the equipment item, or to the outside of the container in which the equipment item is delivered, in accordance with regulations issued by the Secretary of Transportation (49 CFR parts 555, 567, 568 and 571) under section 114 of the Act (15 U.S.C. 1403).

(iii) The vehicle or equipment item was not manufactured in conformity to all applicable safety standards, but it has been or will be brought into conformity. Within 120 days after entry, or within a period not to exceed 180 days after entry, if additional time is granted by the Administrator, National Highway Traffic Safety Administration (''Administrator, NHTSA''), the importer or consignee will submit a true and complete statement to the Administrator, NHTSA, identifying the manufacturer, contractor, or other person who has brought the vehicle or equipment item into conformity, describing the exact nature and extent of the work performed, and certifying that the vehicle or equipment item has been brought into conformity, and that the vehicle or equipment item will not be sold or offered for sale until the Administrator, NHTSA, issues an approval letter to the port director stating that the vehicle or equipment item described in the declaration has been brought into conformity with all applicable safety standards.

(iv) The vehicle or equipment item is intended solely for export, and the vehicle or equipment item, and the outside of the container of the equipment item, if any, bears a label or tag to that effect.

(v) The importer or consignee is a nonresident of the United States, is importing the vehicle or equipment item primarily for personal use for a period not exceeding 1 year from the date of entry, will not sell it in the United States during that period, and has stated his passport number and country of issue, if he has a passport, on the declaration.

(vi) The importer or consignee is a member of the armed forces of a foreign country on assignment in the U.S. or is a member of the personnel of a foreign government on assignment in the U.S. or other individual who is within the class of persons for whom free entry of vehicles has been authorized by the Department of State in accordance with general principles of international law, is importing the vehicle or equipment item for purposes other than resale; and a copy of his official orders, if any, is attached to the declaration (or, if a qualifying member of the personnel of a foreign government on assignment in the U.S., the name of the Embassy to which he is accredited is stated on the declaration).

(vii) The vehicle or equipment item is imported solely for the purpose of show, test, experiment, competition (a vehicle the configuration of which at the time of entry is such that it cannot be licensed for use on the public roads is considered to be imported for the purpose of competition), repair or alteration, and the statement required by 19 CFR 12.80(c)(2) or (c)(3) is attached to the declaration.

(viii) The vehicle was not manufactured primarily for use on the public roads and is not a ''motor vehicle'' as defined in section 102 of the Act (15 U.S.C. 1391).

(ix) The vehicle is an ''incomplete vehicle'' as defined in 49 CFR part 568.

(2) A vehicle imported solely for the purpose of test or experiment which is the subject of a declaration filed under paragraph (b)(1)(vii) of this section may be licensed for use on the public roads for a period not to exceed 1 year from the date of importation if use on the public roads is an integral part of the test or experiment. The vehicle may be licensed for use on the public roads for one or more further periods which, when added to the initial 1 year period, shall not exceed a total of 3 years, upon application to and approval by the Administrator, NHTSA.

(c) *Declaration; contents.* (1) Each declaration filed under paragraph (b)(1) of this section shall include the name and

address in the United States of the importer or consignee, the date and the entry number (if applicable), the make, model, and engine and body serial numbers, or other identification number (if a vehicle), or a description of the item (if an equipment item), and shall be signed by the importer or consignee.

(2) Each declaration filed under paragraph (b)(1)(vii) of this section which relates to a vehicle or equipment item reported for the purpose of show, competition, repair, or alteration shall have attached a statement fully describing the use to be made of the vehicle or equipment item and its ultimate disposition.

(3) Each declaration filed under paragraph (b)(1)(vii) of this section which relates to a vehicle imported solely for the purpose of test or experiment shall have attached a statement fully describing the test or experiment, the estimated period of time necessary to use the vehicle on the public roads, and the disposition to be made of the vehicle after completion of the test or experiment.

(4) Any declaration filed under paragraph (b)(1) of this section may, if appropriate, relate to more than one vehicle or equipment item imported on the same entry.

(d) *Declaration; disposition*. The port director shall forward the original of each declaration submitted to him under paragraph (b)(1) of this section as soon as practicable to the Director, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, Washington, DC 20590.

(e) *Release under bond*. (1) If a declaration is filed under paragraph (b)(1)(iii) of this section, the entry shall be accepted only if the importer or consignee gives a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. An approval letter shall be issued upon approval by the Administrator, NHTSA, of the conformity statement submitted by the importer or consignee as provided for in paragraph (b)(1)(iii) of this section. The approval letter shall be forwarded by the Administrator, NHTSA, to the port director with a copy to the importer or consignee. Upon receipt of the approval letter the port director shall cancel the charge against the bond.

(2) If the approval letter is not received by the port director within 180 days after entry, the port director shall issue a Notice of Redelivery, Customs Form 4647, requiring the redelivery to Customs custody of the vehicle or equipment item. If the vehicle or equipment item is not redelivered to Customs custody or exported under Customs supervision within the period allowed by the port director in the Notice of Redelivery, liquidated damages shall be assessed in the full amount of a bond if it is single entry bond or if a continuous bond is used, the amount that would have been taken under a single entry bond.

(f) *Waiver of declaration requirements*. The requirement that a declaration be filed under paragraph (b)(1)(i), (b)(1)(ii), or (b)(1)(v) of this section as a condition to the introduction of a vehicle or equipment item into the Customs territory of the United States may be waived by the port director for a United States, Canadian, or Mexican registered vehicle arriving via land borders.

(g) *Vehicle or equipment item introduced by means of a fraudulent or false declaration*. Any person who enters, introduces, attempts to enter or introduce, or aids or abets the entry, introduction, or attempted entry or introduction, of a vehicle or equipment item into the Customs territory of the United States by means of a fraudulent entry declaration, or by means of a false entry declaration made without reasonable cause to believe the truth of the declaration, may incur liabilities under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

(h) *Vehicle or equipment item denied entry*. If a vehicle or equipment item is denied entry under the provisions of paragraph (b) of this section, the port director shall refuse to release the vehicle or equipment item for entry into the Customs territory of the United States and shall issue a notice of that refusal to the importer or consignee.

(i) *Disposition of vehicle or equipment item denied entry; redelivery*. A vehicle or equipment item denied entry under paragraph (b) of this section, or redelivered to Customs custody under

paragraph (e) of this section, which is not exported under Customs supervision within 90 days from the date of the notice of denial of entry or date of redelivery, shall be disposed of under applicable Customs laws and regulations, except that disposition shall not result in the introduction of the vehicle or equipment item into the Customs territory of the United States in violation of the Act.

[T.D. 78–478, 43 FR 56659, Dec. 4, 1978, as amended by T.D. 84–213, 49 FR 41167, Oct. 19, 1984; T.D. 86–203, 51 FR 42997, Nov. 28, 1986]

SAFETY STANDARDS FOR BOATS AND ASSOCIATED EQUIPMENT

§ 12.85 Coast Guard boat and associated equipment safety standards.

(a) *Applicability of standards or regulations prescribed by the Commandant, U.S. Coast Guard.* Boats and associated equipment (as hereinafter defined) are subject to U.S. Coast Guard safety regulations or standards when imported or, under certain conditions, brought into the United States after November 1, 1972. Those regulations or standards are prescribed by the Commandant, U.S. Coast Guard, pursuant to sections 5, 7, and 39, Federal Boat Safety Act of 1971 (46 U.S.C. 1454, 1456, 1488), as set forth in 33 CFR parts 181, 183.

(1) The term ''boats'' includes:

(i) All vessels manufactured or used primarily for noncommercial use.

(ii) All vessels leased, rented, or chartered to another for the latter's noncommercial use.

(iii) All vessels engaged in the carrying of six or fewer passengers (see section 4.80 of this chapter on prohibitions against foreign vessels transporting passengers in the coastwise trade).

(2) For purposes of § 12.85 the term ''boat'' does not include:

(i) Foreign vessels temporarily using waters subject to U.S. jurisdiction.

(ii) Military or public vessels of the United States, except recreational type public vessels.

(iii) A vessel whose owner is a State or subdivision thereof, which is principally used for governmental purposes, and which is clearly identifiable as such.

(iv) Ships' lifeboats.

(3) The term ''associated equipment'' means:

(i) Any system, part, or component of a boat as originally manufactured, or a similar part or component manufactured or sold for replacement, repair, or improvement of such system, part, or component (excluding radio equipment).

(ii) Any accessory or equipment for, or appurtenance to, a boat (excluding radio equipment).

(iii) Any marine safety article, accessory, or equipment intended for use by a person on board a boat (excluding radio equipment).

(4) The term ''product'' as used in this section, includes the terms ''boats'' and ''associated equipment'' as defined in paragraphs (a) (1), (2), and (3) of this section.

(b) *Evidence of compliance with boating standards or regulations as condition of* entry. A product for which entry is sought into the Customs territory of the United States will, subject to the exceptions specified in paragraph (c) of this section, be denied entry unless accompanied by evidence of compliance with standards or regulations as follows:

(1) A product subject to standards prescribed in 33 CFR part 183 will have affixed to it a compliance certification label in accordance with the requirements of subpart B, 33 CFR part 181.

(2) A boat hull subject to subpart C, 33 CFR part 181 will have affixed to it a hull identification number affixed by the importer or the original manufacturer. The number shall comply with the format requirements of subpart C, 33 CFR part 181.

(c) *Products not in compliance with standards or regulations: Alternative evidence required as condition of entry and release.* Certain products shall be permitted entry and release without a compliance certification label or hull identification number affixed, as is required by subparts B and C, 33 CFR part 181, if they fall within one of the following categories, and if the conditions for entry and release specified for each category of product are met:

(1) *Products manufactured before standards or regulations in effect.* For certain

products manufactured before an applicable standard or regulation was in effect, a declaration will be filed in accordance with the requirements of paragraph (d) of this section. The declaration will state that the product was manufactured before the applicable standard or regulation was in effect. If the port director believes that it is necessary in a particular case, he may communicate with the nearest Coast Guard district commander by the most expedient means to request that the Coast Guard determine that alteration of the product is not required.

(2) *Products exempted from standards or regulations by Coast Guard Grant of Exemption.* For certain products specifically exempted from applicable standards or regulations by a Coast Guard Grant of Exemption, a declaration will be filed in accordance with paragraph (d) of this section. The declaration will state that the product has been specifically exempted from applicable standards or regulations by a U.S. Coast Guard Grant of Exemption, issued under the authority of section 9 of the Federal Boat Safety Act of 1971 (46 U.S.C. 1458), and in effect on the date the product was manufactured. The declaration will also state that the product complies with all the terms and conditions of the exemption. A copy of the exemption, certified by the importer or consignee to be a true copy, shall be attached to each declaration.

(3) *Products to be brought into conformity.* In the case of products that are not in conformity at the time of entry but will be brought into conformity, a declaration will be filed in accordance with paragraph (d) of this section. The declaration will state that the product does not conform with applicable safety standards or regulations, but that the importer or consignee will bring the product into conformity with safety standards or regulations, and will also state that the product will not be sold or offered for sale, or used on waters subject to the jurisdiction of the United States and on the high seas beyond the territorial seas for a vessel owned in the United States except for the purpose of bringing it into conformity, until the bond has been satisfied with respect to this obligation. To secure entry under this provision, bond must be given in accordance with paragraph (e)(1) of this section.

(4) *Certain products entering the United States for repair or alteration.* In the case of a nonresident of the United States who wishes to enter a product for the purpose of making repairs or alterations to it for a period not exceeding 1 year from the date of entry, a declaration will be filed in accordance with paragraph (d) of this section. The declaration shall state that the importer or consignee is a nonresident of the United States, that the product is being brought in for the purpose of making repairs or alterations to it, that it will not remain in the Customs territory of the United States for more than 1 year following the date of the entry, and that it will not be offered for sale, sold, or used for pleasure in waters subject to the jurisdiction of the United States during that time.

(5) *Products owned by certain foreign governments.* In the case of an importer or consignee employed in one of the capacities set forth in this subparagraph, a declaration will be filed in accordance with paragraph (d) of this section. The declaration shall state that the importer or consignee is either a member of the armed forces of a foreign country on assignment in the U.S. or is a member of the personnel of a foreign government on assignment in the U.S. or other individual who comes within the class of persons for whom free entry of boats has been authorized by the Department of State in accordance with general principles of international law, and that he is importing the product for purposes other than resale.

(6) *Certain products entered for tests, experiments, exhibits, or races.* An importer or consignee seeking to enter a product for period not to exceed 1 year, for tests, experiments, exhibits, or races but not for sale in the United States, shall file a declaration in accordance with paragraph (d) of this section. The declaration shall state that the importer or consignee is importing the product solely for the stated purpose and that it will not be sold or operated in the United States, unless the operation is an integral part of the stated use for which the product was imported. The importer or consignee

shall attach to the declaration a description of use for which the product is being imported, the time period estimated for completion, and disposition to be made of the product after completion. Entry under this paragraph may be authorized for a period not to exceed 1 year from the date of importation. However, this period may be extended at the discretion of the port director for one or more additional periods which, when added to the initial 1-year period, shall not exceed a total of 3 years.

(d) *Declaration requirements.* All declarations submitted must:

(1) Be filed at the time of entry, in duplicate on Form CG–5096.

(2) Be signed by the importer or consignee.

(3) State the name and U.S. address of the importer or consignee.

(4) State the entry number and date.

(5) Provide the make, model, and hull identification number, if affixed, or date of manufacture if hull identification number not affixed, of any boat, and a description of any equipment or component.

(6) Identify, if known, the city or state in which the product will be principally located.

(7) Be sent by the port director, to the Commandant (G-BBS-1/42), U.S. Coast Guard, Washington, D.C. 20593.

(e) *Release under bond*—(1) *When bond required.* A bond will be required of the importer or consignee on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter, in such amount as the port director deems appropriate, when a declaration is made that a product is to be brought into conformity. When the importer or consignee of a product declares that it will be brought into conformity before being sold or offered for sale, or before being used on waters subject to the jurisdiction of the United States and on the high seas beyond the territorial seas for a vessel owned in the United States and seeks entry of the product under paragraph (c)(3) of this section, the entry shall be accepted only if bond is given for the production of a statement by either the importer or the consignee that the product described in the declaration is in conformity with applicable safety standards or regulations. The statement shall identify the person or firm who has brought the product into conformity with the standards or regulations and shall describe the nature and extent of the work performed.

(2) *Time limitation to produce statement for which bond is obligated.* Within 180 days after entry, the importer or consignee shall deliver to both the port director and the Commandant, U.S. Coast Guard, a copy of the statement for production of which the bond was obligated. If the statement is not delivered to the director of the port of entry of the product within 180 days after the date of entry, the importer or consignee shall deliver or cause to be delivered to the port director the product that was released in accordance with this paragraph.

(3) *Damages to be assessed against bond.* In the event that any product is not redelivered within 5 days following the date required by paragraph (e)(2) of this section, liquidated damages shall be assessed in the full amount of the bond if it is a single entry bond, or if a continuous bond is used, the amount that would have been taken under a single entry bond.

(f) *Products refused entry.* If a product is denied entry under the provisions of this section, the port director shall refuse to release the product for entry into the United States and shall issue a notice of the refusal to the importer or consignee.

(g) *Disposition of products refused entry into the United States; redelivered products.* Products which are denied entry under paragraph (b) of this section, or which are redelivered in accordance with paragraph (e)(2) of this section, and which are not exported under Customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery, shall be disposed of under Customs laws and regulations. However, no such disposition shall result in an introduction into the United States of a product in violation of the Federal Boat Safety Act of 1971 (46 U.S.C. 1451–1489).

[T.D. 76–166, 41 FR 23398, June 10, 1976, as amended by T.D. 82–220, 47 FR 52138, Nov. 19, 1982; T.D. 84–213, 49 FR 41168, Oct. 19, 1984; T.D. 86–203, 51 FR 42997, Nov. 28, 1986]

ELECTRONIC PRODUCTS

§ 12.90 Definitions.

As used in §§ 12.90 and 12.91, the term ''the Act'' shall mean the Public Health Service Act (42 U.S.C. 201 *et seq.*), as amended by the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263b *et seq.*), and as further amended from time to time.

[T.D. 83–235, 48 FR 52436, Nov. 18, 1983]

§ 12.91 Electronic products offered for importation under the Act.

(a) *Standards prescribed by the Department of Health and Human Services.* Electronic products offered for importation into the customs territory of the United States are subject to standards prescribed under section 358 of the Act (42 U.S.C. 263f) unless intended solely for export. Prescribed standards shall not apply to any electronic product intended solely for export if:

(1) Such product and the outside of any shipping container used in the export of such product are labeled or tagged to show that it is intended for export, and

(2) Such product meets all the applicable requirements of the country to which it is intended for export.

(See 21 CFR, chapter I, subchapter J.)

(b) *Requirements for entry and release.* Electronic products subject to standards in effect under section 358 of the Act (42 U.S.C. 263f), when offered for importation into the customs territory of the United States, shall be refused entry unless there is filed with the entry, in duplicate, a declaration (FDA Form FD 2877) verified by the importer of record which identifies the products and affirms:

(1) That the electronic products were manufactured before the date of any applicable electronic product performance standard (the date of manufacture shall be specified); or

(2) That the electronic products comply with all standards in effect under section 358 of the Act (42 U.S.C. 263f), and chapter I, subchapter J, title 21, Code of Federal Regulations (21 CFR, chapter I, subchapter J), and that the certification required by section 360 of the Act (42 U.S.C. 263h) in the form of a label or tag is attached to the product; or

(3)(i) That the electronic products do not comply with all standards in effect under section 358 of the Act (42 U.S.C. 263f), and chapter I, subchapter J, title 21, Code of Federal Regulations (21 CFR, chapter I, subchapter J), but are being imported for the purpose of research, investigations, studied, demonstrations, or training, (ii) that the products will not be introduced into commerce and when the use for which they were imported is completed they will be destroyed or exported under Customs supervision, and (iii) that an exemption for these products has been or will be requested from the National Center for Devices and Radiological Health, Food and Drug Administration, in accordance with section 360B(b) of the Act (42 U.S.C. 263j); or

(4) That the electronic products do not comply with all standards in effect under section 358 of the Act (42 U.S.C. 263f) and chapter I, subchapter J, Code of Federal Regulations (21 CFR, chapter I, subchapter J), but that a timely and adequate petition for permission to bring the products into compliance with applicable standards has been or will be filed with the Secretary of Health and Human Services in accordance with section 360 of the Public Health Service Act, as amended, and as implemented by 21 CFR 1005.21.

(c) *Notice of sampling.* When a sampling of a product offered for importation has been requested by the Secretary of Health and Human Services, as provided for in 21 CFR 1005.10, the port director having jurisdiction over the shipment from which the sample is procured shall give to its owner or importer of record prompt notice of delivery of, or intention to deliver, the sample. If the notice so requires, the owner or importer of record shall hold the shipment of which the sample is typical and not release the shipment until notice of the results of the tests of the sample from the Secretary of Health and Human Services stating the product fulfills the requirements of the Act.

(d) *Release under bond.* If a declaration filed in accordance with paragraph (b) of this section states that the entry

is being made under circumstances described in paragraph (b)(4) of this section, the entry shall be accepted only if the owner or importer of record gives a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, for the production of a notification from the Secretary of Health and Human Services or his designee, in accordance with 21 CFR 1005.23, that the electronic product described in the declaration filed by the importer of record is in compliance with the applicable standards. The bond shall be in an amount deemed appropriate by the port director. Within 180 days after the entry of such additional period as the port director may allow for good cause shown, the importer of record shall take any action necessary to insure delivery to the port director of the notification described in this paragraph. If the notification is not delivered to the director of the port of entry of the electronic products within 180 days of the date of entry or such additional period as may be allowed by the port director, for good cause shown, the importer of record shall deliver or cause to be delivered to the port director those electronic products which were released. In the event that any electronic products are not redelivered to Customs custody or exported under Customs supervision within the period allowed by the port director in the Notice of Redelivery (Customs Form 4647), liquidated damages shall be assessed in the full amount of a bond if it is a single entry bond, or if a continuous bond is used, the amount that would have been taken under a single entry bond.

(e) *Release without bond—special exemptions.* For certain electronic products the Director, National Center for Devices and Radiological Health, has granted special exemptions from the otherwise applicable standards under the Act. Such exempted products may be imported and released without bond if they meet all the criteria of the special exemption. If a special exemption is granted after the product has been imported under bond in accordance with paragraph (d) of this section, the bond conditions pertaining to the notification of compliance from the Secretary of Health and Human Services shall be deemed to have been satisfied.

(f) *Merchandise refused entry.* If electronic products are denied entry under any provision of this section, the port director shall refuse to release the merchandise for entry into the United States.

(g) *Disposition of merchandise refused entry into the United States; redelivered merchandise.* Electronic products which are denied entry under paragraph (b) of this section, or which are redelivered in accordance with paragraph (d) of this section, and which are not exported under Customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery, shall be disposed of under Customs laws and regulations. However, no such disposition shall result in an introduction into the United States of an electronic product in violation of the Act (42 U.S.C. 263f, 263h).

[T.D. 83–235, 48 FR 52436, Nov. 18, 1983, as amended by T.D. 84–213, 49 FR 41168, Oct. 19, 1984]

SWITCHBLADE KNIVES

§ 12.95 Definitions.

Terms as used in §§ 12.96 through 12.103 of this part are defined as follows:

(a) *Switchblade knife.* ''Switchblade knife'' means any imported knife, or components thereof, or any class of imported knife, including ''switchblade'', ''Balisong'', ''butterfly'', ''gravity'' or ''ballistic'' knives, which has one or more of the following characteristics or identities:

(1) A blade which opens automatically by hand pressure applied to a button or device in the handle of the knife, or any knife with a blade which opens automatically by operation of inertia, gravity, or both;

(2) Knives which, by insignificant preliminary preparation, as described in paragraph (b) of this section, can be altered or converted so as to open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both;

(3) Unassembled knife kits or knife handles without blades which, when fully assembled with added blades,

springs, or other parts, are knives which open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both; or

(4) Knives with a detachable blade that is propelled by a spring-operated mechanism, and components thereof.

(b) *Insignificant preliminary preparation*. ''Insignificant preliminary preparation'' means preparation with the use of ordinarily available tools, instruments, devices, and materials by one having no special manual training or skill for the purpose of modifying blade heels, relieving binding parts, altering spring restraints, or making similar minor alterations which can be accomplished in a relatively short period of time.

(c) *Utilitarian use*. ''Utilitarian use'' includes but is not necessarily limited to use:

(1) For a customary household purpose;

(2) For usual personal convenience, including grooming;

(3) In the practice of a profession, trade, or commercial or employment activity;

(4) In the performance of a craft or hobby;

(5) In the course of such outdoor pursuits as hunting and fishing; and

(6) In scouting activities.

[T.D. 71–243, 36 FR 18859, Sept. 23, 1971, as amended by T.D. 90–50, 55 FR 28192, July 10, 1990]

§ 12.96 Imports unrestricted under the Act.

(a) *Common and special purpose knives*. Imported knives with a blade style designed for a primary utilitarian use, as defined in § 12.95(c), shall be admitted to unrestricted entry provided that in condition as entered the imported knife is not a switchblade knife as defined in § 12.95(a)(1). Among admissible common and special purpose knives are jackknives and similar standard pocketknives, special purpose knives, scout knives, and other knives equipped with one or more blades of such single edge nonweapon styles as clip, skinner, pruner, sheep foot, spey, coping, razor, pen, and cuticle.

(b) *Weapons with fixed blades*. Importations of certain articles having a fixed unexposed or exposed blade are not within the prohibition of 15 U.S.C. 1241 through 1245. However, upon release by Customs, possession of these admissible articles which include such weapons as sword canes, camel whips, swords, sheath knives, machetes and similar devices that may be capable of use as weapons may be in violation of State or municipal laws.

[T.D. 71–243, 36 FR 18860, Sept. 23, 1971, as amended by T.D. 90–50, 55 FR 28192, July 10, 1990]

§ 12.97 Importations contrary to law.

Importations of switchblade knives, except as permitted by 15 U.S.C. 1244, are importations contrary to law and are subject to forfeiture under 19 U.S.C. 1595a(c).

[T.D. 90–50, 55 FR 28192, July 10, 1990]

§ 12.98 Importations permitted by statutory exceptions.

The importation of switchblade knives is permitted by 15 U.S.C. 1244, when:

(a) Imported pursuant to contract with a branch of the Armed Forces of the United States;

(b) Imported by a branch of the Armed Forces of the United States or any member or employee thereof acting in the performance of his duty; or

(c) A switchblade knife, other than a ballistic knife, having a blade not exceeding 3 inches in length is in the possession of and is being transported on the person of an individual who has only one arm.

[T.D. 71–243, 36 FR 18860, Sept. 23, 1971, as amended by T.D. 90–50, 55 FR 28192, July 10, 1990]

§ 12.99 Procedures for permitted entry.

(a) *Declaration required*. The entry of switchblade knives, the importation of which is permitted under § 12.98 shall be accompanied by a declaration, in duplicate, of the importer or consignee stating the facts of the import transaction as follows:

(1) *Importation pursuant to Armed Forces contract*. (i) The names of the contracting Armed Forces branch and its supplier;

(ii) The specific contract relied upon identified by its date, number, or other contract designation; and

(iii) A description of the kind or type of knife imported, the quantity entered, and the aggregate entered value of the importation.

(2) *Importation by a branch, member, or employee of the Armed Forces.* (i) The name of the Armed Forces branch by or for the account of which entry is made or the branch of the importing member or employee acting in performance of duty; and

(ii) The description, quantity, and aggregate entered value of the importation.

(3) *Importation by a one-armed person.* A statement that the knife has a blade not exceeding 3 inches in length and is possessed by and transported on the declarant's person solely for his necessary personal convenience, accommodation, and use as a one-armed individual.

(b) *Attachments to declaration.* Details for purposes of a declaration required under paragraph (a) of this section may be furnished by reference in the declaration to attachment of the original or copy of the contract or other documentation which contains the information.

(c) *Execution of declaration.* Declarations required by paragraph (a) of this section shall be executed as follows:

(1) *Contract supplier; Armed Forces branch; member or employee.* Declarations made under paragraph (a) or (b) of § 12.98 shall affirm that facts and data furnished are declared on knowledge, information, or belief of a signing officer, partner, or authorized representative of an importing contract supplier or of a commissioned officer, contracting officer, or employee authorized to represent an Armed Forces importing branch. The signature to a declaration shall appear over the declarant's printed or typewritten name, his title or rank, and the identity of the contract supplier or Armed Forces branch he represents or in which he has membership or employment.

(2) *One-armed person.* Declarations made under paragraph (c) of § 12.98, signed by the eligible person, shall be presented upon his arrival directly to a Customs officer who shall visually confirm the facts declared. An eligible knife shall be released only to the declarant.

(d) *Verification of declared information.* The importer, consignee, or declarant of knives permitted entry under § 12.98 upon request shall furnish Customs additional documentary evidence from an Armed Forces branch or other relevant source as Customs officers may require in order to:

(1) Verify declared statements;

(2) Resolve differences pertaining to quantity, description, value, or other discrepancy disclosed by the importation, entry, or related documentation;

(3) Establish the declarant's authority to act; or

(4) Authenticate a signature.

[T.D. 71–243, 36 FR 18860, Sept. 23, 1971]

§ 12.100 Importations in good faith; common or contract carriage.

(a) *Exportation in lieu of seizure.* Upon a claim that the importer acted in good faith without knowledge of applicable laws and regulations, Customs officers may authorize detained inadmissible knives to be exported otherwise than in the mails, at no expense to the Government, under the procedures of §§ 18.25 through 18.27 of this chapter.

(b) *Common or contract carriers.* In accordance with 15 U.S.C. 1244(1), excepted from the penalties of the Act are the shipping, transporting, or delivering for shipment in interstate commerce, in the ordinary course of business of common or contract carriage, of any switchblade knife. However, imported switchblade knives as defined in § 12.95(a) so shipped or transported to a port of entry or place of Customs examination are prohibited importations subject to §§ 12.95–12.103 and disposition as therein required, authorized, or permitted.

[T.D. 71–243, 36 FR 18860, Sept. 23, 1971, as amended by T.D. 90–50, 55 FR 28192, July 10, 1990]

§ 12.101 Seizure of prohibited switchblade knives.

(a) *Importations contrary to law.* Inadmissible importations which are not exported in accordance with § 12.100(a) shall be seized under 19 U.S.C. 1595a(c).

(b) *Notice of seizure.* Notice of Customs seizure shall be sent or given to

the importer or consignee, which shall inform him of his right to file a petition under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), for remission of the forfeiture and permission to export the seized switchblade knives. (See part 171 of this chapter.)

[T.D. 71–243, 36 FR 18860, Sept. 23, 1971, as amended by T.D. 90–50, 55 FR 28192, July 10, 1990]

§ 12.102 Forfeiture.

If the importer or consignee fails to submit, within 60 days after being notified of his right to do so, a petition under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), for remission of the forfeiture and permission to export the seized importation, the seized prohibited knives shall be forfeited in accordance with applicable provisions of sections 602 through 611, Tariff Act of 1930, as amended (19 U.S.C. 1602 through 1611), and the procedures of part 162 of this chapter.

[T.D. 71–243, 36 FR 18860, Sept. 23, 1971, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978; T.D. 00–57, 65 FR 53574, Sept. 5, 2000]

§ 12.103 Report to the U.S. Attorney.

Should circumstances and facts of the import transaction show evidence of deliberate violation of 15 U.S.C. 1241 through 1245, so as to present a question of criminal liability, the evidence, accompanied by reports of investigative disclosures, findings, and recommendation, shall be transmitted to the U.S. Attorney for consideration of criminal prosecution. The port director shall hold the seized switchblade knives intact pending disposition of the case.

[T.D. 71–243, 36 FR 18860, Sept. 23, 1971, as amended by T.D. 72–81, 37 FR 5364, Mar. 15, 1972; T.D. 90–50, 55 FR 28192, July 10, 1990]

CULTURAL PROPERTY

SOURCE: Sections 12.104 through 12.104i issued by T.D. 86–52, 51 FR 6907, Feb. 27, 1986, unless otherwise noted.

§ 12.104 Definitions.

For purposes of §§ 12.104 through 12.104i:

(a) The term, *archaeological or ethnological material of the State Party* to the 1970 UNESCO Convention means—

(1) Any object of archaeological interest. No object may be considered to be an object of archaeological interest unless such subject—

(i) Is of cultural significance;

(ii) Is at least 250 years old; and

(iii) Was normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or under water; or in addition to paragraphs (a)(1) (i) and (ii) of this section;

(iv) Meets such standards as are generally acceptable as archaeological such as, but not limited to, artifacts, buildings, parts of buildings, or decorative elements, without regard to whether the particular objects are discovered by exploration or excavation;

(2) Any object of ethnological interest. No object may be considered to be an object of ethnological interest unless such object—

(i) Is the product of a tribal or nonindustrial society, and

(ii) Is important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development or history of that people;

(3) Any fragment or part of any object referred to in paragraph (a) (1) or (2) of this section which was first discovered within, and is subject to export control by the State Party.

(b) The term *Convention* means the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property adopted by the General Conference of the United Nations Educational, Scientific, and Cultural Organization at its sixteenth session (823 U.N.T.S. 231 (1972)).

(c) The term *cultural property* includes articles described in Article 1 (a) through (k) of the Convention, whether or not any such article is specifically designated by any State Party for the purposes of Article 1. Article 1 lists the following categories:

(1) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;

(2) Property relating to history, including the history of science and technology and military and social history,

to the life of national leaders, thinkers, scientists and artists and to events of national importance;

(3) Products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;

(4) Elements of artistic or historical monuments or archaeological sites which have been dismembered;

(5) Antiquities more than 100 years old, such as inscriptions, coins and engraved seals;

(6) Objects of ethnological interest;

(7) Property of artistic interest, such as:

(i) Pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);

(ii) Original works of statuary art and sculpture in any material;

(iii) Original engravings, prints and lithographs;

(iv) Original artistic assemblages and montages in any material;

(8) Rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;

(9) Postage, revenue and similar stamps, singly or in collections;

(10) Archives, including sound, photographic and cinematographic archives;

(11) Articles of furniture more than 100 years old and old musical instruments.

(d) The term *designated archaeological or ethnological material* means any archaeological or ethnological material of the State Party which—

(1) Is—

(i) Covered by an agreement under 19 U.S.C. 2602 that enters into force with respect to the U.S., or

(ii) Subject to emergency action under 19 U.S.C. 2603 and

(2) Is listed by regulation under 19 U.S.C. 2604.

(e) The term *museum* means a public or private nonprofit agency or institution organized on a permanent basis for essentially educational or esthetic purposes, which, utilizing a professional staff, owns or utilizes tangible objects, cares for them, and exhibits them to the public on a regular basis (Museum Services Act; Pub. L. 94–462; 20 U.S.C. 968). For the purposes of these regulations, the term *recognized museum* under the Cultural Property Implementation Act shall be synonymous with *museum*.

(f) The term *Secretary* means the Secretary of the Treasury or his delegate, the Commissioner of Customs.

(g) The term *State Party* means any nation which has ratified, accepted, or acceded to the 1970 UNESCO Convention.

(h) The term *United States* or *U.S.*, includes the customs territory of the United States, the U.S. Virgin Islands and any territory or area the foreign relations for which the U.S. is responsible.

[T.D. 86–52, 51 FR 6907, Feb. 27, 1986; 51 FR 15316, Apr. 23, 1986; 51 FR 17332, May 12, 1986]

§ 12.104a Importations prohibited.

(a) No article of cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any State Party which was stolen from such museum, monument, or institution after April 12, 1983, or after the date of entry into force of the Convention for the State Party, whichever date is later, may be imported into the U.S.

(b) No archaeological or ethnological material designated pursuant to 19 U.S.C. 2604 and listed in § 12.104g, that is exported (whether or not such exportation is to the U.S.) from the State Party after the designation of such material under 19 U.S.C. 2604 may be imported into the U.S. unless the State Party issues a certificate or other documentation which certifies that such exportation was not in violation of the laws of the State Party.

§ 12.104b State Parties to the Convention.

(a) The following is a list of State Parties which have deposited an instrument of ratification, acceptance, accession or succession, the date of such deposit and the date of entry into force for each State Party:

State party	Date of deposit	Date of entry into force
Algeria	June 24, 1974 (R)	Sept. 24, 1974.
Angola	Nov. 7, 1991 (R)	Feb. 7, 1992.
Argentina	Jan. 11, 1973 (R)	Apr. 11, 1973.
Armenia, Republic of	Sept. 5, 1993 (S)	See Note 1.
Australia	Oct. 30, 1989 (Ac)	Jan. 30, 1990.
Bangladesh	Dec. 9, 1987 (R)	Mar. 9, 1988.
Belarus	Apr. 28, 1988 (R)	July 28, 1988.
Belize	Jan. 26, 1990 (R)	Apr. 26, 1990.
Bolivia	Oct. 4, 1976 (R)	Jan. 4, 1977.
Bosnia-Herzegovina	July 12, 1993 (S)	See Note 2.
Brazil	Feb. 16, 1973 (R)	May 16, 1973.
Bulgaria	Sept. 15, 1971 (R)	Apr. 24, 1972.
Burkina Faso	Apr. 7, 1987 (R)	July 7, 1987.
Cambodia	Sept. 26, 1972 (R)	Dec. 26, 1972.
Cameroon	May 24, 1972 (R)	Aug. 24, 1972.
Canada	Mar. 28, 1978 (Ac)	June 28, 1978.
Central African Republic	Feb. 1, 1972 (R)	May 1, 1972.
China, People's Republic of	Nov. 28, 1989 (Ac)	Feb. 28, 1990.
Columbia	May 24, 1988 (Ac)	Aug. 24, 1988.
Cote d'Ivoire	Oct. 30, 1990 (R)	Jan. 30, 1991.
Croatia	July 6, 1992 (S)	See Note 2.
Cuba	Jan. 30, 1980 (R)	Apr. 30, 1980.
Cyprus	Oct. 19, 1979 (R)	Jan. 19, 1980.
Czech Republic	Mar. 26, 1993 (S)	See Note 4.
Dominican Republic	Mar. 7, 1973 (R)	June 7, 1973.
Ecuador	Mar. 24, 1971 (Ac)	Apr. 24, 1972.
Egypt	Apr. 5, 1973 (Ac)	July 5, 1973.
El Salvador	Feb. 20, 1978 (R)	May 20, 1978.
Georgia, Republic of	Nov. 4, 1992 (S)	See Note 1.
Greece	June 5, 1981 (R)	Sept. 5, 1981.
Grenada	Sept. 10, 1992 (Ac)	Dec. 10, 1992.
Guatemala	Jan. 14, 1985 (R)	Apr. 14, 1985.
Guinea	Mar. 18, 1979 (R)	June 18, 1979.
Honduras	Mar. 19, 1979 (R)	June 19, 1979.
Hungary	Oct. 23, 1978 (R)	Jan. 23, 1979.
India	Jan. 24, 1977 (R)	Apr. 24, 1977.
Iran	Jan. 27, 1975 (Ac)	Apr. 27, 1975.
Iraq	Feb. 12, 1973 (Ac)	May 12, 1973.
Italy	Oct. 2, 1978 (R)	Jan. 2, 1979.
Jordan	Mar. 15, 1974 (R)	June 15, 1974.
Korea, Democratic People's Republic of	May 13, 1983 (R)	Aug. 13, 1983.
Korea, Republic of	Feb. 14, 1983 (Ac)	May 14, 1983.
Kuwait	June 22, 1972 (Ac)	Sept. 22, 1972.
Lebanon	Aug. 25, 1992 (R)	Nov. 25, 1992.
Libya	Jan. 9, 1973 (R)	Apr. 9, 1973.
Madagascar	June 21, 1989 (R)	Sept. 21, 1989.
Mali	Apr. 6, 1987 (R)	July 6, 1987.
Mauritania	Apr. 27, 1977 (R)	July 27, 1977
Mauritius	Feb. 27, 1978 (Ac)	May 27, 1978.
Mexico	Oct. 4, 1972 (Ac)	Jan. 4, 1973.
Mongolia	June 23, 1991 (Ac)	Aug. 23, 1991.
Nepal	June 23, 1976 (R)	Sept. 23, 1976.
Nicaragua	Apr. 19, 1977 (R)	July 19, 1977.
Niger	Oct. 16, 1972 (R)	Jan. 16, 1973.
Nigeria	Jan. 24, 1972 (R)	Apr. 24, 1972.
Oman	June 2, 1978 (Ac)	Sept. 2, 1978.
Pakistan	Apr. 30, 1978 (R)	July 30, 1981.
Panama	Aug. 13, 1973 (Ac)	Nov. 13, 1973.
Peru	Oct. 24, 1979 (Ac)	Jan. 24, 1980.
Poland	Jan. 31, 1974 (R)	Apr. 30, 1974.
Portugal	Dec. 9, 1985 (R)	Mar. 9, 1986.
Qatar	Apr. 20, 1977 (Ac)	July 20, 1977.
Romania	Dec. 6, 1993 (R)	Mar. 6, 1994.
Russian Federation	Apr. 28, 1988 (R)	See Note 3.
Saudi Arabia	Sept. 8, 1976 (Ac)	Dec. 8, 1976.
Senegal	Dec. 9, 1984 (R)	Mar. 9, 1985.
Slovak Republic	Mar. 31, 1993 (S)	See Note 4.
Slovenia, Republic of	Oct. 10, 1992 (S)	See Note 2.
Spain	Jan. 10, 1986 (R)	Apr. 10, 1986.
Sri Lanka	Apr. 7, 1981 (Ac)	July 7, 1981.
Syria	Feb. 21, 1975 (Ac)	May 21, 1975.
Tadjikistan, Republic of	Aug. 11, 1992 (S)	See Note 1.
Tanzania	Aug. 2, 1977 (R)	Nov. 2, 1977.
Tunisia	Mar. 10, 1975 (R)	June 10, 1975.

State party	Date of deposit	Date of entry into force
Turkey	Apr. 21, 1981 (R)	July 21, 1981.
Ukraine	Apr. 28, 1988 (R)	July 28, 1988.
United States of America	Sept. 2, 1983 (Ac)	Dec. 2, 1983.
Uruguay	Aug. 9, 1977 (R)	Nov. 9, 1977.
Yugoslavia	Oct. 3, 1972 (R)	Jan. 3, 1973.
Zaire	Sept. 23, 1974 (R)	Dec. 23, 1974.
Zambia	June 21, 1985 (R)	Sept. 21, 1985.

Code for reading second column: Ratification (R); Acceptance (Ac); Accession (A); Succession (S).

Notes:

1. The Republic of Armenia, the Republic of Georgia, and the Republic of Tadjikistan each deposited a notification of succession in which each declared itself bound by the Convention as ratified by the USSR on April 28, 1988 and which entered into force on July 28, 1988.
2. Bosnia-Herzegovina, Croatia and the Republic of Slovenia each deposited notification of succession in which each declared itself bound by the Convention as ratified by Yugoslavia on Oct. 3, 1972 and entered into force on January 3, 1973.
3. The Government of the Russian Federation informed the Director General of UNESCO that the Russian Federation continues without interruption the participation of the USSR in all UNESCO Conventions. The instrument of ratification was deposited by the former USSR on April 28, 1988. and entered into force on July 28, 1988.
4. The Czech Republic and the Slovak Republic each deposited a notification of succession in which each declared itself bound by the Convention as accepted by Czechoslovakia on Feb. 14, 1977 and which entered into force on May 14, 1977.

(b) Additions to and deletions from the list of State Parties will be accomplished by FEDERAL REGISTER notice, from time to time, as the necessity arises.

[T.D. 86–52, 51 FR 6907, Feb. 27, 1986, as amended by T.D. 88–59, 53 FR 38287, Sept. 30, 1988; T.D. 90–13, 55 FR 4996, Feb. 13, 1990; T.D. 95–71, 60 FR 47467, Sept. 13, 1995]

§ 12.104c Importations permitted.

Designated archaeological or ethnological material for which entry is sought into the U.S., will be permitted entry if at the time of making entry:

(a) A certificate, or other documentation, issued by the Government of the country of origin of such material in a form acceptable to the Secretary is filed with the port director, such form being, but not limited to, an affidavit, license, or permit from an appropriate, authorized State Party official under seal, certifying that such exportation was not in violation of the laws of that country, or

(b) Satisfactory evidence is presented to the port director that such designated material was exported from the State Party not less than 10 years before the date of such entry and that neither the person for whose account the material is imported (or any related person) contracted for or acquired an interest, directly or indirectly, in such material more than 1 year before that date of entry, or

(c) Satisfactory evidence is presented to the port director that such designated material was exported from the State Party on or before the date on which such material was designated under 19 U.S.C. 2604.

(d) The term ''satisfactory evidence'' means—

(1) For purposes of paragraph (b) of this section—

(i) One or more declarations under oath by the importer, or the person for whose account the material is imported, stating that, to the best of his knowledge—

(A) The material was exported from the State Party not less than 10 years before the date of entry into the U.S., and

(B) Neither such importer or person (or any related person) contracted for or acquired an interest, directly or indirectly, in such material more than 1 year before the date of entry of the material; and

(ii) A statement provided by the consignor, or person who sold the material to the importer, which states the date, or, if not known, his belief, that the material was exported from the State Party not less than 10 years before the date of entry into the U.S. and the reasons on which the statement is based; and

(2) For purposes of paragraph (c) of this section—

(i) One or more declarations under oath by the importer or the person for whose account the material is to be imported, stating that, to the best of his knowledge, the material was exported from the State Party on or before the date such material was designated under 19 U.S.C. 2604, and

(ii) A statement by the consignor or person who sold the material to the importer which states the date, or if not known, his belief, that the material was exported from the State Party on or before the date such material was designated under 19 U.S.C. 2604, and the reasons on which the statement is based.

(e) *Related persons.* For purposes of paragraphs (b) and (d) of this section, a person shall be treated as a related person to an importer, or to a person for whose account material is imported, if such person—

(1) Is a member of the same family as the importer or person of account, including, but not limited to, membership as a brother or sister (whether by whole or half blood), spouse, ancestor, or lineal descendant;

(2) Is a partner or associate with the importer or person of account in any partnership, association, or other venture; or

(3) Is a corporation or other legal entity in which the importer or person of account directly or indirectly owns, controls, or holds power to vote 20 percent or more of the outstanding voting stock or shares in the entity.

§ 12.104d Detention of articles; time in which to comply.

In the event an importer cannot produce the certificate, documentation, or evidence required in § 12.104c at the time of making entry, the port director shall take the designated archaeological or ethnological material into Customs custody and send it to a bonded warehouse or public store to be held at the risk and expense of the consignee until the certificate, documentation, or evidence is presented to such officer. The certificate, documentation, or evidence must be presented within 90 days after the date on which the material is taken into Customs custody, or such longer period as may be allowed by the port director for good cause shown.

§ 12.104e Seizure and forfeiture.

(a) Whenever any designated archaeological or ethnological material is imported into the U.S. in violation of 19 U.S.C. 2606, and the importer states in writing that he will not attempt to secure the certificate, documentation, or evidence required by § 12.104c, or such certificate, documentation, or evidence is not presented to the port director before the expiration of the time provided in § 12.104d, the material shall be seized and summarily forfeited to the U.S. in accordance with part 162 of this chapter.

(1) Any designated archaeological or ethnological material which is forfeited to the U.S. shall, in accordance with the provisions of Title III of Pub. L. 97–446, 19 U.S.C. 2609(b):

(i) First be offered for return to the State Party;

(ii) If not returned to the State Party be returned to a claimant with respect to whom the designated material was forfeited if that claimant establishes—

(A) Valid title to the material;

(B) That the claimant is a bona fide purchaser for value of the material; or

(iii) If not returned to the State Party under paragraph (a)(1)(i) of this section or to a claimant under paragraph (a)(1)(ii) of this section, be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws. No return of material may be made under paragraph (a)(1) (i) or (ii) of this section unless the State Party or claimant, as the case may be, bears the expenses incurred incident to the return and delivery, and complies with such other requirements relating to the return as the Secretary shall prescribe.

(b) Whenever any stolen article of cultural property is imported into the U.S. in violation of 19 U.S.C. 2607, such cultural property shall be seized and forfeited to the U.S. in accordance with part 162 of this chapter.

(1) Any stolen article of cultural property which is forfeited to the U.S. shall, in accordance with the provisions of Title III of Pub. L. 97–446, 2609(c):

(i) First be offered for return to the State Party in whose territory is situated the institution referred to in 19 U.S.C. 2607 and shall be returned if that State Party bears the expenses incident to such return and delivery and complies with such other requirements relating to the return as the Secretary prescribes; or

(ii) If not returned to such State Party, be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws.

§ 12.104f Temporary disposition of materials and articles.

Pending a final determination as to whether any archaeological or ethnological material, or any article of cultural property, has been imported into the U.S. in violation of 19 U.S.C. 2606 or 19 U.S.C. 2607, the Secretary may permit such material or article to be retained at a museum or other cultural or scientific institution in the U.S. if he finds that sufficient safeguards will be taken by the museum or institution for the protection of such material or article; and sufficient bond is posted by the museum or institution to ensure its return to the Secretary.

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) The following is a list of agreements imposing import restrictions on the described articles of cultural property of State Parties. The listed Treasury Decision contains the Designated Listing with a complete description of specific items or categories of archaeological or ethnological material designated by the agreement as coming under the protection of the Convention on Cultural Property Implementation Act. Import restrictions listed below shall be effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period may be extended for additional periods of not more than five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists. Any such extension is indicated in the listing.

State party	Cultural Property	Decision No.
Bolivia	Archaeological and Ethnological Material from Bolivia	T.D. 01–86
Cambodia	Khmer Archaeological Material from the 6th century through the 16th century A.D.	CBP Dec. 03–28
Canada	Archaeological artifacts and ethnological material culture of Canadian origin.	T.D. 97–31
Cyprus	Archaeological Material of pre-Classical and Classical periods ranging approximately from the 8th millennium B.C. to 330 A.D..	T.D. 02–37
El Salvador	Archaeological material representing Prehispanic cultures of El Salvador.	T.D. 95–20 extended by CBP Dec. 05–10
Guatemala	Archaeological material from sites in the Peten Lowlands of Guatemala, and related Pre-Columbian material from the Highlands and the Southern Coast of Guatemala.	T.D. 97–81 extended by T.D. 02–56
Honduras	Archaeological Material of Pre-Colombian cultures ranging approximately from 1200 B.C. to 1500 A.D.	CBP Dec. 04–08
Italy	Archaeological Material of pre-Classical, Classical, and Imperial Roman periods ranging approximately from the 9th century B.C. to the 4th century A.D..	T.D. 01–06
Mali	Archaeological material from the Niger River Valley Region, Mali, and the Bandiagara Escarpment (Cliff) forming part of the remains of the sub-Sahara culture.	T.D. 97–80 extended by T.D. 02–55
Nicaragua	Archaeological material of pre-Columbian cultures ranging approximately from 8000 B.C. to 1500 A.D.	T.D. 00–75
Peru	Archaeological artifacts and ethnological material from Peru	T.D. 97–50 extended by T.D. 02–30

(b) The following is a list of emergency actions imposing import restrictions on the described articles of cultural property of State Parties. The listed decision contains a complete description of specific items or categories of archaeological or ethnological material designated by the emergency actions as coming under the protection of the Convention on Cultural Property Implementation Act. Import restrictions listed below shall be effective for no more than five years from the date on which the State Party requested those restrictions. This period may be extended for three more years if it is

determined that the emergency condition continues to apply with respect to the archaeological or ethnological material. Any such extension is indicated in the listing.

State party	Cultural property	Decision No.
Cyprus	Byzantine ecclesiastical and ritual ethnological materials from Cyprus.	T.D. 99–35 extended by CBP Dec. 03–25

[T.D. 86–52, 51 FR 6907, Feb. 27, 1986, as amended by T.D. 90–3, 55 FR 1810, Jan. 19, 1990; T.D. 90–37, 55 FR 19030, May 7, 1990; T.D. 91–34, 56 FR 15182, Apr. 15, 1991; T.D. 92–28, 57 FR 9975, Mar. 23, 1992; T.D. 93–34, 58 FR 29349, May 20, 1993; T.D. 93–74, 58 FR 49430, Sept. 23, 1993; T.D. 94–54, 59 FR 32903, June 27, 1994; T.D. 94–84, 59 FR 54818, Nov. 2, 1994; T.D. 95–20, 60 FR 13360, 13361, Mar. 10, 1995; T.D. 97–31, 62 FR 19492, Apr. 22, 1997; T.D. 97–50, 62 FR 31721, June 11, 1997; T.D. 97–80, 62 FR 49596, Sept. 23, 1997; T.D. 97–81, 62 FR 51774, Oct. 3, 1997; T.D. 99–35, 64 FR 17531, Apr. 12, 1999; T.D. 99–88, 64 FR 67481, Dec. 2, 1999; T.D. 00–16, 65 FR 12470, Mar. 9, 2000; T.D. 00–75, 65 FR 64142, Oct. 26, 2000; T.D. 01–06, 66 FR 7401, Jan. 23, 2001; T.D. 01–86, 66 FR 63499, Dec. 7, 2001; 67 FR 953, Jan. 8, 2002; T.D. 02–30, 67 FR 38878, June 6, 2002; T.D. 02–37, 67 FR 47449, July 19, 2002; T.D. 02–55, 67 FR 59160, Sept. 20, 2002; T.D. 02–56, 67 FR 61260, Sept. 30, 2002; CBP Dec. 03–25, 68 FR 51904, Aug. 29, 2003; CBP Dec. 03–28, 68 FR 55004, Sept. 22, 2003; 68 FR 58371, Oct. 9, 2003; CBP Dec. 04–08, 69 FR 12270, Mar. 16, 2004; CBP Dec. 05–10, 70 FR 11540, Mar. 9, 2005]

§ 12.104h Exempt materials and articles.

The provisions of these regulations shall not apply to—

(a) Any archaeological or ethnological material or any article of cultural property which is imported into the U.S. for temporary exhibition or display, if such material or article is rendered immune from seizure under judicial process by the U.S. Information Agency, Office of the General Counsel and Congressional Liaison, pursuant to the Act entitled ''An Act to render immune from seizure under judicial process certain objects of cultural significance imported into the United States for temporary display or exhibition, and for other purposes'', approved October 19, 1965 (22 U.S.C. 2459); or

(b) Any designated archaeological or ethnological material or any article of cultural property imported into the U.S. if such material or article—

(1) Has been held in the U.S. for a period of not less than 3 consecutive years by a recognized museum or religious or secular monument or similar institution, and was purchased by that institution for value, in good faith, and without notice that such material or article was imported in violation of these regulations, but only if—

(i) The acquisition of such material or article has been reported in a publication of such institution, any regularly published newspaper or periodical with a circulation of at least 50,000, or a periodical or exhibition catalog which is concerned with the type of article or materials sought to be exempted from these regulations,

(ii) Such material or article has been exhibited to the public for a period or periods aggregating at least 1 year during such 3-year period, or

(iii) Such article or material has been cataloged and the catalog material made available upon request to the public for at least 2 years during such 3-year period;

(2) If paragraph (b)(1) of this section does not apply, has been within the U.S. for a period of not less than 10 consecutive years and has been exhibited for not less than 5 years during such period in a recognized museum or religious or secular monument or similar institution in the U.S. open to the public;

(3) If paragraphs (b) (1) and (2) of this section do not apply, has been within the U.S. for a period of not less than 10 consecutive years and the State Party concerned has received or should have received during such period fair notice (through such adequate and accessible publication, or other means, as the Secretary or his designee shall prescribe) of its location within the U.S.; and

(4) If none of the preceding subparagraphs apply, has been within the U.S.

for a period of not less than 20 consecutive years and the claimant establishes that it purchased the material or article for value without knowledge or reason to believe that it was imported in violation of law.

§ 12.104i Enforcement.

In the customs territory of the United States, and in the U.S. Virgin Islands, the provisions of these regulations shall be enforced by appropriate customs officers. In any other territory or area within the U.S., but not within such customs territory or the U.S. Virgin Islands, such provisions shall be enforced by such persons as may be designated by the President.

PRE-COLUMBIAN MONUMENTAL AND ARCHITECTURAL SCULPTURE AND MURALS

§ 12.105 Definitions.

For purposes of §§12.106 through 12.109:

(a) The term *pre-Columbian monumental or architectural sculpture or mural* means any stone carving or wall art listed in paragraph (b) of this section which is the product of a pre-Columbian Indian culture of Belize, Bolivia, Columbia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Peru, or Venezuela.

(b) The term *stone carving or wall art* includes:

(1) Such stone monuments as altars and altar bases, archways, ball court markers, basins, calendars, and calendrical markers, columns, monoliths, obelisks, statues, stelae, sarcophagi, thrones, zoomorphs;

(2) Such architectural structures as aqueducts, ball courts, buildings, bridges, causeways, courts, doorways (including lintels and jambs), forts, observatories, plazas, platforms, facades, reservoirs, retaining walls, roadways, shrines, temples, tombs, walls, walkways, wells;

(3) Architectural masks, decorated capstones, decorative beams of wood, frescoes, friezes, glyphs, graffiti, mosaics, moldings, or any other carving or decoration which had been part of or affixed to any monument or architectural structure, including cave paintings or designs;

(4) Any fragment or part of any stone carving or wall art listed in the preceding subparagraphs.

(c) The term *country of origin*, as applied to any pre-Columbian monumental or architectural sculpture or mural, means the country where the sculpture or mural was first discovered.

[T.D. 73–119, 38 FR 10807, May 2, 1973, as amended by T.D. 73–151, 38 FR 14677, June 4, 1973; T.D. 73–165, 38 FR 16044, June 20, 1973; 42 FR 42684, Aug. 24, 1977; T.D. 82–145, 47 FR 35477, Aug. 16, 1982]

§ 12.106 Importation prohibited.

Except as provided in section 12.107, no pre-Columbian monumental or architectural sculpture or mural which is exported (whether or not such exportation is to the United States) from its country of origin after June 1, 1973, may be imported into the United States.

[T.D. 78–273, 43 FR 36055, Aug. 15, 1978]

§ 12.107 Importations permitted.

Pre-Columbian monumental or architectural sculpture or mural for which entry is sought into the Customs territory of the United States will be permitted entry if at the time of making entry:

(a) A certificate, issued by the Government of the country of origin of such sculpture or mural, in a form acceptable to the Secretary, certifying that such exportation was not in violation of the laws of that country, is filed with the port director; or

(b) Satisfactory evidence is presented to the port director that such sculpture or mural was exported from the country of origin on or before June 1, 1973; or

(c) Satisfactory evidence is presented to the port director that such sculpture or mural is not an article listed in §12.105.

[T.D. 73–119, 38 FR 10807, May 2, 1973, as amended by T.D. 82–145, 47 FR 35477, Aug. 16, 1982]

§ 12.108 Detention of articles; time in which to comply.

If the importer cannot produce the certificate or evidence required in § 12.107 at the time of making entry, the port director shall take the sculpture or mural into Customs custody and send it to a bonded warehouse or public store to be held at the risk and expense of the consignee until the certificate or evidence is presented to such officer. The certificate or evidence must be presented within 90 days after the date on which the sculpture or mural is taken into Customs custody, or such longer period as may be allowed by the port director for good cause shown.

[T.D. 73–119, 38 FR 10807, May 2, 1973]

§ 12.109 Seizure and forfeiture.

(a) Whenever any pre-Columbian monumental or architectural sculpture or mural listed in § 12.105 is detained in accordance with § 12.108 and the importer states in writing that he will not attempt to secure the certificate or evidence required, or such certificate or evidence is not presented to the port director prior to the expiration of the time provided in § 12.108, the sculpture or mural shall be seized and summarily forfeited to the United States in accordance with part 162 of this chapter.

(b) Any pre-Columbian monumental or architectural sculpture or mural which is forfeited to the United States shall in accordance with the provisions of Title II of Pub. L. 92–587, 19 U.S.C. 2093(b):

(1) First be offered for return to the country of origin, and shall be returned if that country presents a request in writing for the return of the article and agrees to bear all expenses incurred incident to such return; or

(2) If not returned to the country of origin, be disposed of in accordance with law, pursuant to the provisions of section 609, Tariff Act of 1930, as amended (19 U.S.C. 1609), and § 162.46 of this chapter.

[T.D. 73–119, 38 FR 10807, May 2, 1973, as amended by T.D. 82–145, 47 FR 35477, Aug. 16, 1982]

PESTICIDES AND DEVICES

§ 12.110 Definitions.

Except as otherwise provided below, the terms used in §§ 12.111 through 12.117 shall have the meanings set forth for those terms in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*), hereinafter referred to as ''the Act.'' The term *Administrator* shall mean the Administrator of the Environmental Protection Agency.

[T.D. 75–194, 40 FR 32321, Aug. 1, 1975]

§ 12.111 Registration.

All imported pesticides are required to be registered under the provisions of section 3 of the Act, and under the regulations (40 CFR 162.10) promulgated thereunder by the Administrator before being permitted entry into the United States. Devices, although not required to be registered, must not bear any statement, design, or graphic representation that is false or misleading in any particular.

[T.D. 75–194, 40 FR 32321, Aug. 1, 1975]

§ 12.112 Notice of arrival of pesticides and devices.

(a) *General.* An importer desiring to import pesticides or devices into the United States shall submit to the Administrator a Notice of Arrival of Pesticides and Devices (Environmental Protection Agency Form 3540–1), hereinafter referred to as a Notice of Arrival, prior to the arrival of the shipment in the United States. The Administrator shall complete the Notice of Arrival, indicating the disposition to be made of the shipment of pesticides or devices upon its arrival in the United States, and shall return the completed Notice of Arrival to the importer or his agent.

(b) *Chemicals imported for use other than as pesticides.* Chemicals which can be used as pesticides but which are not imported for such use and are not shown on the Abbreviated List of Pesticides compiled by the Environmental Protection Agency, may be entered without the submission of the Notice of Arrival.

[T.D. 75–194, 40 FR 32321, Aug. 1, 1975]

§ 12.113 Arrival of shipment.

(a) *Notice of arrival presented.* Upon the arrival of a shipment of pesticides or devices, the importer or his agent shall present to the director of the port of entry the Notice of Arrival completed by the Administrator and indicating the Customs action to be taken with respect to the shipment. The port director shall compare entry documents for the shipment of pesticides or devices with the Notice of Arrival and notify the Administrator of any discrepancies.

(b) *Notice of arrival not presented.* When a shipment of pesticides or devices arrives in the United States without the presentation by the importer or his agent of the Notice of Arrival completed by the Administrator, the shipment shall be detained by the director of the importer's risk and expense until the completed Notice of Arrival is presented or until other disposition is ordered by the Administrator, but not to exceed a period of 30 days, or such extended period, not in excess of 30 additional days, as the port director for good cause may specially authorize. An application of the importer or his agent requesting an extension of the initial 30-day period shall be filed with the director of the port of entry.

(c) *Disposition of pesticides or devices remaining under detention.* A shipment that remains detained or undisposed of due to failure of presentment of a completed Notice of Arrival or nonreceipt of an order of the Administrator as to its disposition shall be treated as a prohibited importation. The port director shall cause the destruction of any such shipment not exported by the consignee within 90 days after the expiration of the detention period specified or authorized pursuant to § 12.113(b).

[T.D. 75–194, 40 FR 32322, Aug. 1, 1975]

§ 12.114 Release or refusal of delivery.

If the completed Notice of Arrival directs the port director to release the shipment of pesticides or devices, the shipment shall be released to the consignee. If the completed Notice of Arrival directs the port director to refuse delivery of the shipment, the shipment shall be refused delivery and treated as a prohibited importation. The port director shall cause the destruction of any shipment refused delivery and not exported by the consignee within 90 days after notice of such refusal of delivery.

[T.D. 75–194, 40 FR 32322, Aug. 1, 1975]

§ 12.115 Release under bond.

If the completed Notice of Arrival so directs, a shipment of pesticides or devices shall be detained at the importer's expense by the port director pending an examination by the Administrator to determine whether the shipment complies with the requirements of the Act. However, a shipment detained for examination may be released to the consignee prior to a determination by the Administrator provided a bond is furnished on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, for the return of the merchandise to Customs custody. The bond shall be in an amount deemed appropriate by the port director. When a shipment of pesticides or devices is released to the consignee under bond, the shipment shall not be used or otherwise disposed of until the determination is made by the Administrator.

[T.D. 75–194, 40 FR 32322, Aug. 1, 1975, as amended by T.D. 84–213, 49 FR 41168, Oct. 19, 1984]

§ 12.116 Samples.

Upon the request of the Administrator, either on the completed Notice of Arrival or otherwise, the port director shall deliver to the Administrator samples of the imported pesticides or devices, together with all accompanying labels, circulars, and advertising matter pertaining to such merchandise. The port director shall notify the consignee, in writing, that the samples of imported pesticides or devices, together with all accompanying labels, circulars, and advertising matter pertaining to such merchandise have been delivered to the Administrator.

[T.D. 75–194, 40 FR 32322, Aug. 1, 1975]

§ 12.117 Procedure after examination.

(a) *Merchandise complying with the Act.* If, upon examination or analysis of

a sample from a shipment of pesticides or devices, the sample is found to be in compliance with the Act, the Administrator shall notify the port director that the shipment may be released to the consignee.

(b) *Merchandise not complying with the Act*. If, upon examination or analysis of a sample from a shipment of pesticides or devices, the sample is found to be in violation of the Act, the consignee shall be notified promptly by the Administrator of the nature of the violation and be given a reasonable time, not to exceed 20 days, to submit written material or, at his option, to appear before the Administrator and introduce testimony, to show cause why the shipment should not be destroyed or refused entry. If, after consideration of all the evidence presented, it is still the opinion of the Administrator that the merchandise is in violation of the Act, the Administrator shall notify the port director of this opinion and the port director shall either (1) refuse delivery to the consignee, or (2) if the shipment has been released to the consignee under bond, demand redelivery of the shipment under the terms of the bond. If the merchandise is not redelivered within 30 days after the date of demand by the port director, the port director shall issue a demand for liquidated damages in the full amount of the bond if it is a single entry bond, or if a continuous bond is used, the amount that would have been taken under a single entry bond. The port director shall cause the destruction of any merchandise refused delivery to the consignee, or redelivered by the consignee pursuant to a demand therefor, and not exported by the consignee within 90 days after notice of such refusal of delivery or within 90 days after such redelivery, as applicable.

[T.D. 75–194, 40 FR 32322, Aug. 1, 1975, as amended by T.D. 84–213, 49 FR 41168, Oct. 19, 1984]

CHEMICAL SUBSTANCES IN BULK AND AS PART OF MIXTURES AND ARTICLES

SOURCE: Sections 12.118 through 12.127 issued by T.D. 83–158, 48 FR 34739, Aug. 1, 1983, unless otherwise noted.

§ 12.118 Toxic Substances Control Act.

The importation into the customs territory of the United States of a chemical substance in bulk or as part of a mixture, or article *containing a chemical substance or mixture*, is governed by the Toxic Substances Control Act (''TSCA'') (15 U.S.C. 2601 *et seq.*), and by regulations issued under the authority of section 13(b), TSCA (15 U.S.C. 2612(b)) by the Secretary of the Treasury in consultation with the Administrator, Environmental Protection Agency (''EPA'').

§ 12.119 Scope.

Sections 12.120 through 12.127 apply to the importation into the customs territory of the United States of chemical substances in bulk and as part of mixtures under TSCA. Sections 12.120 through 12.127 also apply to articles containing a chemical substance or mixture if so required by the Administrator by specific rule under TSCA.

§ 12.120 Definitions.

Except as otherwise provided below, the terms used in §§12.121 through 12.127 have the meanings set forth for those terms in TSCA.

(a) *Article*—(1) *Article* means a manufactured item which:

(i) Is formed to a specific shape or design during manufacture,

(ii) Has end use functions dependent in whole or in part upon its shape or design during the end use, and

(iii) Has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article and that may occur as described in §12.120(a)(2); except that fluids and particles are not considered articles regardless of shape or design.

(2) The allowable changes of composition, referred to in §12.120(a)(1), are those which result from a chemical reaction that occurs upon the end use of other chemical substances, mixtures, or articles such as adhesives, paints, miscellaneous cleaners or other household products, fuels and fuel additives, water softening and treatment agents, photographic films, batteries, matches, and safety flares in which the chemical substance manufactured upon end use

of the article is not itself manufactured for distribution in commerce or for use as an intermediate.

(b) *Chemical substance in bulk form* means a chemical substance (other than as part of a mixture or article) in containers used for purposes of transportation or containment, provided that the chemical substance is intended to be removed from the container and has an end use or commercial purpose separate from the container.

§ 12.121 Reporting requirements.

(a) *Chemical substances in bulk or mixtures*—(1) *Certification required.* The importer of a chemical substance imported in bulk or as part of a mixture, or the authorized agent of such an importer, must certify either that the chemical shipment is subject to TSCA and complies with all applicable rules and orders thereunder, or that the chemical shipment is not subject to TSCA, by signing and filing with Customs one of the following statements:

I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order thereunder.

I certify that all chemical substances in this shipment are not subject to TSCA.

(2) *Filing of certification*—(i) *General.* The appropriate certification required under paragraph (a)(1) of this section must be filed with the director of the port of entry before release of the shipment and, except when a blanket certification is on file as provided for in paragraph (a)(2)(ii) of this section, must appear as a typed or stamped statement:

(A) On an appropriate entry document or commercial invoice or on an attachment to that entry document or invoice; or

(B) In the event of release under a special permit for an immediate delivery as provided for in § 142.21 of this chapter or in the case of an entry as provided for in § 142.3 of this chapter, on the commercial invoice or on an attachment to that invoice.

(ii) *Blanket certifications.* A port director may, in his discretion, approve an importer's use of a ''blanket'' certification, in lieu of filing a separate certification for each chemical shipment, for any chemical shipment that conforms to a product description provided to Customs pursuant to paragraph (a)(2)(ii)(A) of this section. In approving the use of a ''blanket'' certification, the port director should consider the reliability of the importer and Customs broker. Approval and use of a ''blanket'' certification will be subject to the following conditions:

(A) A ''blanket'' certification must be filed with the port director on the letterhead of the certifying firm, must list the products covered by name and Harmonized Tariff Schedule of the United States subheading number, must identify the foreign supplier by name and address, and must be signed by an authorized person;

(B) A ''blanket'' certification will remain valid, and may be used, for 1 year from the date of approval unless the approval is revoked earlier for cause by the port director. Separate ''blanket'' certifications must be approved and used for chemical substances that are subject to TSCA and for chemical substances that are not subject to TSCA; and

(C) An importer for whom the use of a ''blanket'' certification has been approved must include, on the invoice used in connection with the entry and entry summary procedures for each shipment covered by the ''blanket'' certification, a statement referring to the ''blanket'' certification and incorporating it by reference. This statement need not be signed.

(b) *Chemical substances or mixtures as parts of articles.* Each importer of a chemical substance or mixture as part of an article must comply with the certification requirements set forth in paragraph (a) of this section only if required to do so by a rule or order issued under TSCA.

(c) *Facsimile signatures.* The certification statements required under paragraph (a)(1) of this section may be signed by means of an authorized facsimile signature.

[T.D. 00–13, 65 FR 10704, Feb. 29, 2000]

§ 12.122 Detention of certain shipments.

(a) The director of the port of arrival shall detain, at the importer's risk and expense, shipments of chemical substances, mixtures, or articles:

(1) Which have been banned from the customs territory of the United States by a rule or order issued under section 5 or 6 of TSCA (15 U.S.C. 2604 or 2605) or

(2) Which have been ordered seized because of imminent hazards as specified under section 7 of TSCA (15 U.S.C. 2606).

(b) The director of the port of entry shall detain shipments of chemical substances, mixtures, or articles at the importer's risk and expense, in the following situations:

(1) Whenever the Administrator has reasonable grounds to believe that the shipment is not in compliance with TSCA and notifies the port director to detain the shipment.

(2) Whenever the port director has reasonable grounds to believe that the shipment is not in compliance with TSCA; or

(3) Whenever the importer fails to certify compliance with TSCA as required by § 12.121.

(c) Upon detention of a shipment, the port director shall give prompt notice to the Administrator and the importer. The notice shall include the reasons for detention.

(d) A detained shipment shall not be held in the custody of the port director for more than 48 hours after the date of detention. Thereafter, the shipment shall be promptly turned over to the Administrator for storage or disposition as provided for in §§12.127 and 127.28(i), unless previously released to the importer under bond as provided in § 12.123(b). Notice of intent to abandon the shipment by the importer shall constitute a waiver of all time periods specified in parts 12 and 127.

§ 12.123 Procedure after detention.

(a) *Submission of written documentation.* If a shipment is detained by a port director under § 12.122, the importer may submit written documentation to the Administrator with a copy to the port director within 20 days from the date of notice of detention, to show cause why the shipment should not be refused entry. If an importer submits that documentation, the Administrator shall allow or deny entry of the shipment within 10 days of receipt of the documentation, and in any case shall allow or deny entry of the shipment within 30 days of the date of notice of detention.

(b) *Release under Bond.* The port director may release to the importer a shipment detained for any of the reasons given in § 12.122 when the port director has reasonable grounds to believe that the shipment may be brought into compliance, or when the port director deems it appropriate under § 141.66 of this chapter. Any such release shall be conditioned upon furnishing a bond on Customs Form 7551, 7553, or 7595 for the return of the shipment to Customs custody. The bond shall be for the full amount required in § 113.14 of this chapter. If a shipment of chemical substance, mixture, or article is released to the importer under bond, the shipment shall be held intact and shall not be used or otherwise disposed of until the Administrator makes a final determination on entry as provided for in paragraph (c) of this section.

(c) *Determination by the Administrator.* After consideration of the available evidence and within 30 days from the notice of detention, the Administrator shall notify the port director and the importer of his decision either to permit or refuse entry of the shipment. If the Administrator finds that the shipment is in compliance with TSCA, the port director shall release the shipment to the importer. If the Administrator finds that the shipment is not in compliance, the port director shall:

(1) Refuse delivery to the importer, giving reasons for such refusal, or

(2) If the shipment has been released on bond, demand its redelivery under the terms of the bond, giving reasons for such demand. If the merchandise is not redelivered within 30 days from the date of the redelivery notice, the port director shall assess liquidated damages in the full amount of the bond.

§ 12.124 Time limitations and extensions.

(a) *Time limitations.* The importer of a shipment of chemical substances, mixtures, or articles which has been detained under § 12.122 shall bring the shipment into compliance with TSCA or export the shipment from the customs territory of the United States within 90 days after notice of detention or 30 days of demand for redelivery, whichever comes first.

(b) *Time extensions.* The port director, upon notification by the Administrator, may grant an extension of not more than 30 days if, due to delays caused by the Environmental Protection Agency or the Customs Service:

(1) The importer is unable, for good cause shown, to bring a shipment into compliance with the Act within the required time period; or

(2) The importer is unable to export the shipment from the customs territory of the United States within the required time period.

§ 12.125 Notice of exportation.

Whenever the Administrator directs the port director to refuse entry under § 12.123 and the importer exports the non-complying shipment within the 30 day period of notice of refusal of entry or within 90 days of demand for redelivery, the importer shall give written notice of the fact of exportation to the Administrator and the port director. The importer shall include the following information in the notice of exportation:

(a) The name and address of the exporter or his agent;

(b) A description of the chemical substances, mixtures, or articles exported;

(c) The destination (country);

(d) The port of arrival at the destination;

(e) The carrier;

(f) The date of exportation; and

(g) The bill of lading or the air way bill number.

§ 12.126 Notice of abandonment.

If the importer intends to abandon the shipment after receiving notice of refusal of entry, the importer shall present a written notice of intent to abandon to the port director and the Administrator. Notification under this section is a waiver of any right to export the merchandise. The importer shall remain liable for any expense incurred in the storage and/or disposal of abandoned merchandise.

§ 12.127 Decision to store or dispose.

(a) A shipment detained under § 12.122 shall be considered to be unclaimed or abandoned and shall be turned over to the Administrator for storage or dispositon as provided for in § 127.28(i) of this chapter if the importer has not brought the shipment into compliance with TSCA and has not exported the shipment within time limitations or extensions specified according to § 12.124. The importer shall remain liable for any expenses in the storage and/or disposal of abandoned merchandise.

TEXTILES AND TEXTILE PRODUCTS

§ 12.130 Textiles and textile products country of origin.

(a) *General.* Textile or textile products subject to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), include merchandise which is subject to the provisions of the International Arrangement Regarding Trade in Textiles (The Multi-Fiber Arrangement).

(1) Is in chief value of cotton, wool, or man-made fibers, or any textile fibers subject to the terms of any textile trade agreement, or any combination thereof; or

(2) Contains 50 percent or more by weight of cotton or man-made fibers, or any textile fibers subject to the terms of any textile trade agreement; or

(3) Contains 17 percent or more by weight of wool; or

(4) If in chief value of textile fibers or textile materials, contains a blend of cotton, wool, or man-made fibers, or any textile fibers subject to the terms of any textile trade agreement, or any combination thereof, which fibers, in the aggregate amount to 50 percent or more by weight of all component fibers.

(b) *Country of origin.* For the purpose of this section and except as provided in paragraph (c), a textile or textile product, subject to section 204, Agricultural Act of 1956, as amended, imported

into the customs territory of the United States, shall be a product of a particular foreign territory or country, or insular possession of the U.S., if it is wholly the growth, product, or manufacture of that foreign territory or country, or insular possession. However, except as provided in paragraph (c), a textile or textile product, subject to section 204, which consists of materials produced or derived from, or processed in, more than one foreign territory or country, or insular possession of the U.S., shall be a product of that foreign territory or country, or insular possession where it last underwent a substantial transformation. A textile or textile product will be considered to have undergone a substantial transformation if it has been transformed by means of substantial manufacturing or processing operations into a new and different article of commerce. However, the origin of products of Canada and Mexico, and the origin of textile and apparel products covered by § 102.21 of this chapter, are determined pursuant to the procedures set forth in part 102 of this chapter.

(c) *Articles exported for processing and returned*—(1) *Applicability to U.S. articles sent abroad*. Chapter 98, Subchapter II, Note 2, Harmonized Tariff Schedule of the United States, provides that any product of the U.S. which is returned after having been advanced in value or improved in condition abroad, or assembled abroad, shall be a foreign article for the purposes of the Tariff Act of 1930, as amended. In order to have a single definition of the term ''product of'' and, therefore, a single country of origin for a textile or textile product, notwithstanding paragraph (b), merchandise which falls within the purview of Chapter 98, Subchapter II, Note 2, Harmonized Tariff Schedule of the United States, may not, upon its return to the U.S., be considered a product of the U.S.

(2) *Applicability to U.S. insular possession products processed outside the insular possession*. Unless otherwise required by law, the rules of origin applicable to products of the U.S. shall also apply to products of insular possessions of the U.S. Accordingly, notwithstanding paragraph (b) of this section, for purposes of section 204, Agricultural Act of 1956, as amended, products of insular possessions of the U.S., if imported into the U.S. after having been advanced in value, improved in condition, or assembled, outside the insular possessions shall not be treated as products of those insular possessions.

(d) *Criteria for determining country of origin*. The criteria in paragraphs (d) (1) and (2) of this section shall be considered in determining the country of origin of imported merchandise. These criteria are not exhaustive. One or any combination of criteria may be determinative, and additional factors may be considered. However, the origin of products of Canada and Mexico, and the origin of textile and apparel products covered by § 102.21 of this chapter, are determined pursuant to the procedures set forth in part 102 of this chapter.

(1) A new and different article of commerce will usually result from a manufacturing or processing operation if there is a change in:

(i) Commercial designation or identity,

(ii) Fundamental character or

(iii) Commercial use.

(2) In determining whether merchandise has been subjected to substantial manufacturing or processing operations, the following will be considered:

(i) The physical change in the material or article as a result of the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(ii) The time involved in the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(iii) The complexity of the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(iv) The level or degree of skill and/or technology required in the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(v) The value added to the article or material in each foreign territory or country, or insular possession of the U.S., compared to its value when imported into the U.S.

(e) *Manufacturing or processing operations.* (1) Except for products of which the origin is Canada or Mexico and except for textile and apparel products (the origin of such products is determined pursuant to the procedures set forth in part 102 of this chapter), an article or material usually will be a product of a particular foreign territory or country, or insular possession of the U.S., when it has undergone prior to importation into the U.S. in that foreign territory or country, or insular possession any of the following:

(i) Dyeing of fabric and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing;

(ii) Spinning fibers into yarn;

(iii) Weaving, knitting or otherwise forming fabric;

(iv) Cutting of fabric into parts and the assembly of those parts into the completed article; or

(v) Substantial assembly by sewing and/or tailoring of all cut pieces of apparel articles which have been cut from fabric in another foreign territory or country, or insular possession, into a completed garment (*e.g.* the complete assembly and tailoring of all cut pieces of suit-type jackets, suits, and shirts).

(2) An article or material usually will not be considered to be a product of a particular foreign territory or country, or insular possession of the U.S. by virtue of merely having undergone any of the following:

(i) Simple combining operations, labeling, pressing, cleaning or dry cleaning, or packaging operations, or any combination thereof;

(ii) Cutting to length or width and hemming or overlocking fabrics which are readily identifiable as being intended for a particular commercial use;

(iii) Trimming and/or joining together by sewing, looping, linking, or other means of attaching otherwise completed knit-to-shape component parts produced in a single country, even when accompanied by other processes (*e.g.* washing, drying, mending, etc.) normally incident to the assembly process;

(iv) One or more finishing operations on yarns, fabrics, or other textile articles, such as showerproofing, superwashing, bleaching, decating, fulling, shrinking, mercerizing, or similar operations; or

(v) Dyeing and/or printing of fabrics or yarns.

(f) *Declaration of manufacturer, producer, exporter, or importer of textiles and textile products.* All importations of textiles and textile products subject to section 204, Agricultural Act of 1956, as amended, shall be accompanied by the appropriate declaration(s) set forth in paragraph (f)(1) or (f)(2) of this section. Textiles or textile products subject to section 204 include that merchandise described in §12.130(a). All importations of textiles and textile products not subject to section 204 shall be accompanied by the declaration set forth in paragraph (f)(3) of this section. The declaration(s) shall be filed with the entry. The declaration(s) may be prepared by the manufacturer, producer, exporter or importer of the textiles and textile products. If multiple manufacturers, producers, or exporters are involved, a separate declaration prepared by each may be filed. A separate declaration may be filed for each invoice which is presented with the entry. The determination of country of origin, other than as set forth in paragraph (g) of this section, will be based upon information contained in the declaration(s). The declaration(s) shall not be treated as a missing document for which a bond may be filed. Entry will be denied unless accompanied by a properly executed declaration(s)

(1) *Single foreign territory or country, or U.S. insular possession.* Textiles or textile products which are wholly the growth, product, or manufacture of a single foreign territory or country, or insular possession of the U.S., or assembled in a single foreign territory or country, or insular possession of the U.S. of fabricated components which are in whole the product of the U.S. and/or the single foreign territory or country, or insular possession of the U.S. shall be identified in a declaration which is substantially in the following form:

SINGLE COUNTRY DECLARATION

I, _____ (name), declare that the articles listed below and covered by the

invoice or entry to which this declaration relates are wholly the growth, product, or manufacture of a single foreign territory or country, or insular possession of the U.S., or were assembled in the single foreign territory or country, or insular possession of the U.S. of fabricated components which are in whole the product of the U.S. and/or the single foreign territory or country, or insular possession of the U.S. as identified below. I declare, that the information set forth in this declaration is correct and true to the best of my information, knowledge, and belief.

A ..... (country*)
B ..... (country*)
C ..... (country*)
D ..... (country*)

etc.

Marks of identification, numbers	Description of article and quantity	Country* of origin	Date of exportation

Date _____
Name _____
Signature _____
Title _____
Company _____
Address _____

*Country when used in this declaration includes territories and U.S. insular possessions. If the entry or invoice to which the declaration relates covers merchandise from more than one country each country will be identified in the declaration by the alphabetical designation appearing next to the named country. In the case of an assembly operation of U.S. components, both the country of assembly and the U.S. shall be reported (e.g. Haiti/U.S.) along with the date of exportation from the country of assembly.

(2) *More than one foreign territory or country, or U.S. insular possession.* Textiles and textiles products which were subjected to manufacturing or processing operations in, and/or incorporate materials originating in more than one foreign territory or country, or an insular possession of the U.S. or were assembled in, and/or incorporate fabricated components which are the product of the U.S. and more than one foreign territory, country or insular possession of the U.S., shall be identified in a declaration which is substantially in the following form:

MULTIPLE COUNTRY DECLARATION

I, _____ (name), declare that the articles described below and covered by the invoice or entry to which this declaration relates were exported from the country* identified below on the dates listed and were subjected to assembling, manufacturing or processing operations in, and/or incorporate materials originating in, the foreign territory or country* or countries*, or the U.S. or an insular possession of the U.S., identified below. I declare that the information set forth in this declaration is correct and true to the best of my information, knowledge, and belief.

A ..... (country*)
B ..... (country*)
C ..... (country*)
D ..... (country*)

etc.

Marks of identification, numbers	Description of article and quantity	Description of manufacturing and/or processing operations	Date and country of manufacture and/or processing		Materials		
			Country	Date of exportation	Description of material	Country of production	Date of exportation

Date _____
Name _____
Signature _____
Title _____
Company _____
Address _____

*Country or countries when used in this declaration includes territories and U.S. insular possessions. The country will be identified in the above declaration by the alphabetical designation appearing next to the named country.

(3) *Textiles and textile products not subject to section 204.* Textiles and textile products not subject to section 204, Agricultural Act of 1956, as amended, (see

paragraph (a) of this section for products subject to section 204), shall be accompanied by the declaration set forth below:

NEGATIVE DECLARATION

I, _____ (name), declare that the articles described below and covered by the invoice or entry to which this declaration relates are not subject to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854) and the information set forth in this declaration is correct and true to the best of my information, knowledge, and belief.

Marks of identification, numbers	Description of article and quantity	Country of origin

Date _____
Name _____
Signature _____
Title _____
Company _____
Address _____

(g) *Incomplete or insufficient information*. If the port director is unable to determine the country of origin of an article from the information set forth in the declaration, the declarant shall submit such additional information as requested. Release of the article from Customs custody will be denied until the determination is made based upon the information provided or the best information available. In this regard if incomplete or insufficient information is provided, the port director may consider the experience and costs of domestic industry in similar manufacturing or processing operations.

(h) *Shipments covered by an informal entry*. While a declaration is not required for shipments covered by an informal entry, the port director may require such other evidence of the country of origin as deemed necessary. The filing of the appropriate declaration will be required in a case involving consolidation of individual shipments under §§12.131 and 143.22 of this chapter.

(i) *Date of exportation*. For quota, visa or export license requirements, and statistical purposes, the date of exportation for textiles or textile products, subject to section 204, Agricultural Act of 1956, as amended, shall be the date the vessel or carrier leaves the last port in the country of origin, as defined by this section. Contingency of diversion in another foreign territory or country shall not change the date of exportation for quota, visa or export license requirements or for statistical purposes.

[T.D. 85–38, 50 FR 8723, Mar. 5, 1985, as amended by T.D. 86–57, 51 FR 8315, Mar. 11, 1986; T.D. 89–1, 53 FR 51254, Dec. 21, 1988; T.D. 93–27, 58 FR 19349, Apr. 14, 1993; T.D. 94-4, 59 FR 113, Jan. 3, 1994; T.D. 95–69, 60 FR 46197, Sept. 5, 1995]

§ 12.131 Entry of textiles and textile products.

(a) *General*. Separate shipments of textiles and textile products, including samples, which originate from a country subject to visa or export license requirements for exports of textiles and textile products, arriving in the customs territory of the United States for one consignee on the same conveyance on the same day, the combined value of which is over $250, shall not be entered under the informal entry procedures set forth in subpart C, part 143 or procedures set forth in §141.52 of this chapter. Port directors shall refuse separate informal entries and require a formal entry and visa or export license, as appropriate, for all such merchandise. A consignee for purposes of this section is the ultimate consignee and does not include a freight forwarder or Customs broker not importing for its own account.

(b) *Denial of entry pursuant to directive*. Textiles and textile products subject to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), whether or not the requirements set forth in §12.130 have been met, will be denied entry where the factory, producer or manufacturer named in the entry documents for such textiles or textile products is named in a directive published in the FEDERAL REGISTER by the Committee for the Implementation of Textile Agreements as a company found to be illegally transshipping, closed or unable to produce records to verify production. In these circumstances, no additional information will be accepted or considered by Customs for purposes of determining the

admissibility of such textiles or textile products.

[T.D. 84–171, 49 FR 31253, Aug. 3, 1984, as amended by T.D. 99–68, 64 FR 48092, Sept. 2, 1999]

§ 12.132 Textile and apparel goods under the North American Free Trade Agreement.

(a) *Country of origin declaration*. The provisions of § 12.130(f) of this part regarding submission of a country of origin declaration shall apply to all textile and apparel goods which are subject to the provisions of Annex 300–B of the North American Free Trade Agreement (NAFTA). Although a separate country of origin declaration shall not be required for such goods for NAFTA purposes, the following additional requirements shall apply for purposes of this section:

(1) All commercial importations of textile and apparel goods shall be accompanied by the appropriate declaration;

(2) A declaration by each U.S., Canadian, and/or Mexican manufacturer or producer of the goods, and, if there are multiple manufacturers or producers, a separate declaration by each manufacturer or producer shall be furnished by the importer. Packaging operations shall not be considered manufacture or production for purposes of this paragraph; and

(3) If the port director is unable to determine the country of origin of the goods because the information contained in a declaration is incomplete, the shipment to which that declaration pertains shall not be entitled to preferential tariff treatment or any other benefit under the NAFTA for which it would otherwise be eligible.

(b) *Certificate of eligibility*. In connection with a claim for NAFTA preferential tariff treatment involving non-originating textile and apparel goods subject to the tariff preference level provisions of appendix 6.B. to Annex 300–B of the NAFTA and Additional U.S. Notes 3 through 6 to Section XI, Harmonized Tariff Schedule of the United States, the importer shall submit to Customs a Certificate of Eligibility covering the goods. The Certificate of Eligibility shall be properly completed and signed by an authorized official of the Canadian or Mexican government and shall be presented to Customs at the time the claim for preferential tariff treatment is filed under § 181.21 of this chapter.

[T.D. 94–1, 58 FR 69470, Dec. 30, 1993, as amended by T.D. 94–52, 59 FR 31520, June 20, 1994; T.D. 95–98, 60 FR 58518, Nov. 28, 1995]

SOFTWOOD LUMBER FROM CANADA

§ 12.140 Entry of softwood lumber from Canada.

The requirements set forth in this section are applicable for as long as the Softwood Lumber Agreement, entered into on May 29, 1996, by the Governments of the United States and Canada, remains in effect.

(a) *Encumbrance regarding export permit and export fee*. In the case of softwood lumber first manufactured into a product classifiable in subheading 4407.10.00, 4409.10.10, 4409.10.20, or 4409.10.90, Harmonized Tariff Schedule of the United States (HTSUS), in the Province of Ontario, Quebec, British Columbia, or Alberta, the requirement that the Government of Canada issue an export permit and collect the appropriate export fees under the Softwood Lumber Agreement attaches to and encumbers the product when it is imported into the United States. Such imported merchandise remains subject to the encumbrance until the Government of Canada issues an export permit and collects the appropriate fees. The merchandise shall be released by Customs subject to the following conditions: The importer of record assumes an obligation to ensure within 20 working days of release that such export permit is issued by the Government of Canada and to provide sufficient information to satisfy U.S. Customs that the encumbrance no longer attaches or, if the merchandise remains encumbered at the expiration of 20 working days, to pay any liquidated damages assessed under the Customs bond.

(b) *Reporting requirements*. Except as otherwise provided in paragraph (d) of this section, in the case of a softwood lumber product classifiable in HTSUS subheading 4407.10.00, 4409.10.10, 4409.10.20, or 4409.10.90 that is imported

from Canada and that was manufactured (that is, subjected to any processing operation other than mere loading, unloading or processing necessary to maintain the condition of the product) in Canada, whether or not such product was previously subjected to any processing operation outside Canada, the following information shall be included on the entry summary, Customs Form 7501, or on an electronic equivalent:

(1) The Canadian province or territory in which the product was first manufactured; and

(2) In the case of a product first manufactured into a product classifiable in HTSUS subheading 4407.10.00, 4409.10.10, 4409.10.20, or 4409.10.90 in the Province of Ontario, Quebec, British Columbia, or Alberta:

(i) The export permit number issued by the Government of Canada for the product; and

(ii) An indication of the export fee payment status of the product for which the permit was issued according to the following categories:

(A) Category A: No payment of an export fee because the exported product falls within the base amount of 14.7 billion board feet. This category includes products for which the export permit was issued without an indication of the export fee status;

(B) Category B: Payment of the export fee applicable to a product exported in excess of 14.7 billion board feet but not in excess of 15.35 billion board feet;

(C) Category C: Payment of the export fee applicable to a product exported in excess of 15.35 billion board feet;

(D) Category D: No payment of an export fee where the product was exported in excess of 14.7 billion board feet because the average price of a benchmark softwood lumber price exceeds a prescribed trigger price during any quarterly period as determined by the Governments of Canada and the United States. If the issued permit pertains to this category, the specific quarterly period shall also be indicated on the Customs Form 7501 or electronic equivalent;

(E) Category R: Payment of the repriced lower fee base export fee applicable to certain products first manufactured in British Columbia; or

(F) Category S: Payment of the repriced upper fee base export fee applicable to certain products first manufactured in British Columbia.

(c) *Untimely issuance of export permit.* If an export permit for the product has not been issued by the Government of Canada on or before the required date for filing the entry summary documentation as provided in §142.12(b) or §142.23 of this chapter, the importer shall have a maximum of 10 additional working days to file the entry summary documentation setting forth all of the information specified in paragraph (b)(2) of this section. If an export permit for the product has not been issued by the Government of Canada within the maximum time period specified in this paragraph, the entry summary or electronic equivalent shall be filed on the next business day and shall be completed in pertinent part as follows:

(1) The export permit number field shall be completed by inserting as many eights as are necessary to complete the field; and

(2) The export fee payment status field shall be completed by inserting an ''A'' followed by two zeros.

(d) *Absence of export permit number and fee status data for certain remanufactured softwood lumber products.* In the case of a softwood lumber mill product classifiable in HTSUS subheading 4407.10.00, 4409.10.10, 4409.10.20, or 4409.10.90 that is imported from Canada and that was first manufactured in Canada in the Province of Ontario, Quebec, British Columbia, or Alberta, if no export permit for the product is issued by the Government of Canada because the product was previously subjected to processing operations outside Canada, the entry summary, Customs Form 7501, or an electronic equivalent, shall include the Canadian province or territory in which the product was first manufactured and also shall be completed in pertinent part as follows:

(1) The export permit number field shall be completed by inserting as many nines as are necessary to complete the field; and

(2) The export fee payment status field shall be completed by inserting an ''A'' followed by two zeros.

[T.D. 97–9, 62 FR 8622, Feb. 26, 1997, as amended by T.D. 00–36, 65 FR 33253, May 23, 2000]

STEEL PRODUCTS

§ 12.145 Entry or admission of certain steel products.

In any case in which a steel import license number is required to be obtained under regulations promulgated by the U.S. Department of Commerce, that license number must be included:

(a) On the entry summary, Customs Form 7501, or on an electronic equivalent, at the time of filing, in the case of merchandise entered, or withdrawn from warehouse for consumption, in the customs territory of the United States; or

(b) On Customs Form 214, at the time of filing under Part 146 of this chapter, in the case of merchandise admitted into a foreign trade zone.

[T.D. 03–13, 68 FR 13839, Mar. 21, 2003]

MERCHANDISE SUBJECT TO ECONOMIC SANCTIONS

§ 12.150 Merchandise prohibited by economic sanctions; detention; seizure or other disposition; blocked property.

(a) *Generally*. Merchandise from certain countries designated by the President as constituting a threat to the national security, foreign policy, or economy of the United States shall be detained until the question of its release, seizure, or other disposition has been determined under law and regulations issued by the Treasury Department's Office of Foreign Assets Control (OFAC) (31 CFR Chapter V).

(b) *Seizure*. When an unlicensed importation of merchandise subject to OFAC's regulations is determined to be prohibited, no entry for any purpose shall be permitted and, unless the immediate reexportation or other disposition of such merchandise under Customs supervision has previously been authorized by OFAC, the merchandise shall be seized.

(c) *Licenses*. OFAC's regulations may authorize OFAC to issue licenses on a case-by-case basis authorizing the importation of otherwise prohibited merchandise under certain conditions. If such a license is issued subsequent to the attempted entry and seizure of the merchandise, importation shall be conditioned upon the importer:

(1) Agreeing in writing to hold the Government harmless, and

(2) Paying any storage and other Customs fees, costs, or expenses, as well as any mitigated forfeiture amount or monetary penalty imposed or assessed by Customs or OFAC, or both.

(d) *Blocked property*. Merchandise which constitutes property in which the government or any national of certain designated countries has an interest may be blocked (frozen) pursuant to OFAC's regulations and may not be transferred, sold, or otherwise disposed of without an OFAC license.

(e) *Additional information*. For further information concerning importing merchandise prohibited under economic sanctions programs currently in effect, the Office of Foreign Assets Control of the Department of the Treasury should be contacted. The address of that office is 1500 Pennsylvania Ave., NW., Annex 2nd Floor, Washington, DC 20220.

[T.D. 96–42, 61 FR 24889, May 17, 1996]

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

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AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623, 1624.

Section 18.3 also issued under 19 U.S.C. 1565;

Section 18.4 also issued under 19 U.S.C. 1322, 1323;

Section 18.7 also issued under 19 U.S.C. 1557; 1646a;

Section 18.10 also issued under 19 U.S.C. 1557;

Section 18.11 also issued under 19 U.S.C. 1484;

Section 18.12 also issued under 19 U.S.C. 1448, 1484, 1490;

Section 18.13 also issued under 19 U.S.C. 1498(a);

Section 18.14 also issued under 19 U.S.C. 1498.

Section 18.31 also issued under 19 U.S.C. 1553a.

SOURCE: 28 FR 14755, Dec. 31, 1963, unless otherwise noted.

GENERAL PROVISIONS

§ 18.1 Carriers; application to bond.

(a)(1) Merchandise to be transported from one port to another in the United States in bond, except as provided for in paragraph (b) of this section, shall be delivered to a common carrier, contract carrier, freight forwarder, or private carrier bonded for that purpose, but such merchandise delivered to a common carrier, contract carrier, or freight forwarder may be transported with the use of facilities of other bonded or nonbonded carriers. For the purposes of this section, the term ''common carrier'' means a common carrier of merchandise owning or operating a railroad, steamship, pipeline, or other transportation line or route. Only vessels entitled to engage in the coastwise trade (see § 4.80 of this chapter) shall be entitled to transport merchandise under this section.

(2) Merchandise to be transported from one port to another in the United States under cover of a TIR carnet (see part 114 of this chapter), except merchandise not otherwise subject to Customs control, as provided in §§ 18.41 through 18.45, shall be delivered to a common carrier or contract carrier bonded for that purpose, but the merchandise thereafter may be transported with the use of other bonded or nonbonded common or contract carriers. The TIR carnet shall be responsible for liability incurred in the carriage of merchandise under the carnet, and the carrier's bond shall be responsible as provided in § 114.22(d) of this chapter.

(3) Merchandise to be transported from one port to another in the United States under cover of an A.T.A. or TECRO/AIT carnet (see part 114 of this chapter) shall be delivered to a common carrier or contract carrier bonded for that purpose, but the merchandise thereafter may be transported with the use of other bonded or nonbonded common or contract carriers. The A.T.A. or TECRO/AIT carnet shall be responsible for liability incurred in the carriage of merchandise under the carnet, and the carrier's bond shall be responsible as provided in § 114.22(d) of this chapter.

(b) Pursuant to Public Resolution 108, of June 19, 1936, (19 U.S.C. 1551, 1551a) and subject to compliance with all other applicable provisions of this part, the port director, upon the request of the party in interest, may permit merchandise entered and examined for Customs purposes to be transported in bond between the ports named in the resolution by bonded cartmen or lightermen duly qualified in accordance with the provisions of part 112 of this chapter, if the port director is satisfied that the transportation of such merchandise in this manner will not endanger the revenue.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 71–70, 36 FR 4485, Mar. 6, 1971; T.D. 71–263, 36 FR 20291, Oct. 20, 1971; T.D. 73–140, 38 FR 13550, May 23, 1973; T.D. 78–99, 43 FR 13061, Mar. 29, 1978; T.D. 82–116, 47 FR 27261, June 24, 1982; T.D. 82–145, 47 FR 35478, Aug. 16, 1982; 47 FR 39478, Sept. 8, 1982; T.D. 84–149, 49 FR 28698, July 16, 1984; T.D. 89–1, 53 FR 51254, Dec. 21, 1988; T.D. 96–18, 61 FR 6779, Feb. 22, 1996; T.D. 98–10, 63 FR 4167, Jan. 28, 1998]

§ 18.2 Receipt by carrier; manifest.

(a)(1) *Merchandise other than from warehouse or foreign trade zone delivered to bonded carrier*. Except as set forth in paragraphs (a)(2) and (a)(3) of this section, within 5 working days after presentation of an entry for merchandise to be transported in-bond, the forwarding carrier shall take receipt of the merchandise if no other entry is filed. If the forwarding carrier fails to take receipt of the merchandise within the prescribed period, the transportation entry shall be canceled and the merchandise shall be treated as unclaimed as of the date of original arrival.

(2) When merchandise is delivered to a bonded carrier for transportation in-bond, the merchandise shall be laden on the conveyance under supervision of a Customs officer unless—

(i) The transporting conveyance is not to be sealed with Customs seals, or

(ii) The lading inspector accepts the check of the carrier as to the merchandise laden. The carrier's receipt shall be given immediately to the lading inspector on the Customs in-bond document (the appropriate Customs Form 7512, or the carnet) covering the merchandise. In the case of a carnet, the receipt shall be given on the appropriate vouchers in the following form:

Received the cargo listed herein for delivery to Customs at the indicated port of destination or exportation, or for direct exportation.

Name of Carrier (or Exporter) _____

Attorney-in-fact or Agent of Carrier (or Exporter) _____

_____

Date _____

(3) *Merchandise delivered from warehouse*. When merchandise is delivered from a warehouse to a bonded carrier for transportation in bond, supervision of lading shall be accomplished in accordance with the procedure set forth in § 19.6(b) of this chapter.

(4) *Merchandise delivered from foreign trade zone*. When merchandise is delivered from a foreign trade zone to a bonded carrier for transportation in bond, supervision of lading will be accomplished in accordance with the procedure set forth in § 146.71(a) of this chapter.

(b) A Customs in-bond document, containing a description of the merchandise, shall be prepared by the carrier or any of the parties named in § 18.11(b), whenever merchandise is being transported in bond. The Customs in-bond document thus prepared shall then be signed by the carrier or any of the parties named in § 18.11(b). All copies of the in-bond document shall be signed by the importing carrier or his agent and the in-bond carrier or his agent to indicate the quantity delivered for transportation in bond. When there is no discrepancy between the quantity manifested by the importing carrier and the quantity delivered to the in-bond carrier, the port director may authorize waiving the signature of the parties in interest as to delivered quantities. Quantities of goods transported in bond from a Customs bonded warehouse shall be accounted for under the procedures set forth in § 19.6 of this chapter. Except as prescribed in subpart D of part 123 of this chapter, relating to merchandise in transit through the United States between ports in contiguous foreign territory, a separate set shall be prepared for each entry and, if the consignment is contained in more than one conveyance, a separate set shall be prepared for each conveyance.

(c)(1) After the merchandise has been laden and the in-bond carrier or his

agent has receipted the in-bond document, Customs Form 7512 (in duplicate), together with any related carnet shall be delivered as a manifest to the conductor, master, or person in charge to accompany the merchandise to its port of destination or exportation. If more than one conveyance is used to transport the merchandise, two copies of Customs Form 7512 shall accompany each conveyance as a manifest of the merchandise transported by that conveyance. A TIR carnet (see § 18.3(b)) shall not be used if more than one conveyance is required.

(2) Except transit air cargo provided for in § 122.118 of this chapter, bonded merchandise destined to a final port of destination in the United States, or for export from the United States, shall be delivered to Customs at the port of destination or exportation within 30 days after the date of receipt by the forwarding carrier at the port of origin, if transported on land. If the merchandise is transported on board a vessel engaged in the United States coastwise trade, delivery to Customs at the port of destination or exportation shall be within 60 days after the date of receipt by the forwarding carrier at the port of origin. Failure to deliver the merchandise within the prescribed period shall constitute an irregular delivery and the initial bonded carrier shall be subject to applicable penalties (see § 18.8).

(d) Promptly, but no more than 2 working days after the arrival of any portion of the in-bond shipment at the port of destination, the delivering carrier shall surrender the in-bond manifest (the in-bond document any related carnet) to the port director as notice of arrival of the merchandise. If the in-bond manifest is lost in transit, the in-bond carrier shall report the arrival of the merchandise within the prescribed period and shall be responsible for obtaining copies of the original in-bond manifest. Failure to surrender the in-bond manifest or report the arrival of bonded merchandise within the prescribed period shall constitute an irregular delivery and the initial bonded carrier shall be subject to applicable penalties (see § 18.8).

[T.D. 71–70, 36 FR 4485, Mar. 6, 1971, as amended by T.D. 81–243, 46 FR 45602, Sept. 14, 1981; T.D. 82–204, 47 FR 49368, Nov. 1, 1982; T.D. 84–212, 49 FR 39046, Oct. 3, 1984; T.D. 86–16, 51 FR 5063, Feb. 11, 1986; T.D. 87–75, 52 FR 20067, May 29, 1987; T.D. 88–12, 53 FR 9315, Mar. 22, 1988; T.D. 98–74, 63 FR 51288, Sept. 25, 1998; T.D. 00–22, 65 FR 16517, Mar. 29, 2000]

§ 18.3 Transshipment; transfer by bonded cartmen.

(a) When bonded merchandise in one conveyance is to be transshipped under Customs supervision to another single conveyance while en route to the port of destination or exportation, the in-bond document which accompanied the merchandise shall be presented to the port director at the place of transshipment for execution of a certificate of transfer thereon. The in-bond document shall be returned to the carrier to accompany the merchandise to the port of destination or exportation. Except as provided in paragraph (c) of this section, merchandise covered by a TIR carnet shall not be transshipped if the transshipment involves the unlading of the merchandise from a container or road vehicle.

(b) When bonded merchandise, other than merchandise covered by a TIR carnet, is to be transshipped to more than one conveyance, the carrier or any of the parties named in § 18.11(b) shall prepare for each such conveyance two additional copies of the Customs Form 7512 which accompanied the merchandise to the place of transshipment. The Customs Form 7512 which accompanied the shipment to the place of transshipment shall be presented to the port director there. The Customs officer supervising the transshipment shall execute a certificate of transfer on all copies of the Customs Form 7512. The original copies of the Customs Form 7512 shall be delivered to the conductor, master, or person in charge of the first conveyance. Two additional copies of the Customs Form 7512 shall be delivered to the person in charge of each additional conveyance in which the merchandise is forwarded for delivery to the director of the port of destination or exportation.

(c) Merchandise covered by a TIR carnet may be transshipped in a case

involving the unlading of the merchandise from a container or road vehicle only if the transshipment is necessitated by casualty en route. In the event of transshipment, a TIR approved container or road vehicle shall be used if available. If the transshipment takes place under Customs supervision, the Customs officer shall excute a certificate of transfer on the appropriate TIR carnet voucher.

(d) If it becomes necessary at any point in transit to remove the Customs seals from a conveyance or container containing bonded merchandise for the purpose of transferring its contents to another conveyance or container, or to gain access to the shipment because of casualty or for other good reason, and it cannot be done under Customs supervision because of the element of time involved or because there is no Customs officer stationed at such point, a responsible agent of the carrier may remove the seals, supervise the transfer or handling of the merchandise, seal the conveyance or container in which the shipment goes forward, and make appropriate notation of his action on the conductor's or master's copy of the manifest, or the outside back cover of the TIR carnet, including the date, serial numbers of the new seals applied, and the reason therefor. This authorization shall not apply in any case not involving a real emergency.

(e) All transfers to or from the conveyance or warehouse of merchandise undergoing transportation in bond shall be made under the provisions of part 125 of this chapter and at the expense of the parties in interest, unless the bond of the carrier on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter or a TIR carnet is liable for the safekeeping and delivery of the merchandise while it is being transferred.

[T.D. 71–70, 36 FR 4486, Mar. 6, 1971, as amended by T.D. 82–204, 47 FR 49368, Nov. 1, 1982; T.D. 84–212, 49 FR 39046, Oct. 3, 1984; T.D. 84–213, 49 FR 41168, Oct. 19, 1984; T.D. 89–1, 53 FR 51254, Dec. 21, 1988; T.D. 00–22, 65 FR 16517, Mar. 29, 2000]

§ 18.4 Sealing conveyances and compartments; labeling packages; warning cards.

(a)(1) Conveyances or compartments in which carload lots of bonded merchandise are transported shall be sealed with commercial shipper seals, Customs red in-bond seals, or other accepted seals. High-security Customs seals will be required on carload or containerized shipments where the Customs officer reviewing the in-bond entry determines it is required to adequately protect the revenue and prevent violations of Customs laws. The bonded carrier will provide Customs with the necessary seals. When the compartment or conveyance cannot be effectively sealed, as in the case of merchandise shipped in open cars or barges, or on the decks of vessels, or when it is known that any seals would necessarily be removed outside the jurisdiction of the United States for the purpose of discharging or taking on cargo, or when it is known that the breaking of the seals will be necessary to ventilate the hatches, or in other similar circumstances, such sealings may be waived with the consent of the carrier and an appropriate notation of such waiver shall be made on the manifest. The Commissioner of Customs may authorize the waiver of sealing of conveyances or compartments in which bonded merchandise is transported in other cases when in his opinion the sealing thereof is unnecessary to protect the revenue or to prevent violations of the Customs laws and regulations.

(2) The port director shall cause a Customs seal to be affixed to a container or road vehicle which is being used to transport merchandise under cover of a TIR carnet unless the container or road vehicle bears a customs seal (domestic or foreign). The port director shall likewise cause a Customs seal or label to be affixed to heavy or bulky goods being so transported. If, however, he has reason to believe that there is a discrepancy between the merchandise listed on the Goods Manifest of the carnet and the merchandise which is to be transported, he shall

cause a Customs seal or label to be affixed only when the listing of the merchandise in the carnet and a physical inventory agree.

(b) Ports at which the facilities are insufficient to maintain continuous customs supervision over vessels arriving with bonded cargo while the bonded merchandise is not under Customs seals shall permit the vessels to proceed to destination without further sealing and notation to this effect shall be made on the manifest.

(c)(1) Merchandise not under bond may be transported in sealed conveyances or compartments containing bonded goods when destined for the same place or places beyond, but not when intended for intermediate places.

(2) Merchandise moving under cover of a carnet may not be consolidated with other merchandise.

(d) The seals to be used in sealing conveyances, compartments, or packages must meet Customs standards provided in § 24.13a of this chapter, and may be obtained in accordance with § 24.13 of this chapter.

(e) Except as otherwise provided for in this paragraph, packages shipped in bond or by a carrier permitted to transport articles under the last sentence of section 553 of the tariff act, as amended, shall be corded and sealed or, in lieu thereof, the carrier shall furnish and attach to each such package a warning label on bright red paper, not less than 5 by 8 inches in size, containing the following legend in black or white lettering of a conspicuous size:

U.S. CUSTOMS

This package is under bond and must be delivered intact to the Customs officer in charge at the port of destination or to such other place as authorized by Customs.

WARNING. Two years' imprisonment, $5,000 fine, or both, is the penalty for unlawful removal of this package or any of its contents.

Transportation Entry No. _____; From _____ To _____; This package to be delivered to Customs at _____ (If other than port of destination)

A carrier at its option may omit the last three lines of the above legend from the warning label but if not omitted the information called for must be filled in. If the size of the package renders the use of a 5 × 8 inch warning label impracticable because of lack of space, a 3×5 inch label may be used. A high visibility, pressure-sensitive warning label, whether as a continuous series in tape form or otherwise, but not less than 1½ by 3 inches in size, may be used on any size package. Such cording and sealing or labeling of the packages so shipped is not required either when the packages are transported in a conveyance or compartment sealed with Customs seals, or when the sealing of the conveyance or compartment in which the packages are transported is waived under paragraph (a) or (b) of this section. When the packages are shipped in a railroad car the sealing of which is practicable but which is not sealed because merchandise not being transported in bond is or may be carried in the same car, the packages being transported in bond shall be corded and sealed or labeled.

(f) The warning label, when used, shall be pasted securely on the package under Customs supervision as close as practicable to the mark or number on the package. Additional labels may be required by the port director in such places on the package as he shall specify in any case where he is of the opinion that one is not adequate.

(g) When, in the case of crates and similar packages, it is impossible to attach the warning labels by pasting, bright red shipping tags of convenient size, large enough to be conspicuous and containing the same legend as the labels, shall be used in lieu of labels. Such tags shall be wired or otherwise securely fastened to the packages in such manner as not to injure the merchandise.

(h) Bonded carriers shall furnish and securely attach to the side doors of cars, to the doors of compartments, and on vehicles carrying bonded merchandise which are secured with Customs seals, bright red cards, 8 by 10¼ inches in size, which shall be attached near such seals and on which shall be printed in large, clear, black letters the following:

United States Customs. Two years' imprisonment, or $5,000 fine, or both, is the penalty for the unlawful removal of United States

Customs seals on this car, vehicle, or compartment. United States Customs officers only are authorized to break these seals.

Car or vessel _____
Number or name _____
From _____
To _____

NOTICE: The merchandise in this car, vehicle, or compartment shall be delivered to the chief officer of the customs at _____.

(i) *Removal of seals.* Except as provided in §18.3(d) and §19.6(e) of this chapter, seals affixed under this section shall be removed only under Customs supervision.

[28 FR 14755, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §18.4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§18.4a Containers or road vehicles accepted for transport under customs seal; requirements.

(a)(1) Containers covered by the Customs Convention on Containers shall be accepted for transport under Customs seal (see §18.4) if (i) durably marked with the name and address of the owner, particulars of tare, and identification marks and numbers, and (ii) constructed and equipped as outlined in Annex 1 to the Customs Convention on Containers, as evidenced by an accompanying unexpired certificate of approval in the form prescribed by Annex 2 to that Convention or by a metal plate showing design type approval by a competent authority.

(2) Containers carrying merchandise covered by a TIR carnet shall be accepted for transport under Customs seal (see §18.4) if (i) durably marked with the name and address of the owner, particulars of tare, and identification marks and numbers, (ii) constructed and equipped as outlined in Annex 6 to the TIR Convention, as evidenced by an accompanying unexpired certificate of approval in the form prescribed by Annex 8 to that Convention, or by a metal plate showing design type approval by a competent authority, and (iii) if the container or road vehicle hauling the container has affixed to it a rectangular plate bearing the letters ''TIR'' in accordance with Article 31 of the TIR Convention.

(b) Road vehicles carrying merchandise covered by a TIR carnet shall be accepted for transport under Customs seal if (1) durably marked with the name and address of the owner, particulars of tare, and identification marks and numbers, (2) constructed and equipped as outlined in Annex 3 to the TIR Convention, as evidenced by an accompanying unexpired certificate of approval in the form prescribed by Annex 5 to that Convention, or by a metal plate showing design type approval by a competent authority, and (3) if the road vehicle has affixed to it a rectangular plate bearing the letters ''TIR'' in accordance with Article 31 of the TIR Convention.

(c) The port director may refuse to accept for transport under Customs seal a container or road vehicle bearing evidence of approval if, in his opinion, the container or road vehicle no longer meets the requirements of the applicable Convention.

(d) Containers or road vehicles which are not approved under the provisions of a Customs Convention may be accepted for transport under Customs seal only if the port director at the port of origin is satisfied that (1) the container or road vehicle can be effectively sealed and (2) no goods can be removed from or introduced into the container or road vehicle without obvious damage to it or without breaking the seal. A container or road vehicle so accepted shall not carry merchandise covered by a TIR carnet.

[T.D. 71–70, 36 FR 4486, Mar. 6, 1971, as amended by T.D. 89–1, 53 FR 51254, Dec. 21, 1988]

§18.5 Diversion.

(a) Merchandise forwarded under any class of transportation entry may be diverted to any port other than the port named in the entry at the option of the consignee or agent. Except as provided for in paragraphs (c), (d), (e) and (f) of this section, prior application or approval of such diversion is not required.

(b) The director of the port to which merchandise is diverted may permit merchandise in transit under bond under any class of transportation entry to be entered at his port for consumption, warehouse, exportation, further

transportation in bond, or under any provisions of the tariff laws.

(c) When merchandise which has been delivered to the director of the port of original destination or port of diversion under any class of transportation entry is to be forwarded to another port or returned to the port of origin, a new transportation entry shall be required. If the merchandise is moving under cover of a carnet, the carnet may be accepted as a transportation entry.

(d) If it is desired to split a shipment at a port of destination and to enter a portion for consumption or warehouse and forward the balance in bond, or to divert the entire shipment or a part thereof to more than one port, the director of the port where diversion takes place shall complete the original transaction and shall require the filing of a new transportation entry or entries for the portion or portions forwarded. In the case, however, of merchandise being transported under cover of a carnet, splitting up of a shipment shall not be permitted.

(e) The diversion of shipments in bond which are subject on importation to restriction or prohibition under quarantines and regulations of the Agricultural Research Service of the Department of Agriculture shall be allowed only upon written permission or under regulations issued by the agency concerned.

(f) The diversion of in-bond shipments, which contain textiles or textile products subject to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), during the in-bond movement shall be allowed only upon the prior written permission of the director of the port of origin.

[T.D. 71–70, 36 FR 4487, Mar. 6, 1971, as amended by T.D. 82–116, 47 FR 27261, June 24, 1982; T.D. 84–207, 49 FR 38247, Sept. 28, 1984; T.D. 85–38, 50 FR 8723, Mar. 5, 1985]

§ 18.6 Short shipments; shortages; entry and allowance.

(a) When there has been a short shipment and the short-shipped packages are subsequently received, they may be forwarded only under a new transportation entry referenced to the original entry.

(b) When there is a shortage of one or more packages, or nondelivery of an entire shipment, or delivery to unauthorized locations, or delivery to the consignee without the permission of Customs, the port director may demand return of the merchandise to Customs custody. The demand shall be made no later than 30 days after the shortage, delivery, or nondelivery is discovered by Customs. The demand for the return of the merchandise to Customs custody shall be made on the bonded carrier, cartman, or lighterman identified on the Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit, Customs Form 7512, the Transit Air Cargo Manifest (TACM), or other appropriate document. The demand for the return of the merchandise shall be made on Customs Form 4647, Notice of Redelivery, or other appropriate form or by letter. A copy of the demand with the date of mailing or delivery noted thereon, shall be retained by the port director and made part of the in-bond entry record. Entry of the merchandise may be accepted if the merchandise can be recovered intact without any of the packages having been opened. In such cases, any shortage from the invoice quantity shall be presumed to have occurred while the merchandise was in the possession of the bonded carrier.

(c) If the merchandise cannot be recovered intact, as specified above, entry shall be accepted in accordance with § 141.4 of this chapter for the full manifested quantity unless a lesser amount is otherwise permitted in accordance with subpart A of part 158. Except as provided in paragraph (d) of this section, if the merchandise is not returned to Customs custody within 30 days of the date of mailing or date of delivery of the demand for redelivery, there shall be sent to the initial bonded carrier a demand for liquidated damages on Customs Form 5955–A, in the case of nondelivery of an entire shipment or on Customs Form 5931, in the case of a partial shortage.

(d) If merchandise covered by a carnet cannot be recovered intact, as specified in paragraph (b) of this section, entry shall not be accepted; there shall be sent to the appropriate guaranteeing association a demand for liquidated damages, duties, and taxes as

prescribed in §18.8(e); and, if appropriate, there shall also be sent to the initial bonded carrier a demand for any excess, as provided in §114.22(d) of this chapter. Demands shall be made on the forms specified in paragraph (c) of this section.

(e) An allowance in duty on merchandise reported short at destination, including merchandise found by the appraising officer to be damaged and worthless, and animals and birds found by the discharging officer to be dead on arrival at destination, shall be made in the liquidation of the entry.

(f) In the case of shipments arriving in the United States by rail or seatrain which are forwarded under Customs in-bond seals under the provisions of subpart D of part 123 of this chapter, and §18.11, or §18.20, a notation shall be made by the carrier or shipper on the in-bond manifest, Customs Form 7512, to show whether the shipment was transferred to the car designated in the manifest or whether it was laden in the car in the foreign country, which shall be named.

[T.D. 71–70, 36 FR 4487, Mar. 6, 1971, as amended by T.D. 82–116, 47 FR 27261, June 24, 1982; T.D. 82–158, 47 FR 37881, Aug. 27, 1982; T.D. 84–213, 49 FR 41168, Oct. 19, 1984; T.D. 85–180, 50 FR 42517, Oct. 21, 1985; T.D. 97–82, 62 FR 51770, Oct. 3, 1997]

§ 18.7 Lading for exportation, verification of.

(a) Promptly, but no more than 2 working days, after arrival of any portion of the in-bond shipment at the port of exportation, the delivering carrier shall surrender the in-bond manifest (the in-bond document any related carnet) to the port director as notice of arrival of the merchandise. If the in-bond manifest is lost in transit, the in-bond carrier shall report the arrival of the merchandise within the prescribed period and shall be responsible for obtaining copies of the original in-bond manifest. Failure to surrender the in-bond manifest or report the arrival of bonded merchandise within the prescribed period shall constitute an irregular delivery and the initial bonded carrier shall be subject to applicable penalties (see §18.8).

(b) The port director shall require only such supervision of the lading for exportation of merchandise covered by an entry or withdrawal for exportation or for transportation and exportation as is reasonably necessary to satisfy him that the merchandise has been laden on the exporting conveyance.

(c) Whenever the circumstances warrant, and occasionally in any event, port directors shall request the Office of Enforcement to check export entries and withdrawals against the records of the exporting carriers. Such check or verification shall include an examination of the carrier's records of claims and settlement of export freight charges and any other records which may relate to the transaction. The exporting carrier shall maintain these records for 5 years from the date of exportation of the merchandise.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 79–159, 44 FR 31967, June 4, 1979; T.D. 84–212, 49 FR 39047, Oct. 3, 1984; T.D. 91–77, 56 FR 46114, Sept. 10, 1991; T.D. 00–22, 65 FR 16517, Mar. 29, 2000]

§ 18.8 Liability for shortage, irregular delivery, or nondelivery; penalties.

(a) The initial bonded carrier shall be responsible for shortage, irregular delivery, or nondelivery at the port of destination or exportation of bonded merchandise received by it for carriage. An acceptable proof of proper delivery of bonded merchandise to Customs at the port of destination or exportation is a properly receipted copy of the in-bond document (the appropriate Customs Form 7512 or 7520, or the carnet). When sealing is waived, any loss found to exist at the port of destination or exportation shall be presumed to have occurred while the merchandise was in the possession of the carrier, unless conclusive evidence to the contrary is produced.

(b) Carriers shall be liable for payment of liquidated damages under the carriers bond for any shortage, failure to deliver, or irregular delivery, as provided in such bond.

(c) In addition to the penalties described in paragraph (b) of this section, the carrier shall pay any internal-revenue taxes, duties, or other taxes accruing to the United States on the missing merchandise, together with all costs, charges, and expenses caused by

the failure to make the required transportation, report, and delivery.

(d) In any case in which liquidated damages are imposed in accordance with this section and the Fines, Penalties, and Forfeitures Officer is satisfied by evidence submitted to him with a petition for relief filed in accordance with the provisions of Part 172 of this chapter that any violation of the terms and conditions of the bond occurred without any intent to evade any law or regulation, the Fines, Penalties, and Forfeitures Officer, in accordance with delegated authority, may cancel such claim upon the payment of any lesser amount or without the payment of any amount as may be deemed appropriate under the law and in view of the circumstances.

(e)(1) The domestic guaranteeing association shall be jointly and severally liable with the initial bonded carrier for duties and taxes accruing to the U.S., and any other charges imposed, in lieu thereof, as the result of any shortage, irregular delivery, or nondelivery at the port of destination or port of exit of merchandise covered by a TIR carnet. The liability of the domestic guaranteeing association is limited to $50,000 per TIR carnet for duties, taxes, and sums collected in lieu thereof. Penalties imposed as liquidated damages on the initial bonded carrier, and sums assessed the guaranteeing association in lieu of duties and taxes for any shortage, irregular delivery, or nondelivery shall be in accordance with this section. If a TIR carnet has not been discharged or has been discharged subject to a reservation, the guaranteeing association shall be notified within 1 year of the date upon which the carnet is taken on charge, including time for receipt of the notification, except that if the discharge shall have been obtained improperly or fraudulently the period shall be 2 years. However, in cases which become the subject of legal proceedings during the abovementioned period, no claim for payment shall be made more than 1 year after the date when the decision of the court becomes enforceable.

(2) Within 3 months from the date demand for payment is made by the port director as provided by §18.6(d), the guaranteeing association shall pay the amount claimed, except that if the amount claimed exceeds the liability of the guaranteeing association under the carnet (see §114.22(d) of this chapter), the carrier shall pay the excess. The amount paid shall be refunded if, within a period of 1 year from the date on which the claim for payment was made, it is established to the satisfaction of the Commissioner of Customs that no irregularity occurred. The Fines, Penalties, and Forfeitures Officer may cancel liquidated damages assessed against the guaranteeing association to the extent authorized by paragraph (d) of this section.

(3) The domestic guaranteeing association shall be jointly and severally liable with the initial bonded carrier for pecuniary penalties, liquidated damages, duties, and taxes accruing to the United States and any other charges imposed as the result of any shortage, irregular delivery, or nondelitery at the port of destination or port of exit of merchandise covered by an A.T.A. or TECRO/AIT carnet. However, the liability of the guaranteeing association shall not exceed the amount of the import duties by more than 10 percent. If an A.T.A. or TECRO/AIT carnet is unconditionally discharged with respect to certain goods, the guaranteeing association will no longer be liable on the carnet with respect to those goods unless it is subsequently discovered that the discharge of the carnet was obtained fraudulently or improperly or that there has been a breach of the conditions of temporary admission or of transit. No claim for payment shall be made more than one year following the date of expiration of the validity of the carnet. The guaranteeing association shall be allowed a period of six months from the date of any claim by the port director in which to furnish proof of the reexportation of the goods or of any other proper discharge of the A.T.A. or TECRO/AIT carnet. If such proof is not furnished within the time specified, the guranteeing association shall either deposit or provisionally pay the sums. The deposit or payment shall become final three months after the date of the deposit or payment, during which time the guaranteeing association may still furnish proof of the reexportation of

the goods to recover the sums deposited or paid.

[28 FR 14755, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 18.8, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 18.9 Examination by inspectors of trunk line associations or agents of the Surface Transportation Board.

(a) Upon presentation of proper credentials showing the applicant to be a representative of the Trunk Line Association, the Surface Transportation Board, the Joint Rate Inspection Bureau of Chicago or the Southern Weighing and Inspection Bureau of Atlanta, inspectors of CBP in charge will permit such applicant to examine packages containing in-bond merchandise described in the manifest in general terms for the purpose of ascertaining whether the merchandise is properly classified under the interstate commerce laws.

(b) The opening and examination of such packages shall be without expense to the Customs Service or the owner of the goods and shall be done in the presence of a Customs officer. The contents of the cases shall not be removed or disturbed further than is necessary to ascertain the character thereof. The Customs officer shall require the packages to be securely closed, and shall note on the manifest the packages so inspected, the date, and by whom inspected.

[28 FR 14755, Dec. 31, 1963, as amended by CBP Dec. 04–28, 69 FR 52599, Aug. 27, 2004]

§ 18.10 Kinds of entry.

(a) The following entries and withdrawals may be made for merchandise to be transported in bond:

(1) Entry for immediate transportation without appraisement.

(2) Warehouse or rewarehouse withdrawal for transportation.

(3) Warehouse or rewarehouse withdrawal for exportation or for transportation and exportation.

(4) Entry for transportation and exportation.

(5) Entry for exportation.

(b) The copy of each entry or withdrawal made in any of the classes named in paragraph (a) of this section which is retained in the office of the forwarding port director shall be signed by the party making the entry or withdrawal. In the case of shipments to the Virgin Islands (U.S.) under paragraph (a), (3), (4), or (5) of this section, one additional copy of the entry or withdrawal on Customs Form 7512 shall be filed and shall be mailed by the receiving port director to the port director, Charlotte Amalie, St. Thomas, Virgin Island (U.S.). Before shipping merchandise in bond to another port for the purpose of warehousing or rewarehousing, the shipper should ascertain whether warehouse facilities are available at the intended port of destination.

[28 FR 14755, Dec. 21, 1963, as amended by T.D. 89–1, 53 FR 51254, Dec. 21, 1988]

§ 18.10a Special manifest.

(a) *General.* Merchandise for which no other type of bonded movement is appropriate (e.g., prematurely discharged or overcarried merchandise and other such types of movements whereby the normal transportation-in-bond procedures are not applicable) may be shipped in bond from the port of unlading to the destination shown on the importing carrier's manifest (manifested port) when authorized by the port director having custody of the merchandise. For this purpose, Custom's Form 7512 prepared in quadruplicate shall be used as a special manifest.

(b) *Manifest procedures.* (1) Written application shall be made to the port director where the merchandise is being held for permission to return it as a bonded shipment under a special manifest to the manifested port, including to the port of diversion (see section 4.33 of this chapter), when different from the original manifested port.

(2) The application and accompanying completed Customs Form 7512 shall identify the prematurely discharged or overcarried merchandise on the inward manifest of the importing carrier; and also identify the date and entry number of any entry made at the manifested port covering the merchandise to be returned, if known. If the port director is satisfied that the merchandise will be delivered to Customs

custody at the manifest port before expiration of 90 days from the date of the entry identified, or 90 days from the date of the importing carrier's arrival at the manifested port when no entry is identified, the port director may approve the shipment under a special manifest.

[T.D. 83–218, 48 FR 48657, Oct. 20, 1983; 48 FR 49655, Oct. 27, 1983]

IMMEDIATE TRANSPORTATION WITHOUT APPRAISEMENT

§ 18.11 Entry; classes of goods for which entry is authorized; form used.

(a) Entry for immediate transportation without appraisement may be made under section 552, Tariff Act of 1930, (1) for any merchandise, except explosives and prohibited merchandise, upon its arrival at a port of entry, or (2) for merchandise in general-order warehouse at any time within 6 months from the date of importation.

(b) Entry for immediate transportation without appraisement may be made by (1) the carrier bringing the merchandise to the port of arrival, (2) the carrier who is to accept the merchandise under its bond or a carnet for transportation to the port of destination, or (3) any person shown by the bill of lading or manifest, a certificate of the importing carrier, or by any other document satisfactory to the port director, to have a sufficient interest in the merchandise for that purpose.

(c) Before a shipment covered by an entry for immediate transportation, including a carnet, or a manifest of baggage shipped in bond (other than baggage to be forwarded in bond to a Customs station—see § 18.13(a)), shall be allowed to be transported directly to a place of deposit outside a port of entry for examination and release as contemplated by section 484(f), Tariff Act of 1930, as amended, the consent of the director of the port of entry designated in the transportation entry or baggage manifest (or in the event of diversion under § 18.5, for the port of destination of the merchandise or baggage) must first be secured. Before consent may be given, the importer must furnish such port director with a stipulation that, promptly upon the arrival of any part of the merchandise or baggage at the place of deposit, he will file an entry for the shipment at the port of entry designated in the transportation entry or baggage manifest (or in the event of diversion under § 18.5, at the port of destination of the merchandise or baggage) and will comply with the provisions of § 151.9 of this chapter.

(d) Carload shipments of livestock shall not be entered for immediate transportation without appraisement unless they will arrive at destination before it becomes necessary to remove the seals for the purpose of watering and feeding the animals, or unless the route be such that the removal of the seals and the watering, feeding, and reloading of the stock may be done under Customs supervision.

(e) Entries for immediate transportation without appraisement covering merchandise subject to detention of supervision by any Federal agency shall contain a sufficient description of the merchandise to enable the representative of the agency concerned to determine the contents of the shipment. Such merchandise covered by quarantines and regulations administered by the Bureau of Entomology and Plant Quarantine shall be forwarded under such entries only upon written permission of or under regulations issued by that Bureau. Entries for immediate transportation without appraisement covering textiles and textile products subject to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), shall be described in such detail as to enable the port director to estimate the duties and taxes, if any, due. The port director may require evidence to satisfy him of the approximate correctness of the value and quantity stated in the entry (e.g. Detailed quantity description, 14 cartons, 2 dozen per carton); Detailed description of the textiles or textile products including type of commodity and chief fiber content (e.g., men's cotton jeans or women's wool sweaters); Net weight of the textiles or textile products (including immediate packing but excluding pallet); Total value of the textiles or textile products; Manufacturer or supplier; Country of orgin; Name(s) and address(es) of the person(s) to whom

the textiles and textile products are consigned; Harmonized code tariff number (when available).

(f) One or more entire packages of merchandise covered by an invoice from one consignor to one consignee may be entered for consumption or warehouse at the port of first arrival, and the remainder entered for immediate transportation without appraisement, provided all the merchandise covered by the invoice is entered simultaneously and any carnet which may cover such merchandise is discharged as to that merchandise.

(g) Several importations may be consolidated in one immediate transportation without appraisement entry when bills of lading or carrier's certificates name only one consignee at the port of first arrival. However, merchandise moving under cover of a carnet may not be consolidated with other merchandise.

(h) Either Customs Form 7512, a carnet, or an air waybill (see § 122.92 of this chapter), shall be used as a combined transportation entry, invoice, and manifest. If Customs Form 7512 is used, a minimum of three copies shall be required at the port of origin. The port director, however, may require additional copies of Customs Form 7512 or the Goods Manifest of the carnet for use in connection with the delivery of the merchandise to the bonded carrier. In lieu of additional copies of the Goods Manifest, the port director may accept copies of a bill of lading covering the merchandise. The merchandise shall be described in such detail as to enable the port director to estimate the duties and taxes, if any, due. The port director may require evidence to satisfy him of the approximate correctness of the value or quantity stated in the entry. If a TIR carnet is used, and the duties and taxes estimated to be due exceed the maximum liability of the guaranteeing association under the carnet, the provisions of § 114.22(d) of this chapter shall apply.

(i) The value stated on the entry at the port of first arrival is not binding on the ultimate consignee making entry at the port of destination and does not relieve the importer of the obligation to show the correct value on entry.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 71–70, 36 FR 4488, Mar. 6, 1971; T.D. 73–175, 38 FR 17446, July 2, 1973; T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 84–207, 49 FR 38247, Sept. 28, 1984; T.D. 85–38, 50 FR 8723, Mar. 5, 1985; T.D. 89–1, 53 FR 51254, Dec. 21, 1988; T.D. 92–82, 57 FR 38275, Aug. 24, 1992; T.D. 98–74, 63 FR 51288, Sept. 25, 1998]

§ 18.12 Entry at port of destination.

(a) Merchandise received under an immediate transportation without appraisement entry may be entered for transportation and exportation or for immediate transportation, or under any other form of entry, and shall be subject to all the conditions pertaining to merchandise entered at a port of first arrival if not more than 6 months have elapsed from the date of original importation. If more than 6 months have elapsed, only an entry for consumption shall be accepted. Such entry shall show the name of the port of first arrival, the transporting carrier, and the number of the immediate transportation entry. (See § 127.2 of this chapter.)

(b) The right to make entry at the port of destination shall be determined in accordance with the provisions of § 141.11 of this chapter.

(c) When a portion of a shipment is entered at the port of first arrival and the remainder is entered for consumption or warehouse at one or more subsequent ports, the entry at each subsequent port may be made on an extract of the invoice as provided for in § 141.84 of this chapter.

(d) All merchandise included in an immediate transportation without appraisement entry (including carnets) not entered within 15 calendar days after delivery at the port of destination shall be disposed of in accordance with the applicable procedures in § 4.37 or § 122.50 or § 123.10 of this chapter.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 71–70, 36 FR 4488, Mar. 6, 1971; T.D. 73–175, 38 FR 17446, July 2, 1973; T.D. 74–114, 39 FR 12091, Apr. 3, 1974; T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 98–74, 63 FR 51288, Sept. 25, 1998]

SHIPMENT OF BAGGAGE IN BOND

§ 18.13 Procedure; manifest.

(a) Baggage may be forwarded in bond to another port of entry, or to a Customs station listed in § 101.4 of this chapter, at the request of the passenger, the transportation company, or the agent of either, with the use of a baggage manifest described in paragraph (b) of this section without examination or assessment of duty at the port or station of first arrival. For this purpose, the carrier shall furnish cards of bright red cardboard not less than 2½ by 4 inches in size with the following printed text, for attachment (by wire or cord) to the baggage:

UNITED STATES CUSTOMS

Check No. _____
Baggage in bond:
Carrier _____
From _____

TO PORT DIRECTOR

At (destination) _____
This baggage must be delivered by carrier to the director of the port of destination. Failure to do so renders the carrier liable to a fine.

(b) A Customs manifest for baggage shipped in bond, Customs Form 7512, shall be prepared in triplicate for each shipment.

(c) Baggage arriving in bond or otherwise at a port on the Atlantic or Pacific coast, destined to a port on the opposite coast, may be laden under Customs supervision, without examination and without being placed in bond, on a vessel proceeding to the opposite coast, provided the vessel will proceed to the opposite coast without stopping at any other port on the first coast.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 70–121, 35 FR 8222, May 26, 1970; T.D. 77–241, 42 FR 54937, Oct. 12, 1977; T.D. 87–75, 52 FR 20067, May 29, 1987; T.D. 00–22, 65 FR 16517, Mar. 29, 2000]

§ 18.14 Shipment of baggage in transit to foreign countries.

The baggage of any person in transit through the United States from one foreign country to another may be shipped over a bonded route for exportation. Such baggage shall be shipped under the regulations prescribed in § 18.13, except that the card or poster shall be printed on yellow paper and shall read ''Baggage in bond for export.'' See § 123.64 of this chapter for the regulations applicable to baggage shipped in transit through the United States between points in Canada or Mexico.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 70–121, 35 FR 8222, May 26, 1970]

MERCHANDISE IN TRANSIT THROUGH THE UNITED STATES TO FOREIGN COUNTRIES

§ 18.20 Entry procedure; forwarding.

(a) When an importation is entered for transportation and exportation, except as provided for in subparts D, E, F and G of part 123 of this chapter (relating to merchandise in transit through the U.S. between two points in contiguous foreign territory), a carnet, three copies of an air waybill (see § 122.92 of this chapter), or four copies of Customs Form 7512 shall be required. The port director, however, may require additional copies of Customs Form 7512 or the Goods Manifest of the carnet for use in connection with the delivery of the merchandise to, the bonded carrier. In lieu of additional copies of a Goods Manifest, the port director may accept copies of a bill of lading covering the merchandise. Acceptance of transportation and exportation entries shall be subject to the requirements prescribed in § 18.11(b) for entry of merchandise for immediate transportation without appraisement.

(b) Except in respect to merchandise covered by a carnet (see § 18.1(a) (2) and (3)), in places where no bonded common carrier facilities are reasonably available and merchandise is permitted to be transported otherwise than by a bonded common carrier, the port director may permit entry in accordance with the procedure outlined in paragraph (a) of this section if he is satisfied that the revenue will not be endangered. A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter in an amount equal to double the estimated duties shall be required when the port director deems such action necessary. (See § 113.55 of this chapter for cancellation of export bonds.)

(c) The merchandise shall be forwarded in accordance with the general

provisions for transportation in bond, §§ 18.1 through 18.8.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 71–70, 36 FR 4489, Mar. 6, 1971; T.D. 74–227, 39 FR 32015, Sept. 4, 1974; T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 84–212, 49 FR 39047, Oct. 3, 1984; T.D. 84–213, 49 FR 41168, Oct. 19, 1984; T.D. 89–1, 53 FR 51254, Dec. 21, 1988; T.D. 92–82, 57 FR 38275, Aug. 24, 1992]

§ 18.21 Restricted and prohibited merchandise.

(a) Merchandise subject upon importation to examination, disinfection, or further treatment under quarantines and Quarantine Division, Agricultural Research Service, Department of Agriculture, shall be released for transportation or exportation only upon written permission of, or under regulations issued by, that Bureau. (See §§ 12.10 to 12.15 of this chapter.)

(b) Narcotics and other articles prohibited admission into the commerce of the United States shall not be entered for transportation and exportation and any such merchandise offered for entry for that purpose shall be seized, except that exportation or transportation and exportation may be permitted upon written authority from the proper governmental agency and/or compliance with the regulations of such agency.

(c) Articles in transit manifested merely as drugs, medicines, or chemicals, without evidence to satisfy the port director that they are non-narcotic, shall be detained and subjected, at the carrier's risk and expense, to such examination as may be necessary to satisfy the port director whether or not they are of a narcotic character. A properly verified certificate of the shipper, specifying the items in the shipment and stating whether narcotic or not, may be accepted by the port director to establish the character of such a shipment.

(d) Explosives shall not be entered for transportation and/or exportation under a transportation and exportation entry, or an immediate transportation entry unless the importer has first obtained a license or permit from the proper governmental agency.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 84–77, 49 FR 13491, Apr. 5, 1984; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 18.22 Procedure at port of exit.

(a) If transfer is necessary, the procedure shall be as prescribed in § 18.3(d).

(b) Upon the arrival at the port of exit of express shipments of articles shown by the manifest, Customs Form 7512, to be baggage and to be deliverable to the owner on board the exporting vessel, such articles may be transferred by the express company, without a permit from the port director and without the use of a transfer ticket or other Customs formality, from its terminal to the exporting vessel for lading under Customs supervision, if the express company is bonded as a common carrier and is responsible under its bond for the delivery of the articles to the Customs officer in charge of the exporting vessel. The manifest shall show the name of the owner of the baggage and the name of the vessel on which he intends to sail.

§ 18.23 Change of destination; change of entry.

(a) The foreign destination of such merchandise may be changed by the parties in interest upon notice to the director of the port of exit from the United States. The director of the port of exit, in his discretion, may report the application for a change of foreign destination to the director of the port of entry.

(b) Such merchandise may be entered for consumption or warehouse or under any other form of entry. If the merchandise is subject on importation to quarantine and regulations administered by the Bureau of Entomology and Plant Quarantine, it shall be entered for consumption or warehouse only upon written permission of, or under regulations issued by, that Bureau. (See §§ 12.10 to 12.15 of this chapter.)

§ 18.24 Retention of goods on dock; splitting of shipments.

(a) Upon written application of a party in interest and the written consent of the owner of the dock, the port director, in his discretion, may allow in-transit merchandise, including merchandise covered by a carnet, to remain on the dock under the supervision of a Customs officer without extra expense to the Government for a period

not exceeding 90 days. Upon further application, additional extensions of 90 days or less, but not to exceed 1 year from the date of importation, may likewise be granted by the port director. The port director may take possession of the merchandise at any time.

(b) The splitting up of a shipment for exportation shall be permitted when exportation in its entirety is not possible by reason of the different destinations to which portions of the shipment are destined, when the exporting vessel cannot properly accommodate the entire quantity, or in similar circumstances. In the case, however, of merchandise being transported under cover of a carnet, splitting up of a shipment shall not be permitted.

[T.D. 71–70, 36 FR 4489, Mar. 6, 1971, as amended by T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 00–57, 65 FR 53574, Sept. 5, 2000]

EXPORTATION FROM CUSTOMS CUSTODY OF MERCHANDISE UNENTERED OR COVERED BY AN UNLIQUIDATED CONSUMPTION ENTRY, OR MERCHANDISE DENIED ADMISSION BY THE GOVERNMENT

§ 18.25 Direct exportation.

(a) Except as otherwise provided for in subpart F of part 145 of this chapter, relating to exportations by mail, when no entry has been made or completed for merchandise in Customs custody, or when the merchandise is covered by an unliquidated consumption entry, or when merchandise which has been entered in good faith is found to be prohibited under any law of the United States, and such merchandise is to be exported directly without transportation to another port, four copies of Customs Form 7512 shall be filed. If a TIR carnet covers the merchandise which is to be exported directly without transportation, the carnet shall be discharged or canceled, as appropriate (see part 114 of this chapter), and four copies of Form 7512 shall be filed. The port director may require an extra copy or copies of Form 7512 to be furnished for use in connection with delivery of the merchandise to the carrier named in the entry. If an A.T.A. carnet covers the merchandise which is to be exported directly without transportation, the carnet shall be discharged by the certification of the appropriate transportation and reexportation vouchers by Customs officers as necessary.

(b) A bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter, shall be required. (See also § 158.45 of this chapter.)

(c) If the merchandise has been landed or is transferred from one vessel to another and has not been entered for consumption or, in the case of goods entered for consumption and rejected, such export declaration as required by § 30.3(a)(2) of the Foreign Trade Statistics Regulations (15 CFR 30.3(a)(2)) shall be filed.

(d) If the merchandise is exported in the importing vessel without landing, a representative of the exporting carrier who has knowledge of the facts shall certify that the merchandise entered for exportation was not discharged during the vessel's stay in port. A charge shall be made against the continuous bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter, if on file, or if a continuous bond is not on file, a single entry bond containing the bond conditions set forth in § 113.64 shall be required as in the case of residue cargo for foreign ports. If the merchandise is covered by a TIR carnet, the carnet shall not be taken on charge (see § 114.22(c)(2) of this chapter).

(e) The principal on any bond filed to guarantee direct exportation shall cause the merchandise to be exported and provide such evidence of exportation as required by the port director under § 113.55 of this chapter within 30 days of exportation.

(f) Gunpowder and other explosive substances, the deposit of which in any public store or bonded warehouse is prohibited by law, may be entered on arrival from a foreign port for immediate exportation in bond by sea, but shall be transferred directly from the importing to the exporting vessel.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 68–299, 33 FR 18437, Dec. 12, 1968; T.D. 71–70, 36 FR 4489, Mar. 6, 1971; T.D. 72–258, 37 FR 20174, Sept. 27, 1972; T.D. 73–135 38 FR 13369, May 21, 1973; T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 84–213, 49 FR 41168, Oct. 19, 1984; T.D. 98–74, 63 FR 51288, Sept. 25, 1998]

§ 18.26 Indirect exportation.

(a) When merchandise of the character enumerated in § 18.25(d) is to be transported in bond to another port for exportation, it may be entered for transportation and exportation in accordance with the procedure in § 18.20. Upon acceptance of the entry by Customs and acceptance of the merchandise by the bonded carrier, the bonded carrier assumes liability for the transportation and exportation of the merchandise. In the case of merchandise prohibited entry by any Government agency, that fact shall be prominently noted on Customs Form 7512 for the information of the director of the port of exportation. If the merchandise was imported under cover of a TIR carnet, the carnet shall be discharged or canceled at the port of importation and the merchandise transported under an entry on Customs Form 7512 (see § 18.25). If merchandise has been imported under cover of an A.T.A. carnet to be transported in bond to another port for exportation, the appropriate transit voucher shall be accepted in lieu of Customs Forms 7512. One transit voucher shall be certified by Customs officers at the port of importation and a second transit voucher, together with the reexportation voucher, shall be certified at the port of exportation.

(b) The merchandise shall be forwarded in accordance with the general provisions for transportation in bond, §§ 18.1 through 18.8.

(c) If the merchandise is to be transferred after arrival at the selected port of exportation, the procedure prescribed in § 18.3(d) shall be followed. The provisions of §§ 18.23 and 18.24 shall also be followed in applicable cases.

(d) The bonded carrier shall cause the merchandise to be exported and provide such evidence of exportation as required by the port director under § 113.55 of this chapter within 30 days of exportation.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 71–70, 36 FR 4489, Mar. 6, 1971; T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 84–213, 49 FR 41169, Oct. 19, 1984]

§ 18.27 Port marks.

Port marks may be added by authority of the port director and under the supervision of a Customs officer. The original marks and the port marks shall appear in all papers pertaining to the exportation.

MERCHANDISE TRANSPORTED BY PIPELINE

§ 18.31 Pipeline transportation of bonded merchandise.

(a) *General.* Merchandise may be transported by pipeline under the procedures in this part, as appropriate and unless otherwise specifically provided for in this section.

(b) *Bill of lading to account for merchandise.* Unless Customs has reasonable cause to suspect fraud, Customs shall accept a bill of lading or equivalent document of receipt issued by the pipeline operator to the shipper and accepted by the consignee to account for the quantity of merchandise transported by pipeline and to maintain the identity of the merchandise.

(c) *Procedures when pipeline is only carrier.* When a pipeline is the only carrier of bonded merchandise and there is no transfer to another carrier, the bill of lading or equivalent document of receipt issued by the pipeline operator to the shipper shall be included with, and made a part of, the Customs in-bond document (see § 18.2(b)). If there are no discrepancies between the bill of lading or equivalent document of receipt and the other documents making up the in-bond manifest for the merchandise, and provided that Customs has no reasonable cause to suspect fraud, the bill of lading or equivalent document of receipt shall be accepted by Customs at the port of destination or exportation (see §§ 18.2(d) and 18.7) as establishing the quantity and identity of the merchandise transported. The pipeline operator shall be responsible for any discrepancies, including shortages, irregular deliveries, or nondeliveries at the port of destination or exportation (see § 18.8).

(d) *Procedures when there is more than one carrier (i.e., transfer of the merchandise)*—(1) *Pipeline as initial carrier.* When a pipeline is the initial carrier of bonded merchandise and the merchandise is transferred to another conveyance (either a different mode of transportation

or a pipeline operated by another operator), the procedures in § 18.3 and paragraph (c) of this section shall be followed, except that—

(i) When the merchandise is to be transferred to one conveyance, a copy of the bill of lading or equivalent document issued by the pipeline operator to the shipper shall be delivered to the person in charge of the conveyance for delivery, along with the in-bond document, to the appropriate Customs official at the port of destination or exportation; or

(ii) When the merchandise is to be transferred to more than one conveyance, a copy of the bill of lading or equivalent document issued by the pipeline operator to the shipper shall be delivered to the person in charge of each additional conveyance, along with the two additional copies of the in-bond document, for delivery to the appropriate Customs official at the port of destination or exportation.

(2) *Transfer to pipeline from initial carrier other than a pipeline.* When bonded merchandise initially transported by a carrier other than a pipeline is transferred to a pipeline, the procedures in § 18.3 and paragraph (c) of this section shall be followed, except that the bill of lading or other equivalent document of receipt issued by the pipeline operator to the shipper shall be delivered, along with the in-bond document, to the appropriate Customs officer at the port of destination or exportation.

(3) *Initial carrier liable for discrepancies.* In the case of either paragraph (d)(1) or (d)(2) of this section, the initial carrier shall be responsible for any discrepancies, including shortages, irregular deliveries, or nondeliveries, at the port of destination or exportation (see § 18.8).

(e) *Recordkeeping.* The shipper, pipeline operator, and consignee are subject to the recordkeeping requirements in 19 U.S.C. 1508 and 1509, as provided for in part 162 of this chapter.

[T.D. 96–18, 61 FR 6779, Feb. 22, 1996]

MERCHANDISE NOT OTHERWISE SUBJECT TO CUSTOMS CONTROL EXPORTED UNDER COVER OF A TIR CARNET

§ 18.41 Applicability.

The provisions of §§ 18.41 through 18.45 apply only to merchandise to be exported under cover of a TIR carnet for the convenience of the U.S. exporter or other party in interest and do not apply to merchandise otherwise required to be transported in bond under the provisions of this chapter. Merchandise to be exported under cover of a TIR carnet for the convenience of the U.S. exporter or other party in interest may be transported with the use of the facilities of either bonded or nonbonded carriers.

[T.D. 71–263, 36 FR 20291, Oct. 20, 1971]

§ 18.42 Direct exportation.

At the port of exportation, the container or road vehicle, the merchandise, and the TIR carnet shall be made available to the port director. Any required export declarations shall be filed in accordance with the applicable regulations of the Bureau of the Census (15 CFR part 30) and the Office of Export Control (15 CFR part 386). The port director shall examine the merchandise to the extent he believes necessary to determine that the carnet has been properly completed and shall verify that the container or road vehicle has the necessary certificate of approval or approval plate intact and is in satisfactory condition. After completion of any required examination and supervision of loading, the port director shall cause the container or road vehicle to be sealed with Customs seals and ascertain that the TIR plates are properly affixed and sealed. (See § 18.4a.) In the case of heavy or bulky goods moving under cover of a TIR carnet, the port director shall cause a Customs seal or label, as appropriate, to be affixed. He shall also remove two vouchers from the carnet, execute the appropriate counterfoils, and return the carnet to the carrier or agent to accompany the merchandise.

[T.D. 71–70, 36 FR 4489, Mar. 6, 1971]

§ 18.43 Indirect exportation.

(a) When merchandise is to move from one U.S. port to another for actual exportation at the second port, any export declarations required to be validated shall be filed in accordance with the port of origin procedure described in the applicable regulations of the Bureau of the Census and of the Office of Export Control.

(b) The port director shall follow the procedure provided in § 18.42 in respect to examination of the merchandise, supervision of loading, sealing or labeling, and affixing of TIR plates. He shall remove one voucher from the carnet, execute the appropriate counterfoil, and return the carnet to the carrier or agent to accompany the container or road vehicle to the port of actual exportation.

(c) At the port of actual exportation, the carnet and the container (or heavy or bulky goods) or road vehicle shall be presented to the port director who shall verify that seals or labels are intact and that there is no evidence of tampering. After verification, the port director shall remove the appropriate voucher from the carnet, execute the counterfoil, and return the carnet to the carrier or agent.

[T.D. 71–70, 36 FR 4489, Mar. 6, 1971]

§ 18.44 Abandonment of exportation.

In the event that exportation is abandoned at any time after merchandise has been placed under cover of a TIR carnet, the carrier or agent shall deliver the carnet to the nearest customs office or to the Customs office at the port of origin for cancellation (see § 114.26(c) of this chapter). When the carnet has been canceled, the carrier or agent may remove Customs seals or labels and unload the container (or heavy or bulky goods) or road vehicle without customs supervision.

[T.D. 71–70, 36 FR 4489, Mar. 6, 1971]

§ 18.45 Supervision of exportation.

The provisions of §§ 18.41 through 18.44 do not require the director of the port of actual exportation to verify that merchandise moving under cover of a TIR carnet is loaded on board the exporting carrier.

[T.D. 71–70, 36 FR 4489, Mar. 6, 1971]

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

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AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624;

Section 19.1 also issued under 19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1560, 1561, 1562;

Section 19.6 also issued under 19 U.S.C. 1555;

Section 19.7 also issued under 19 U.S.C. 1555, 1556;

Section 19.11 also issued under 19 U.S.C. 1556, 1562;

Section 19.15 also issued under 19 U.S.C. 1311;

Sections 19.17–19.25 also issued under 19 U.S.C. 1312;

Sections 19.35–19.39 also issued under 19 U.S.C. 1555;

Section 19.40(a) also issued under 19 U.S.C. 1450, 1499, 1623;

Sections 19.41–19.43 also issued under 19 U.S.C. 1499;

Section 19.44 also issued under 19 U.S.C. 1448;

Section 19.45 also issued under 19 U.S.C. 1551, 1565;

Section 19.48 also issued under 19 U.S.C. 1499, 1623;

Section 19.49 also issued under 19 U.S.C. 1484.

SOURCE: 28 FR 14763, Dec. 31, 1963, unless otherwise noted.

§ 19.1 Classes of customs warehouses.

(a) *Classifications.* Customs warehouses shall be designated according to the following classifications:

(1) *Class 1.* Premises that may be owned or leased by the Government, when the exigencies of the service as determined by the port director so require, and used for the storage of merchandise undergoing examination by Customs, under seizure, or pending final release from Customs custody. Merchandise will be stored in such premises only at Customs direction and will be held under ''general order.''

(2) *Class 2.* Importers' private bonded warehouses used exclusively for the storage of merchandise belonging or consigned to the proprietor thereof. A warehouse of class 4 or 5 may be bonded exclusively for the storage of goods imported by the proprietor thereof, in which case it shall be known as a private bonded warehouse.

(3) *Class 3.* Public bonded warehouses used exclusively for the storage of imported merchandise.

(4) *Class 4.* Bonded yards or sheds for the storage of heavy and bulky imported merchandise; stables, feeding pens, corrals, or other similar buildings or limited enclosures for the storage of imported animals; and tanks for the storage of imported liquid merchandise in bulk. If the port director deems it necessary, the yards shall be enclosed by substantial fences with entrances and exit gates capable of being secured by the proprietor's locks. The inlets and outlets to tanks shall be secured by means of seals or the proprietor's locks.

(5) *Class 5.* Bonded bins or parts of buildings or of elevators to be used for the storage of grain. The bonded portions shall be effectively separated from the rest of the building.

(6) *Class 6*. Warehouses for the manufacture in bond, solely for exportation, of articles made in whole or in part of imported materials or of materials subject to internal-revenue tax; and for the manufacture for home consumption or exportation of cigars in whole of tobacco imported from one country.

(7) *Class 7*. Warehouses bonded for smelting and refining imported metal-bearing materials for exportation or domestic consumption.

(8) *Class 8*. Bonded warehouses established for the purpose of cleaning, sorting, repacking, or otherwise changing in condition, but not manufacturing, imported merchandise, under Customs supervision and at the expense of the proprietor.

(9) *Class 9*. Bonded warehouse, known as ''duty-free stores'', used for selling, for use outside the Customs territory, conditionally duty-free merchandise owned or sold by the proprietor and delivered from the Class 9 warehouse to an airport or other exit point for exportation by, or on behalf of, individuals departing from the Customs territory for destinations other than foreign trade zones. Pursuant to 19 U.S.C. 1555(b)(8)(C), ''Customs territory'', for purposes of duty-free stores, means the Customs territory of the U.S. as defined in §101.1(e) of this chapter, and foreign trade zones (see part 146 of this chapter). All distribution warehouses used exclusively to provide individual duty-free sales locations and storage cribs with conditionally duty-free merchandise are also Class 9 warehouses.

(10) [Reserved]

(11) *Class 11*. Bonded warehouses, known as ''general order warehouses,'' established for the storage and disposition exclusively of general order merchandise as described in §127.1 of this chapter.

(b) *Manipulation*. The whole or a part of any warehouse of class 1, 2, 3, 4, 5, 6, 7, or 11 may be designated a constructive manipulation (class 8) warehouse when the exigencies of the service so require.

(c) *General order*. General order merchandise as described in §127.1 of this chapter may be stored and disposed of in a class 11 warehouse or a warehouse of class 3, 4, or 5, provided the class 3, 4, or 5 warehouse has also been certified by the port director as meeting the criteria for a class 11 warehouse, following an application under §19.2. So far as such warehouses are used for the purpose of handling general order goods, they will also be considered general order (class 11) warehouses. If there is no space at a warehouse of any of these classes available, the proprietor of such a warehouse, with the approval of the port director of the port nearest to where the warehouse is located, may rent or lease additional suitable premises for the storage of general order merchandise.

[T.D. 76–277, 41 FR 42649, Sept. 28, 1976, as amended by T.D. 82–204, 47 FR 49368, Nov. 1, 1982; T.D. 89–1, 53 FR 51254, Dec. 21, 1988; T.D. 92–81, 57 FR 37696, Aug. 20, 1992; T.D. 97–19, 62 FR 15834, Apr. 3, 1997; T.D. 02–65, 67 FR 68032, Nov. 8, 2002]

GENERAL PROVISIONS

§ 19.2 Applications to bond.

(a) *Application*. An owner or lessee desiring to establish a bonded warehouse facility shall make written application to the director of the port nearest to where the warehouse is located, describing the premises, giving its location, and stating the class of warehouse desired. If required by the port director, the applicant shall provide a list of names and addresses of all officers and managing officials of the warehouse and all persons who have a direct or indirect financial interest in the operation of the warehouse facility. Except in the case of a class 2 or class 7 warehouse, the application shall state whether the warehouse facility is to be operated only for the storage or treatment of merchandise belonging to the applicant or whether it is to be operated as a public bonded warehouse. If the warehouse facility is to be operated as a private bonded warehouse, the application also shall state the general character of the merchandise to be stored therein, and provide an estimate of the maximum duties and taxes which will be due on all merchandise in the bonded warehouse at any one time. A warehouse facility will be determined by street address, location, or both. For example, if a proprietor has two warehouses located at one street address and three warehouses located

at three different street addresses the two located at one address would be considered as one warehouse facility and the three located at three different addresses would each be considered as separate warehouses facilities. The applicant must prepare and have available at the warehouse a procedures manual describing the inventory control and recordkeeping system that will be used in the warehouse. A certification by the proprietor that the inventory control and recordkeeping system meets the requirements of § 19.12 will be submitted with the application. The physical security of the facility must meet the approval of the port director.

(b) The applicant shall submit evidence of fire insurance coverage on the proposed warehouse. If the applicant does not have fire insurance for the proposed warehouse, he shall submit a certificate signed by an officer or agent of each of two insurance companies stating that the building is acceptable for fire-insurance purposes. The application shall also be accompanied by a blueprint showing measurements, openings, etc., of the building or space to be bonded. If the warehouse to be bonded is a tank, the blueprint shall show all outlets, inlets, and pipe liles and shall be certified as correct by the proprietor of the tank. A gauge table showing the capacity of the tank in United States gallons per inch or fraction of an inch of height, certified by the proprietor to be correct, shall accompany the application. When a part or parts of a building are to be used as the warehouse, there shall be given a detailed description of the materials and construction of all partitions. When the proprietor is the lessee of the premises covered by the application and bond, he shall furnish a stipulation concurred in by the sureties, agreeing that, prior to the expiration of the lease covering the premises without renewal thereof, he will transfer any merchandise remaining in the bonded warehouse to an approved bonded warehouse, pay all duties, charges, or exactions due on such merchandise, or otherwise dispose of such merchandise in accordance with the Customs laws and regulations. If the application is for a Class 9 warehouse (duty-free store), the applicant shall furnish the following documents:

(1) A map showing the location of the facilities to be bonded in respect to the port of entry and distances to all exit points of purchasers of conditionally duty-free merchandise;

(2) A description of the store's procedures, which includes inventory control, recordkeeping, and delivery methods. These procedures must be set forth in the proprietor's procedures manual. Such manual and subsequent changes therein must be furnished to the port director upon request. The procedures in the manual shall provide reasonable assurance that conditionally duty-free merchandise sold therein will be exported;

(3) If an airport duty-free store, a description of the store's procedures for restricting sales of conditionally duty-free merchandise to personal-use quantities; and

(4) A statement by an authorized official of the appropriate state, local or other governmental authority administering the exit point facility that the applicant duty-free store is authorized to deliver conditionally duty-free merchandise to purchasers at or through that exit point facility. A separate statement shall be required for each governments authority having jurisdiction over exit point facilities through which the duty-free store intends to deliver merchandise to purchasers. If the merchandise will be delivered through an exit point which is not under the jurisdiction of a governmental authority, the applicant will provide a statement to that effect.

(c) On approval of the application to bond a warehouse of any class, except class 1, a bond shall be executed on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter.

(d) An applicant desiring to establish a general order warehouse may need to establish, as a condition of approval of the application, that the warehouse will meet minimum space requirements imposed by the port director to accommodate the storage of general order merchandise. Any space requirements will be posted by written notice at the customhouse and on the appropriate Customs-authorized electronic

data interchange system. An applicant will not be subject to any minimum space requirements that are posted after the filing of his application.

(e) Any proprietor of a bonded warehouse may be required on 10 days' notice from the port director to furnish a new bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter; and if he fails to do so, no more goods shall be sent to the warehouse and those therein shall be removed at the expense of such proprietor. A new bond is required if the bonded warehouse is substantially altered or rebuilt.

(f) As a condition of approval of the application, the port director may order an inquiry by a Customs officer into the qualification, character, and experience of the applicant (e.g. personal history, financial and business data, credit and personal references), and into the security, suitability, and fitness of the facility. The port director may require an individual applicant to submit fingerprints on form FD 258 or electronically at the time of filing the application, or in the case of applications from a business entity, may require the fingerprints, on form FD 258 or electronically, of all employees of the business entity.

(g) The port director shall promptly notify the applicant in writing of his decision to approve or deny the application to bond the warehouse. If the application is denied the notification shall state the grounds for denial. The decision of the port director will be the final Customs administrative determination in the matter.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 56393, 30 FR 5580, Apr. 20, 1965; T.D. 78–80, 43 FR 10685, Feb. 15, 1978; T.D. 82–204, 47 FR 49368, Nov. 1, 1982; T.D. 84–213, 49 FR 41169, Oct. 19, 1984; T.D. 92–81, 57 FR 37696, Aug. 20, 1992; T.D. 93–18, 58 FR 15772, Mar. 24, 1993; T.D. 95–99, 60 FR 62733, Dec. 7, 1995; T.D. 97–19, 62 FR 15834, Apr. 3, 1997; T.D. 99–27, 64 FR 13675, Mar. 22, 1999; T.D. 01–14, 66 FR 8767, Feb. 2, 2001; T.D. 02–65, 67 FR 68032, Nov. 8, 2002]

§ 19.3 Bonded warehouses; alterations; relocation; suspensions; discontinuance.

(a) *Alterations or relocation.* Alterations to or relocation of a warehouse may be made with the permission of the director of the port nearest to where the facility is located.

(b) *Suspensions.* The use of all or part of a bonded warehouse or bonded floor space may be temporarily suspended by the port director of a period not to exceed one year on written application of the proprietor if there are no bonded goods in the area. Upon written application of the proprietor and upon the removal of all nonbonded goods, if any, the premises may again be used for the storage of bonded goods. If the application is approved, the port director shall indicate the approval by endorsement on the application. Rebonding will not be necessary as long as the original bond remains in force.

(c) *Discontinuance.* If a proprietor wishes to discontinue the bonded status of the warehouse, he shall make written application to the port director. The port director shall not approve the application until all goods in the warehouse are transferred to another bonded warehouse without expense to the Government. To reestablish the bonded warehouse, application shall be made and approved under the provision of § 19.2 of this chapter.

(d) *Employee lists.* The port director may make a written demand upon the proprietor to submit, within 30 days after the date of demand, a written list of the names, addresses, social security numbers, and dates and places of birth of all persons employed by the proprietor in the carriage, receiving, storage, or delivery of any bonded merchandise. If a list has been previously furnished the proprietor shall advise the port director in writing of the names, addresses, social security numbers, and dates and places of birth of any new personnel employed by him in the carriage, receiving, storage, or delivery of bonded merchandise within 10 days after such employment. For the purpose of this part a person shall not be deemed to be employed by a warehouse proprietor if he is an officer or employee of an independent contractor engaged by the warehouse proprietor to load, unload, transport, or otherwise handle bonded merchandise.

(e) *Revocation or suspension for cause.* The port director may revoke or suspend for cause the right of a proprietor to continue the bonded status of the

warehouse for any ground specified in this paragraph. An action to suspend or revoke the right to operate a bonded warehouse shall be taken in accordance with the procedures set forth in paragraph (f) of this section. If the bonded status is revoked or suspended for cause, the port director shall require all goods in the warehouse to be transferred to a bonded warehouse without expense to the Government. The bonded status of a warehouse may be revoked or suspended for cause if:

(1) The approval of the application to bond the warehouse was obtained through fraud or the misstatement of a material fact;

(2) The warehouse proprietor refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation relative to the operation or administration of a bonded warehouse;

(3) The warehouse proprietor or an officer of a corporation which has been granted the right to operate a bonded warehouse is convicted of or has committed acts which would constitute a felony, or a misdemeanor involving theft, smuggling, or a theft-connected crime. Any change in the employment status of the corporate officer, (e.g., discharge, resignation, demotion, or promotion) prior to conviction of a felony or prior to conviction of a misdemeanor involving theft, smuggling, or a theft-connected crime, resulting from acts committed while a corporate officer, will not preclude application of this provision;

(4) The warehouse proprietor does not provide secured facilities or properly safeguard merchandise within the bonded warehouse;

(5) The warehouse proprietor fails to furnish a current list of names, addresses, and other information required by §19.3(d);

(6) The bond required by §19.2(c) or (d) of this chapter is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with goods and sufficient sureties is not furnished within a reasonable time;

(7) Bonded merchandise has not been stored in the warehouse for a period of 2 year; or

(8) The warehouse proprietor or an employee of the warehouse proprietor discloses proprietary information in, or proprietary information contained on, documents to be included in the permit file folder to an unauthorized person.

(9) The proprietor of a Class 9 warehouse is or has been unable to provide reasonable assurance that conditionally duty-free merchandise is or was exported in compliance with the regulations of this part.

(f) *Procedure for revocation or suspension for cause.* The port director may at any time serve notice in writing upon any proprietor of a bonded warehouse to show cause why his right to continue the bonded status of his warehouse should not be revoked or suspended for cause. Such notice shall advise the proprietor of the grounds for the proposed action and shall afford the proprietor an opportunity to respond in writing within 30 days. Thereafter, the port director shall consider the allegations and responses made by the proprietor unless the proprietor in his response requests a hearing. If a hearing is requested, it shall be held before a hearing officer designated by the Commissioner of Customs or his designee within 30 days following the proprietor's request. The proprietor may be represented by counsel at such hearing, and all evidence and testimony of witnesses in such proceedings, including substantiation of the allegations and the responses thereto shall be presented, with the right of cross-examination to both parties. A stenographic record of any such proceeding shall be made and a copy thereof shall be delivered to the proprietor of the warehouse. At the conclusion of the hearing, the hearing officer shall promptly transmit all papers and the stenographic record of the hearing to the Assistant Commissioner, Office of Field Operations or designee together with his recommendation for final action. The proprietor may submit in writing additional views or arguments to the Assistant Commissioner, Office of Field Operations or designee following a hearing on the basis of the stenographic record, within 10 days after delivery to him of a copy of such record. The Assistant Commissioner, Office of Field Operations or designee

shall thereafter render his decision in writing, stating his reasons therefor. Such decision shall be served on the proprietor of the warehouse, and shall be considered the final administrative action.

(g) *Review by the Court of International Trade.* Any proprietor adversely affected by a decision of the Assistant Commissioner, Office of Field Operations or designee may appeal the decision in the Court of International Trade.

[T.D. 82–204, 47 FR 49369, Nov. 1, 1982, as amended by T.D. 85–90, 50 FR 21431, May 24, 1985; T.D. 88–63, 53 FR 40219, Oct. 14, 1988; T.D. 92–81, 57 FR 37697, Aug. 20, 1992; T.D. 95–99, 60 FR 62733, Dec. 7, 1995; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 19.4 Customs and proprietor responsibility and supervision over warehouses.

(a) *Customs supervision.* The character and extent of Customs supervision to be exercised in connection with any warehouse facility or transaction provided for in this part shall be in accordance with § 101.2(c) of this chapter. Independent of any need to appraise or classify merchandise, the port director may authorize a Customs officer to supervise any transaction or procedure at the bonded warehouse facility. Such supervision may be performed through periodic audits of the warehouse proprietor's records, quantity counts of goods in warehouse inventories, spot checks of selected warehouse transactions or procedures or reviews of conditions of recordkeeping, storage, security, or safety in a warehouse facility.

(b) *Proprietor responsibility and supervision*—(1) *Supervision.* The proprietor shall supervise all transportation, receipts, deliveries, sampling, recordkeeping, repacking, manipulation, destruction, physical and procedural security, conditions of storage, and safety in the warehouse as required by law and regulations. Supervision by the proprietor shall be that which a prudent manager of a storage and manipulation facility would be expected to exercise.

(2) *Customs access.* The warehouse proprietor shall permit access to the warehouse and present merchandise within a reasonable time after request by any Customs officer.

(3) *Safekeeping of merchandise and records.* The proprietor is responsible for safekeeping of merchandise and records concerning merchandise entered in Customs bonded warehouses. The proprietor or his employees shall safeguard and shall not disclose proprietary information contained in or on related documents to anyone other than the importer, importer's transferee, or owner of the merchandise to whom the document relates or their authorized agent.

(4) *Records maintenance*—(i) *Maintenance.* The proprietor shall:

(A) Maintain the inventory control and recordkeeping system in accordance with the provisions of § 19.12 of this part;

(B) Retain all records required in this part and defined in § 163.1(a) of this chapter, pertaining to bonded merchandise for 5 years after the date of the final withdrawal under the entry; and

(C) Protect proprietary information in its custody from unauthorized disclosure.

(ii) *Availability.* Records shall be readily available for Customs review at the warehouse. In addition, a proprietor may keep records at another location for Customs review, but only if the proprietor first receives written approval for such storage from the port director.

(5) *Record retention in lieu of originals.* A warehouse proprietor may, in accordance with § 163.5 of this chapter, utilize alternative storage methods in lieu of maintaining records in their original formats.

(6) *Warehouse and merchandise security.* The warehouse proprietor shall maintain the warehouse facility in a safe and sanitary condition and establish procedures adequate to ensure the security of all merchandise under Customs custody stored in the facility. The warehouse construction will be a factor that will be considered by the port director in deciding whether to approve the application. The facility shall be built in such a manner as to render it impossible for unauthorized personnel to enter the premises without such violence as to make the entry

easy to detect. If a portion of the facility is to be used for the storage of non-bonded merchandise, the port director shall designate the means for effective separation of the bonded and non-bonded merchandise, such as a wall, fence, or painted line. All inlets and outlets to bonded tanks shall be secured with locks and/or in-bond seals.

(7) *Storage conditions.* Merchandise in the bonded area shall be stored in a safe and sanitary manner to minimize damage to the merchandise, avoid hazards to persons, and meet local, state, and Federal requirements applicable to specific kinds of goods. Doors and entrances shall be left unblocked for access by Customs officers and warehouse proprietor personnel.

(8) *Manner of storage.* Packages shall be received in the warehouse and recorded in the proprietor's inventory and accounting records according to their marks and numbers. Packages containing weighable or gaugeable merchandise not bearing shipping marks and numbers shall be received under the weigher's or gauger's numbers. Packages with exceptions due to damage or loss of contents, or not identical as to quantity or quality of contents shall be stored separately until the discrepancy is resolved with Customs. Merchandise received in the warehouse shall be stored in a manner directly identifying the merchandise with the entry, general order, or seizure number; using a unique identifier for inventory categories composed of fungible merchandise accounted for on a First-In-First-Out (FIFO) basis; or using a unique identifier for inventory categories composed of fungible merchandise accounted for using another approved alternative inventory method.

(i) *Direct identification.* The warehouse proprietor shall mark all shipments for identification, showing the general order or warehouse entry number or seizure number and the date of the general order, entry, or delivery ticket in the case of seizures. Containers covered by a given warehouse entry, general order or seizure shall not be mixed with goods covered by any other entry, general order or seizure. Merchandise covered by a given warehouse entry, general order or seizure may be stored in multiple locations within the warehouse if the proprietor's inventory control system specifically identifies all locations where merchandise for each entry, general order or seizure is stored and the quantity in each location. The proprietor must provide, upon request by a Customs officer, a record balance of goods, specifying the quantity in each storage location, covered by any warehouse entry, general order, or seizure so a physical count can be made to verify the accuracy of the record balance.

(ii) *FIFO.* A proprietor may account for fungible merchandise on a First-In-First-Out (FIFO) basis instead of specific identification by warehouse entry number, provided the merchandise meets the criteria for fungibility and the recordkeeping requirements contained in § 19.12 of this part are met. As of the beginning date of FIFO procedures, each kind of fungible merchandise in the warehouse under FIFO shall constitute a separate inventory category. Each inventory category shall be assigned a unique number or other identifier by the proprietor to distinguish it from all other inventory categories under FIFO. All of the merchandise in a given inventory category shall be physically placed so as to be segregated from merchandise under other inventory categories or merchandise accounted for under other inventory methods. The unique identifier shall be marked on the merchandise, its container, or the location where it is stored so as to clearly show the inventory category of each article under FIFO procedures. Merchandise covered by a given unique identifier may be stored in multiple locations within the warehouse if the proprietor's inventory control system specifically identifies all locations where merchandise for a specific unique identifier is stored and the quantity in each location. The proprietor must provide, upon request by a Customs officer, a record balance of goods, specifying the quantity in each storage location, covered by any warehouse entry, general order, seizure, or unique identifier so a physical count can be made to verify the accuracy of the record balance.

(iii) *Other alternative inventory methods.* Other alternative inventory systems may be used, if Customs approval is obtained. Importers or proprietors who wish to use an alternative inventory method other than FIFO must apply to Customs Headquarters, Office of Regulations and Rulings, for approval.

(9) *Miscellaneous responsibilities.* The proprietor is responsible for complying with requirements for transport to his warehouse, deposit, manipulation, manufacture, destruction, shortage or overage, inventory control and recordkeeping systems, and other requirements as specified in this part.

[T.D. 97–19, 62 FR 15834, Apr. 3, 1997, as amended by T.D. 98–22, 63 FR 11825, Mar. 11, 1998; T.D. 98–56, 63 FR 32944, June 16, 1998]

§ 19.5 [Reserved]

§ 19.6 Deposits, withdrawals, blanket permits to withdraw and sealing requirements.

(a)(1) *Deposit in warehouse.* The port director may authorize the deposit of merchandise in designated bonded warehouses, without physical supervision by a Customs officer. Goods for which a warehouse or rewarehouse entry has been accepted, according to the procedures in part 144, subpart B, of this chapter, shall be examined or inspected at the place of unlading, bonded warehouse, or other location as ordered by the port director. When merchandise is deposited in a proprietor's warehouse or is accepted and receipted for by a proprietor or his agent for transport to the proprietor's warehouse, the proprietor will be responsible for the quantity and condition of merchandise reflected on entry documentation adjusted by (i) any allowance made under part 158, subparts A and B, of this chapter by the port director, and (ii) any discrepancy report made jointly on the appropriate cartage documents as set forth in § 125.31 of this chapter by the warehouse proprietor and the bonded carrier or licensed cartman or lighterman delivering the goods to the warehouse, or an independent weigher, gauger, measurer, and signed by an authorized representative of the above within 15 calendar days after deposit. A copy of any joint report of discrepancy shall be made within five business days of agreement and provided to the port director on the appropriate cartage documents as set forth in § 125.31 of this chapter. If the proprietor of the bonded warehouse transports the goods to the warehouse, no discrepancy report shall be necessary.

(2) *Allowance after deposit.* After merchandise has been deposited in the warehouse the proprietor's liability may be further modified by any adjustment for duties allowed by the port director for concealed shortages (i.e., §158.5(a)), casualty loss (i.e., part 158, subpart C), destruction (i.e., §158.43), or manipulation (i.e, § 19.11, 19 U.S.C. 1562).

(b)(1) *Withdrawal and removal from warehouse.* The port director may authorize the withdrawal and removal of merchandise, without physical supervision or examination by a Customs officer under permit issued under the procedure set forth in § 144.39 of this chapter. When a withdrawal or removal is not physically supervised by a Customs officer, the warehouse proprietor will be relieved of responsibility only for the merchandise in its warehouse in the condition and quantity as shown on the application for withdrawal or removal. In the case of merchandise to be carted or transported in bond from the warehouse, the proprietor will be relieved of responsibility only if it receives the signed receipt on the withdrawal or removal document of the carrier named in the document. The proprietor's responsibility may be adjusted by any discrepancy report made jointly by the warehouse proprietor, and the licensed cartman or lighterman, bonded carrier, weigher, gauger, or measurer and signed by the authorized representative of the above within 15 calendar days after removal from the warehouse. The adjustments shall be noted on the permit copy of the withdrawal or removal document. A copy of any joint report of discrepancy shall be promptly provided to the port director.

(2) *Retention in warehouse after withdrawal.* Merchandise for which a permit for withdrawal has been issued, whether duty-paid or not, need not be physically removed from the warehouse.

However, such merchandise must be segregated or physically marked to maintain its identity as merchandise for which a withdrawal permit has been issued. Duty-paid or unconditionally duty-free merchandise which has been withdrawn, but not removed, from a warehouse is no longer deemed to be in Customs custody. All other goods which have been withdrawn, but not removed, remain in Customs custody until the end of the 5-year warehouse entry bond period.

(c) *Customs determination of liability*. When a Customs officer physically supervises the deposit or removal of merchandise under paragraphs (a)(1) or (b)(1) of this section, the Customs officer's report of merchandise received or removed shall be determinative of the quantity and condition of merchandise received or removed from the warehouse for Customs purposes.

(d) *Blanket permits to withdraw*—(1) *General*. (i) Blanket permits may be used to withdraw merchandise from bonded warehouses for:

(A) Delivery to individuals departing directly from the Customs territory for exportation under the sales ticket procedure of §144.37(h) of this chapter (Class 9 warehouses only);

(B) Aircraft or vessel supplies under §309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317); or

(C) The personal or official use of personnel of foreign governments and international organizations set forth in subpart I, part 148 of this chapter; or

(D) A combination of the foregoing.

(ii) Blanket permits to withdraw may be used only for delivery at the port where withdrawn and not for transportation in bond to another port, except for a withdrawal for transportation to another port by a duty-free sales enterprise which meets the requirements for exemption as stated in §144.34(c) of this chapter. Blanket permits to withdraw may not be used for delivery to a location for retention or splitting of shipments under the provisions of §18.24 of this chapter. A withdrawer who desires a blanket permit shall state in capital letters on the warehouse entry, or on the warehouse entry/entry summary when used as an entry, that ''Some or all of the merchandise will be withdrawn under blanket permit per section 19.6(d), C.R.'' Customs acceptance of the entry will constitute approval of the blanket permit. A copy of the entry will be delivered to the proprietor, whereupon merchandise may be withdrawn under the terms of the blanket permit. The permit may be revoked by the port director in favor of individual applications and permits if the permit is found to be used for other purposes, or if necessary to protect the revenue or properly enforce any law or regulation Customs is charged with administering. Merchandise covered by an entry for which a blanket permit was issued may be withdrawn for purposes other than those specified in this paragraph if a withdrawal is properly filed as required in subpart D, part 144, of this chapter.

(2) *Withdrawals under blanket permit*. Withdrawals may be made under blanket permit without any further Customs approval, and shall be documented by placing a copy of the withdrawal document in the proprietor's permit file folder. Each withdrawal shall be filed on Customs Form 7501 and shall be consecutively numbered, prefixed with the letter''B''. The withdrawal shall specify the quantity and value of each type of merchandise to be withdrawn. Each copy shall bear the summary statement described in §144.32(a) of this chapter, reflecting the balance of merchandise covered by the warehouse entry. Any joint discrepancy report of the proprietor and the bonded carrier, licensed cartman or lighterman, or weigher, gauger, or measurer for a supplementary withdrawal shall be made on the copy and reported to the port director as provided in paragraph (b)(1) of this section. A copy of the withdrawal shall be retained in the records of the proprietor as provided in §19.12(d)(4) of this part. Merchandise shall not be removed from the warehouse prior to the preparation of the supplementary withdrawal. If merchandise is so removed, the proprietor shall be subject to liquidated damages as if it were removed without Customs permit.

(3) *Withdrawals under blanket permit from duty-free stores*. Withdrawals under blanket permit from duty-free stores shall be made on the sales ticket described in §144.37(h) of this chapter.

The sales ticket need not contain the summary statement described in §144.32(a) of this chapter, since the information required is included in the sales ticket register. The sales ticket shall be serially numbered as provided in §144.37(h)(2) of this chapter.

(4) *Withdrawals under blanket permit for aircraft or vessel supplies.* Multiple withdrawals under a blanket permit for aircraft or vessel supplies, if consigned to the same daily aircraft flight number or vessel sailing, may be filed on one Customs Form 7512; however, an attachment form, developed by the warehouse proprietor and approved by the port director may be used for all withdrawals. This attachment form shall provide a sufficient summary of the goods being withdrawn, and shall include the warehouse entry number, the quantity and weight being withdrawn, the Harmonized Tariff Schedule of the United States number(s), the value of the goods, import and export lading information, the duty rate and amount, and any applicable Internal Revenue tax calculation, for each warehouse entry being withdrawn. A copy of Customs Form 7512 and the summary attachment must be attached to each permit file folder unless the warehouse proprietor qualifies for the permit file folder exemption under §19.12(d)(4)(iii) of this part.

(5) *Blanket permit summary.* When all of the merchandise covered by an entry on which a blanket permit to withdraw was issued has been withdrawn, including withdrawals made for purposes other than duty-free store delivery, vessel or aircraft supply, or diplomatic use, the proprietor shall prepare a report on a copy of Customs Form 7501, or a form on the letterhead of the proprietor, which provides an account of the disposition of the merchandise covered by the blanket permit. The form shall bear the words ''BLANKET PERMIT SUMMARY'' in capital letters conspicuously printed or stamped in the top margin. On the form, the proprietor shall certify that the merchandise listed thereunder was withdrawn in compliance with §19.6(d), and shall account for all of the merchandise withdrawn under blanket permit by HTSUS (Harmonized Tariff Schedule of the United States) number, HTSUS quantity (where applicable) and value. If applicable, the account shall separately list and identify merchandise withdrawn for

(i) Duty-free store exportation,

(ii) Vessel or aircraft supply use, and

(iii) Personal or official use of persons and organizations set forth in subpart I, part 148, of this chapter. If all of the merchandise was withdrawn under the sales ticket procedure of §144.37(h) of this chapter, the sales ticket register may be substituted for the blanket permit summary. The form will be placed in the permit file folder and treated as provided in §19.12(a) of this part.

(e) *Affixing or breaking of seals.* The port director may authorize a warehouse proprietor to: (1) Break Customs in bond seals affixed under §18.4 of this chapter, or under any Customs order or directive, on any vehicle or container of goods entered for warehouse upon arrival of the vehicle or container at the warehouse: or (2) affix Customs in bond seals to any vehicle or container of goods for which a withdrawal document has been approved for movement in bond. The affixing or breaking of seals so authorized, shall be deemed to have been done under Customs supervision. The proprietor shall report to the port director any seal found, upon arrival of the vehicle or container at the warehouse, to be broken, missing, or improperly affixed, and hold the vehicle or container and its contents intact pending instructions from the port director.

[T.D. 82–204, 47 FR 49370, Nov. 1, 1982, as amended by T.D. 84–149, 49 FR 28698, July 16, 1984; T.D. 92–81, 57 FR 37697, Aug. 20, 1992; T.D. 94–81, 59 FR 51494, Oct. 12, 1994; T.D. 95–81, 60 FR 52295, Oct. 6, 1995; T.D. 97–19, 62 FR 15836, Apr. 3, 1997]

§19.7 Expenses of labor and storage.

(a) All merchandise deposited in public stores or in bonded warehouses shall be held liable for the expenses of labor and storage chargeable thereon at the customary rates and for all other expenses accruing upon the goods.

(b) The rates of storage and labor shall be agreed upon between the importer and the warehouse proprietor,

but in case of disagreement the port director may, with the consent of all parties in interest, determine the rates to be charged.

(c) Except in cases provided for by § 141.102(d) of this chapter, when merchandise is stored in a public store under a warehouse entry, general order, or otherwise, the charges for storage due the Government shall be paid before the packages are delivered. The charges shall be based upon the existing bonded warehouse tariff of the port for storage and labor.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 73–175, 38 FR 17446, July 2, 1973]

§ 19.8 Examination of goods by importer; sampling; repacking; examination of merchandise by prospective purchasers.

Importers may, upon application approved by the port director on Customs Form 3499 examine, sample, and repack[12] or transfer merchandise in bonded warehouse. Where there will be no interference with the orderly conduct of Customs business and no danger to the revenue prospective purchaser may be permitted to examine merchandise in bonded warehouses upon the written request of the owner, importer, consignee, or transferee.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 82–204, 47 FR 49371, Nov. 1, 1982]

§ 19.9 General order, abandoned, and seized merchandise.

(a) *Acceptance of merchandise.* The arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry). A joint determination will be made by the warehouse proprietor and the bonded carrier of the quantity and condition of the goods or articles so delivered to the warehouse. Within two working days of the joint determination, the warehouse proprietor will report to the port director any discrepancy between the quantity and condition of the goods and that reported on CF 6043, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs.

(b) *Recording and storing.* General order, abandoned, and seized goods and articles shall be recorded and stored in the warehouse as prescribed by § 19.12.

(c) *Release of merchandise.* Merchandise in general order may be released by the warehouse proprietor, after Customs inspection or examination as ordered by the port director, to the person named in a release order under § 141.11 of this chapter. The release may only be made by the proprietor upon presentation of a permit to release or delivery authorization signed by the appropriate Customs officer on Customs Form 3461, 7501, 368 or 368A or other Customs form as designated by the port director. General order goods which have been unclaimed under § 127.11 of this chapter, voluntarily abandoned, or seized and forfeited may be released for transfer to the place of sale upon presentation to the warehouse proprietor of an approved copy of Customs Form 5251 (Order to Transfer Merchandise for Public Auction (Sale)), and an approved copy of Customs Form 6043 (Delivery Ticket). The quantity and condition of the goods so transferred shall be determined jointly by the proprietor and the cartman or lighterman picking up the goods for delivery to the place of sale. Any discrepancies shall be noted on the delivery ticket, a copy of which shall be sent to the port director within two business days of agreement. Seized goods that are released for a purpose other than sale may be released from warehouse only upon such written terms and conditions as directed by the port director.

[T.D. 82–204, 47 FR 49371, Nov. 1, 1982, as amended by T.D. 92–56, 57 FR 24944, June 12, 1992; T.D. 02–65, 67 FR 68032, Nov. 8, 2002]

[12] Repacking shall be considered a manipulation within the purview of sec. 562, Tariff Act of 1930, as amended.

§ 19.10 Examination packages.

Merchandise sent from a bonded warehouse to the appraiser's stores for examination shall be returned by the port director to the warehouse for delivery unless the warehouse proprietor endorses the duty-paid permit to authorize delivery to another person.

[T.D. 82–204, 47 FR 49371, Nov. 1, 1982]

MANIPULATION IN BONDED WAREHOUSES AND ELSEWHERE

§ 19.11 Manipulation in bonded warehouses and elsewhere.

(a) So far as applicable, the general provisions of the regulations governing warehouses bonded for the storage of imported merchandise shall apply to bonded manipulation warehouses and to other designated places of manipulation.

(b) Merchandise to be manipulated under section 562, Tariff Act of 1930, as amended, may be entered on Customs Form 7501 and sent directly to a storage-manipulation warehouse.

(c) Warehouse proprietors shall not allow manipulation of any merchandise without a prior permit issued by the port director, except as provided in paragraph (h) of this section. Merchandise entered for warehouse may be transferred to a storage-manipulation warehouse; or merchandise entered for storage-manipulation warehouse may be transferred after manipulation to the storage portion of the same warehouse, to another storage warehouse, or to a manufacturing warehouse of class 6.

(d) The application to manipulate, which shall be filed on Customs Form 3499 with the port director having jurisdiction of the warehouse or other designated place of manipulation, shall describe the contemplated manipulation in sufficient detail to enable the port director to determine whether the imported merchandise is to be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, within the meaning of section 562, Tariff Act of 1930, as amended. If the port director is satisfied that the merchandise is to be so manipulated, he may issue a permit on Customs Form 3499, making any necessary modification in such form. The port director may approve a blanket application to manipulate on Customs Form 3499, for a period of up to one year, for a continuous or a repetitive manipulation. The warehouse proprietor must maintain a running record of manipulations performed under a blanket application, indicating the quantities before and after each manipulation. The record must show what took place at each manipulation describing marks and numbers of packages, location within the facility, quantities, and description of goods before and after manipulation. The port director is authorized to revoke a blanket approval to manipulate and require the proprietor to file individual applications if necessary to protect the revenue, administer any law or regulation, or both. Manipulation resulting in a change in condition of the merchandise, which will make it subject to a lower rate of duty or free of duty upon withdrawal for consumption, is not precluded by the provisions of such section 562.

(e) No merchandise shall be manipulated elsewhere than in a bonded warehouse unless the merchandise has been regularly entered for consumption or warehouse and is of a class entitled to the warehousing privilege under section 557, Tariff Act of 1930, as amended.

(f) Upon compliance with the provisions of paragraph (d) of this section, manipulated merchandise may be further manipulated before withdrawal in cases where the port director is satisfied that this will not endanger the revenue or interfere with the efficient conduct of Customs business. The merchandise remaining in the warehouse shall be properly repacked after each manipulation.

(g) Except as provided in § 144.38 of this chapter, manipulated merchandise may be withdrawn under any form of withdrawal, but no withdrawal shall be accepted for less than an entire repacked package. Each type of withdrawal filed shall contain a summary statement indicating the quantity in the warehouse account after manipulation and immediately before the withdrawal, the quantity withdrawn on the particular withdrawal, and the quantity remaining in the warehouse after the withdrawal. When merchandise

covered by a consumption entry is manipulated elsewhere than in a bonded warehouse and thereafter withdrawn for consumption, the withdrawal shall be on Customs Form 7501 and shall be liquidated in accordance with § 159.9 of this chapter.

(h) Merchandise which has been entered for warehouse and placed in a Class 9 warehouse (duty-free store) may be unpacked into its smallest irreducible unit for sale without a prior permit issued by the port director. The port director may issue a blanket permit to a duty-free store for up to one year permitting the destruction of merchandise covered by any entry and found to be nonsaleable, if the merchandise to be destroyed is valued at less than 5 percent of the value of the merchandise at time of entry or $1,250, whichever is less, in its undamaged condition. Such permit may be revoked in favor of a permit for each entry and/or destruction whenever necessary to assure proper destruction and protection of the revenue. The proprietor shall maintain a record of unpacking merchandise into saleable units and destruction of nonsaleable merchandise in its inventory and accounting records.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 82–204, 47 FR 49371, Nov. 1, 1982; T.D. 84–129, 49 FR 23166, June 5, 1984; T.D. 84–171, 49 FR 31253, Aug. 3, 1984; T.D. 84–213, 49 FR 41169, Oct. 19, 1984; T.D. 85–38, 50 FR 8723, Mar. 5, 1985; T.D. 89–1, 53 FR 51254, Dec. 21, 1988; T.D. 92–81, 57 FR 37698, Aug. 20, 1992; T.D. 95–81, 60 FR 52295, Oct. 6, 1995; T.D. 97–19, 62 FR 15836, Apr. 3, 1997]

ACCOUNTS

§ 19.12 Inventory control and recordkeeping system.

(a) *Systems capability*. The proprietor of a class 11 general order warehouse as described in § 19.1 must have an automated inventory control and recordkeeping system. Proprietors of existing class 3, 4, or 5 warehouses as described in § 19.1 certified before December 9, 2002, to receive general order merchandise must have automated inventory control and recordkeeping systems in place with respect to general order merchandise after a period of 2 years from December 9, 2002. All other warehouse proprietors have a choice of maintaining manual or automated inventory control and recordkeeping systems or a combination of manual and automated systems. All inventory control and recordkeeping systems must be capable of:

(1) Accounting for all merchandise transported, deposited, stored, manipulated, manufactured, smelted, refined, destroyed in or removed from the bonded warehouse and all merchandise collected by a proprietor or his agent for transport to his warehouse. The records shall provide an audit trail from deposit through manipulation, manufacture, destruction, and withdrawal from the bonded warehouse either by specific identification or other Customs authorized inventory method. The records to be maintained are those which a prudent businessman in the same type of business can be expected to maintain. The records are to be kept in sufficient detail to permit effective and efficient determination by Customs of the proprietor's compliance with these regulations and correctness of his annual submission or reconciliation;

(2) Producing accurate and timely reports and documents as required by this part; and

(3) Identifying shortages and overages of merchandise in sufficient detail to determine the quantity, description, tariff classification and value of the missing or excess merchandise so that appropriate reports can be filed with Customs on a timely basis.

(b) *Procedures manual*. (1) The proprietor shall have available at the warehouse an English language copy of its written inventory control and recordkeeping systems procedures manual in accordance with the requirements of this part.

(2) The proprietor shall keep current its procedures manual and shall submit to the port director a new certification at the time any change in the system is implemented.

(c) *Entry of merchandise into a warehouse*—(1) *Identification*. All merchandise collected by a proprietor or his agent for transport to his warehouse shall be receipted. In addition, all merchandise entered in a warehouse will be recorded in a receiving report or document using a Customs entry number or

unique identifier if an alternate inventory control method has been approved. All merchandise will be traceable to a Customs entry and supporting documentation.

(2) *Quantity verification.* Quantities received will be reconciled to a receiving report or document such as an invoice with any discrepancy reported to the port director as provided in § 19.6(a).

(3) *Recordation.* Merchandise received will be accurately recorded in the accounting and inventory system records from the receiving report or document using the Customs entry number or unique identifier if an alternative inventory control method has been approved.

(d) *Accountability for merchandise in a warehouse*—(1) *Identification of merchandise.* The Customs entry number or unique identifier, as applicable under § 19.4(b)(8), will be used to identify and trace merchandise.

(2) *Inventory records.* The inventory records will specify by Customs entry number or unique identifier if an alternative inventory control method is approved:

(i) The location of the merchandise within the warehouse;

(ii) Except for merchandise in general order, the cost or value of the merchandise, unless the proprietor's financial records maintain cost or value and the records are made available for Customs review; and

(iii) The beginning balance, cumulative receipts and withdrawals, adjustments, destructions, and current balance on hand by date and quantity.

(3) *Theft, shortage, overage or damage.* Any theft or suspected theft or overage or any extraordinary shortage or damage (equal to one percent or more of the value of the merchandise in an entry or covered by a unique identifier; or if the missing merchandise is subject to duties and taxes in excess of $100) shall be immediately brought to the attention of the port director, and confirmed in writing within five business days after the shortage, overage, or damage has been brought to the attention of the port director. An entry for warehouse must be filed for all overages by the person with the right to make entry within five business days of the date of discovery. The applicable duties, taxes and interest on thefts and shortages so reported shall be paid by the responsible party to Customs within 20 calendar days following the end of the calendar month in which the shortage is discovered. The port director may allow the consolidation of duties and taxes applicable to multiple shortages into one payment; however, the amount applicable to each warehouse entry is to be listed on the submission and shall specify the applicable duty, tax and interest. These same requirements shall apply when cumulative thefts, shortages or overages under a specific entry or unique identifier total one percent or more of the value of the merchandise or if the duties and taxes owed exceed $100. Upon identification, the proprietor shall record all shortages and overages in its inventory control and recordkeeping system, whether or not they are required to be reported to the port director at the time. The proprietor must also record all shortages and overages as required in the Customs Form 300 or annual reconciliation report under paragraphs (g) or (h) of this section, as appropriate. Duties and taxes applicable to any non-extraordinary shortage or damage and not required to be paid earlier must be reported and submitted to the port director no later than the date the certification of preparation of Customs Form 300 is due or at the time the certification of preparation of the annual reconciliation report is due, as prescribed in paragraphs (g) or (h) of this section. Discrepancies found in a Class 9 warehouse with integrated locations as set forth in § 19.35(c) will be the net discrepancies for a unique identifier (see § 19.4(b)(8)(ii) of this part) such that overages within one sales location will be offset against shortages in another location that is within the integrated location. A Class 9 proprietor who transfers merchandise between facilities in different ports without being required to file a rewarehouse entry in accordance with § 144.34 of this chapter may offset overages and shortages within the same unique identifier for merchandise located in stores in different ports (see § 19.4(b)(8)(ii) of this part).

(4) *Permit file folders*—(i) *Maintenance.* Permit file folders shall be maintained and kept up to date by filing all receipts, damage or shortage reports, manipulation requests, withdrawals, removals and blanket permit summaries within five business days after the event occurs. The permit file folders shall be kept in a secure area and shall be made available for inspection by Customs at all reasonable hours.

(ii) *Review.* When the final withdrawal of merchandise relating to a specific warehouse entry, general order or seizure occurs, the warehouse proprietor shall: review the permit file folder to ensure that all necessary documentation is in the file folder accounting for the merchandise covered by the entry; notify Customs of any merchandise covered by the warehouse entry, general order or seizure which has not been withdrawn or removed; and file the permit file folder with Customs within 30 calendar days after final withdrawal, except as allowed by paragraph (d)(4)(iv) of this section. The permit file folder for merchandise not withdrawn during the general order period shall be submitted to the port director upon receipt from Customs of the Customs Form 6043.

(iii) *Exemption to maintenance requirement.* Maintenance of permit file folders will not be required, if the proprietor has an automated system capable of: satisfactorily summarizing all actions by Customs warehouse entry; providing upon demand by Customs an entry activity summary report which lists all individual receipts, withdrawals, destructions, manipulations and adjustments by warehouse entry and is cross-referenced to the source documents for each transaction; and maintaining source documents so that the documents can be readily retrieved upon request. Failure to provide the entry activity summary report or documentation supporting the entry activity summary report upon demand by the port director or the field director of regulatory audit could result in reinstatement by the port director of the requirement to maintain the permit file folder for all warehouse entries. When final withdrawal is made, the proprietor must submit the entry activity summary report to Customs. Prior to submission, the proprietor must ensure the accuracy of the summary report and assure that all supporting documentation is on file and available for review if requested by Customs.

(iv) *Exemption to submission requirement.* At the discretion of the port director, a proprietor may be allowed to furnish formal notification of final withdrawal in lieu of the requirement to submit the permit file folder or entry activity summary within 30 calendar days of each final withdrawal. If approved to use this procedure the proprietor could be required by the port director to submit permit file folders or entry activity summaries on a selective basis. Failure to promptly provide the permit file folder or entry activity summary upon request by the port director or the field director of regulatory audit could result in withdrawal of this privilege.

(5) *Physical inventory.* The proprietor shall take at least an annual physical inventory of all merchandise in the warehouse, or periodic cycle counts of selected categories of merchandise such that each category is counted at least once during the year, with prior notification of the date(s) given to Customs so that Customs personnel may observe or participate in the inventory if deemed necessary. If the proprietor of a Class 2 or Class 9 warehouse has merchandise covered by one warehouse entry, but stored in multiple warehouse facilities as provided for under §144.34 of this chapter, the facility where the original entry was filed must reconcile the on-hand balances at all locations with the record balance for those entries with merchandise in multiple locations. The proprietor shall notify the port director of any discrepancies, record appropriate adjustments in the inventory control and recordkeeping system, and make required payments and entries to Customs, in accordance with paragraph (d)(3) of this section.

(e) *Withdrawal of merchandise from a warehouse.* All bonded merchandise withdrawn from a warehouse will be accurately recorded within the inventory control and recordkeeping system.

The inventory control and recordkeeping system must have the capability to trace all withdrawals back to a Customs entry and to ultimate disposition of the merchandise by the proprietor.

(f) *Special provisions for use of FIFO inventory procedures*—(1) *Notification*. A proprietor who wishes to use FIFO procedures for all or part of the merchandise in a bonded warehouse shall provide the port director a written certification that: The proprietor has read and understands Customs FIFO procedures set forth in this section; the proprietor's procedures are in accordance with Customs FIFO procedures, and the proprietor agrees to abide by those procedures; and the proprietor of a public warehouse will obtain the written consent of any importer using the warehouse before applying FIFO procedures to their merchandise.

(2) *Qualifying merchandise*. FIFO inventory procedures may be used only for fungible merchandise. For purposes of this section, ''fungible merchandise'' means merchandise which is identical and interchangeable for all commercial purposes. While commercial interchangeability is usually decided between buyer and seller or between proprietor and importer, Customs is the final arbiter of fungibility in bonded warehouses. The criteria for determining whether merchandise is fungible include, but are not limited to, Governmental and recognized industrial standards, part numbers, tariff classification, value, brand name, unit of quantity (such as barrels, gallons, pounds, pieces), model number, style and same kind and quality. Fungible textile and textile products which are withdrawn from a Class 9 warehouse may be accounted for using FIFO inventory procedures, inasmuch as such articles would be exempt from textile quotas.

(3) *Merchandise specifically excluded*. FIFO procedures cannot be applied to the following merchandise, as well as any other merchandise which does not comply with the requirements of paragraph (f)(2) of this section:

(i) Merchandise subject to quota, visa or export restrictions chargeable to different countries of origin;

(ii) Textile and textile products of different quota categories;

(iii) Merchandise with different tariff classifications or rates of duty, except where the difference is within the merchandise itself (such as kits, merchandise in unusual containers) or where the tariff classification or dutiability is determined only by conditions upon withdrawal (for example, withdrawal for vessel supplies, bonded wool transactions);

(iv) Merchandise with different legal requirements for marking, labeling or stamping;

(v) Merchandise with different trademarks;

(vi) Merchandise of different grades or qualities;

(vii) Merchandise with different importers of record;

(viii) Damaged or deteriorated merchandise;

(ix) Restricted merchandise; or

(x) General order, abandoned or seized merchandise.

(4) *Maintenance of FIFO*. FIFO procedures used for merchandise in any inventory category, must be used consistently throughout the warehouse storage and recordkeeping practices and procedures for the merchandise. For example, merchandise may not be added to inventory by FIFO but withdrawn by bypassing certain inventory layers to reach a specific warehouse entry other than the oldest one. However, this does not preclude the use of specific identification for some merchandise in a warehouse entry and FIFO for other merchandise, so long as they are segregated in physical storage and clearly distinguished in the inventory and accounting records.

(5) *FIFO recordkeeping*. In the inventory and accounting records, the proprietor shall establish an inventory layer for each warehouse entry represented in each inventory category. The layers shall be established in the order of time of acceptance of the entry or by the date of importation of merchandise covered by each applicable warehouse entry. There shall be no mixing of layering both by time of acceptance and date of importation in the same warehouse. Records for each layer shall, as a minimum, show the

warehouse entry number, date of acceptance, date of importation, quantity and unit of quantity. They shall also show for each entry the type of warehouse withdrawal number or other specific removal event charged against the entry, by date and quantity. Each addition to or deduction from the inventory category shall be posted in the appropriate inventory category within 2 business days after the event occurs. All FIFO records and documentation shall consistently use the same unit of quantity within each inventory category.

(6) *Entry requirements*. Warehouse entries covering any merchandise to be accounted for under FIFO must be prominently marked ''FIFO'' on the face of the entry document. The entry document or an attachment thereto shall show the unique identifier of each inventory category to be accounted for under FIFO, the quantity in each inventory category and the unit of quantity.

(7) *Receipts*. Any shortages, overages, or damage found upon receipt shall be attributed to the entry under which the merchandise was received. FIFO procedures will not take effect until the merchandise is physically placed in the storage location for the inventory category represented in the entry.

(8) *Manipulation*. When manipulation results in a product with a different unique identifier, the inventory and accounting records shall show the quantities of merchandise in each inventory category appearing in the product covered by the new unique identifier. The withdrawal shall show the unique identifiers of both the materials used in the manipulation and the product as manipulated. The quantities of the original unique identifiers will be deducted from their respective warehouse entries on a FIFO basis when the resultant product is withdrawn.

(9) *Discontinuance of FIFO*. A proprietor may voluntarily discontinue the use of FIFO procedures for all or part of the merchandise currently under FIFO by providing written notification to the port director. The notification shall clearly describe the merchandise, by commercial names and unique identifiers, to be removed from FIFO. Following notification, the merchandise shall be segregated in both the recordkeeping system and the physical location by warehouse entry number and the quantities so removed shall be deducted from the appropriate FIFO inventory category balances. Merchandise so removed shall be maintained under the specific identification inventory method. FIFO procedures which were voluntarily discontinued may be reinstated, but not for merchandise covered by any warehouse entry for which FIFO was discontinued.

(g) *Warehouse proprietor submission*. Except as otherwise provided in paragraph (h) of this section or § 19.19(b) of this part, the warehouse proprietor must prepare a Warehouse Proprietor's Submission on Customs Form (CF) 300 within 45 calendar days from the end of the business year and maintain the Submission on file for 5 years from the end of the business year covered by the Submission. The proprietor must submit to the port director, within 10 business days after preparation of the CF 300, a letter signed by the proprietor certifying that the CF 300 has been prepared, is available for Customs review, and is accurate. If the proprietor of a Class 2 or Class 9 warehouse has merchandise covered by one warehouse entry, but stored in multiple warehouse facilities as provided for under § 144.34 of this chapter, the CF 300 shall cover all locations and warehouses of the proprietor. An alternative format may be used for providing the information required on the CF 300.

(h) *Annual reconciliation*—(1) *Report*. Instead of preparing Customs Form 300 as required under paragraph (g) of this section, the proprietor of a class 2, importers' private bonded warehouse, and proprietors of classes 4, 5, 6, 7, 8, and 9 warehouses if the warehouse proprietor and the importer are the same party, must prepare a reconciliation report within 90 days after the end of the fiscal year unless the port director authorizes an extension for reasonable cause. The proprietor shall retain the annual reconciliation report for 5 years from the end of the fiscal year covered by the report. The report must be available for a spot check or audit by Customs, but need not be furnished to Customs unless requested. There is no

form specified for the preparation of the report.

(2) *Information required.* The report must contain the company name; address of the warehouse; class of warehouse; date of inventory or information on cycle counts; a description of merchandise for each entry or unique identifier, quantity on hand at the beginning of the year, cumulative receipts and transfers (by unit), quantity on hand at the end of the year, and cumulative positive and negative adjustments (by unit) made during the year. If the proprietor of a Class 2 or Class 9 warehouse has merchandise covered by one warehouse entry, but stored in multiple warehouse facilities as provided for under § 144.34 of this chapter, the reconciliation shall cover all locations and warehouses of the proprietor at the same port. If the annual reconciliation includes entries for which merchandise was transferred to a warehouse without filing a rewarehouse entry, as allowed under § 144.34, the annual reconciliation must contain sufficient detail to show all required information by location where the merchandise is stored. For example, if merchandise covered by a single entry is stored in warehouses located in 3 different ports, the annual reconciliation should specify individually the beginning and ending inventory balances, cumulative receipts, transfers, and positive and negative adjustments for each location.

(3) *Certification.* The proprietor must submit to the port director within 10 business days after preparation of the annual reconciliation report, a letter signed by the proprietor certifying that the annual reconciliation has been prepared, is available for Customs review, and is accurate. The certification letter must contain the proprietor's IRS number; date of fiscal year end; the name and street address of the warehouse; the name, title, and telephone number of the person having custody of the records; and the address where the records are stored. Reporting of shortages and overages based on the annual reconciliation will be made in accordance with paragraph (d)(3) of this section. Any previously unreported shortages and overages should be reported to the port director and any unpaid duties, taxes and fees should be paid at this time.

(i) *System review.* The proprietor shall perform an annual internal review of the inventory control and recordkeeping system and shall prepare and maintain on file a report identifying any deficiency discovered and corrective action taken, to ensure that the system meets the requirements of this part.

(j) *Special requirements.* A warehouse proprietor submission (CF 300) or annual reconciliation must be prepared for each facility or location as defined in §§ 19.2(a) and 19.35(c) of this part. When merchandise is transferred from one facility or location to another without filing a rewarehouse entry, as provided for in § 144.34(c) of this chapter, the submission/reconciliation for the warehouse where the entry was originally filed should account for all merchandise under the warehouse entry, indicating the quantity in each location.

[T.D. 97–19, 62 FR 15836, Apr. 3, 1997, as amended by T.D. 99–78, 64 FR 57565, Oct. 26, 1999; T.D. 02–65, 67 FR 68033, Nov. 8, 2002; CBP Dec. 04–28, 69 FR 52599, Aug. 27, 2004]

MANUFACTURING WAREHOUSES

§ 19.13 Requirements for establishment of warehouse.

(a) Buildings or parts of buildings and other enclosures may be designated as bonded manufacturing warehouses if the port director is satisfied that their location, construction, and arrangement afford adequate protection to the revenue. Such warehouses shall be used solely and exclusively for the purpose for which they are bonded. The general provisions pertaining to warehouses for the storage of bonded merchandise shall, so far as relevant, apply to bonded manufacturing warehouses.

(b) Application for the establishment of such a warehouse shall be made to the director of the port where the premises are situated, setting forth the size, construction, and location of the premises, the manufacture proposed to be carried on, and the kinds of materials intended to be stored and used therein.

(c) The procedure outlined in § 19.2 with respect to the application to bond the premises and the execution of the bond shall be followed.

(d) A list of all articles intended to be manufactured in the warehouse shall be filed with the port director. Such list shall set forth the specific names under which the articles are to be exported and under which they will be known to the trade, and shall show the names of all the ingredients entering into the manufacture of such articles, with the quantities of such ingredients or materials as may be dutiable or taxable.

(e) Proprietors of such warehouses are required to conform strictly to the formulas filed with the bond, or subsequently, and in no instance shall an article be permitted to be manufactured in or withdrawn from the warehouse which does not contain all the ingredients and in the quantities specified in the formula for the manufacture of such article, or which contains any ingredient not specified in the formula.

(f) Manufactured articles shall be marked with the trade name of the goods and may be marked, in addition, with the formulas and with such insignia or name as may be indicated or desired by the purchaser, if such additional marking will in no manner conflict with the requirements of the formula or present or create a false or misleading statement or impression.

(g) *Secure storage.* Each bonded manufacturing warehouse shall have a secured area separated from the remainder of the premises to be used exclusively for the storage of imported merchandise, domestic spirits, and merchandise subject to internal-revenue tax transferred into the warehouse for manufacture. A like area shall be provided to be used exclusively for the storage of products manufactured in the warehouse. The area shall be secured to prevent any unauthorized person from having access thereto and the goods therein shall be arranged in a manner to assist a Customs officer in making the required examination or taking samples for analysis. The areas for storage of bonded material and manufactured products shall be secured in accordance with the standards prescribed in § 19.4(b)(6) of this part. The proprietor shall mark each package with the correct warehouse entry number and date until manufacturing takes place. After manufacture, the proprietor shall mark each package of the finished product with the warehouse entry number and date.

(h) Entry shall be made and duties paid, where applicable, on any imported machinery or other equipment or apparatus that is for the construction of the warehouse or for the pursuit of its business.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 82–204, 47 FR 49372, Nov. 1, 1982; T.D. 84–213, 49 FR 41169, Oct. 19, 1984; T.D. 89–1, 53 FR 51254, Dec. 21, 1988; T.D. 97–19, 62 FR 15839, Apr. 3, 1997]

§ 19.13a Recordkeeping requirements.

The proprietor of a manufacturing warehouse shall comply with the recordkeeping requirements of §§ 19.4(b) and 19.12. In addition, the proprietor shall:

(a) Record all transfers from any storage area to a manufacturing area, and record all transfers from a manufacturing area to a finished product storage area, in the proprietor's inventory control and accounting records;

(b) Take an annual physical inventory of the merchandise as provided in § 19.12(d)(5) in conjunction with the annual submission required by § 19.12(g); and

(c) Record all manufacturing operations performed within the warehouse with sufficient detail to determine whether there has been compliance with the manufacturing formula filed with Customs and to permit Customs to audit use and disposition of the merchandise.

[T.D. 84–213, 49 FR 41169, Oct. 19, 1984, as amended by T.D. 97–19, 62 FR 15839, Apr. 3, 1997]

§ 19.14 Materials for use in manufacturing warehouse.

(a) Imported merchandise to be used in a bonded manufacturing warehouse shall be entered on Customs Form 7501 at the port at which such warehouse is located. Such form shall be prepared in 5 copies and shall contain all of the statistical information as provided in § 141.61(e) of this chapter. If the merchandise has been imported or entered

for warehouse at another port, it may be forwarded to the port at which the manufacturing warehouse is located under an immediate transportation without appraisement entry or warehouse withdrawal for transportation, whichever is applicable.

(b) *Bond required.* Before the transfer of the merchandise to the manufacturing warehouse is permitted, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be required.

(c) *Domestic merchandise.* When the proprietor of any bonded manufacturing warehouse desires to receive therein any domestic merchandise, except merchandise subject to internal-revenue tax, to be used in connection with the manufacturer of articles permitted to be manufactured in such warehouse, including packages, coverings, vessels, and labels used in putting up such articles, an application in the following form shall be sent to the port director for approval and after approval retained by the warehouse proprietor:

APPLICATION TO RECEIVE FREE MATERIALS

Port of _____
_____, 19____.

To the Port Director:

Application is hereby made to receive into the bonded manufacturing warehouse known as _____, situated at _____ the following described articles and materials:

Marks	Nos.	Description	Quantity	Value
.....	.....	.....	.....	
.....	.....	.....	.....	
.....	.....	.....	.....	

(Signature) _____
Port _____
_____, 19____.

To the warehouse proprietor in charge of the bonded manufacturing warehouse specified above:

The above described articles and materials are hereby permitted to be received into the warehouse in your charge, to be used therein in connection with the manufacture of articles as authorized by law.
Port Director _____

(d) *Domestic spirits and wines.* For the transfer of domestic spirits from the bonded premises of a distilled spirits plant to a bonded manufacturing warehouse, or for the transfer of domestic wines from a bonded wine cellar to a bonded manufacturing warehouse, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, shall be required.

(e) *Monthly statement.* At the end of each month, the proprietor shall file with the port director a statement of all imported merchandise on which Internal Revenue tax has not been paid which was used by the proprietor in the manufacture of articles. The statement shall report this information for each warehouse entry represented in the manufacturing process.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 73–312, 38 FR 30882, Nov. 8, 1973; T.D. 82–204, 47 FR 49373, Nov. 1, 1982; T.D. 84–129, 49 FR 23166, June 5, 1984; T.D. 84–213, 49 FR 41169, Oct. 19, 1984; T.D. 85–123, 50 FR 29953, July 23, 1985]

§ 19.15 Withdrawal for exportation of articles manufactured in bond; waste or byproducts for consumption.

(a) Except cigars manufactured in bond and supplies for vessels, no articles or materials received into a bonded manufacturing warehouse or articles manufactured therefrom shall be withdrawn or removed therefrom except for direct exportation or transportation and exportation in bond to a foreign country. The exportation or shipment shall in every case be under the supervision of Customs.

(b) The coverings or containers of imported articles or materials, whether or not subject to duty apart from their contents, are not ''articles or materials'' within the meaning of section 311, Tariff Act of 1930, as amended, and need not be exported, but may be withdrawn from the warehouse for consumption under Customs Form 7501 upon payment of the duties applicable to such coverings or containers in their condition as withdrawn.

(c) Labels, coverings, and empty containers imported to be used in putting up the manufactured articles, if subject to duty or tax, constitute ''articles or materials'' within the meaning of section 311, Tariff Act of 1930, as amended, but may be withdrawn for consumption upon payment of all applicable duties and taxes.

(d) When waste or a byproduct is withdrawn for consumption, Customs Form 7501 shall be used, modified as necessary and describing in detail the waste or byproduct and the imported material from which it was produced. Such waste or byproduct shall be appraised at its wholesale value at the time of withdrawal in the principal markets of the country from which the material was imported, determined in accordance with the provisions of section 402, Tariff Act of 1930, as amended. Upon payment of the duty, the withdrawal permit shall be issued for delivery and a proper credit given upon the manufacturer's bond.

(e) Each withdrawal covering the items which are permitted to be withdrawn for consumption shall contain a summary statement thereon, showing for each class of merchandise the quantity on hand in the account, the quantity covered by the withdrawal presented, and the quantity remaining in the warehouse account, if any.

(f) The general procedure covering warehouse withdrawals for exportation shall be followed in the case of articles withdrawn for exportation from a bonded manufacturing warehouse, except that in the case of flour each copy of Customs Form 7512 shall bear the following legend:

Produced from wheat imported after September 15, 1930, without payment of duty thereon. Must not be exported to Cuba without permission from the director of the port of withdrawal.

(g)(1) Articles may be withdrawn for transportation and delivery to a bonded storage warehouse at an exterior port under the provisions of section 311, Tariff Act of 1930, as amended (19 U.S.C. 1311), for the sole purpose of immediate export, except for distilled spirits which may be withdrawn under the provisions of section 311 for transportation and delivery to any bonded storage warehouse for the sole purpose of immediate export, or may be withdrawn pursuant to section 309(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1309(a)). Such withdrawal shall be affected on Customs Form 7512, as provided for in § 144.36 of this chapter. A rewarehouse entry shall be made in accordance with § 144.34(b) of this chapter, supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter.

(2) Domestic distilled spirits transferred from a Customs bonded manufacturing warehouse, class 6, to a Customs bonded storage warehouse, class 2 or 3, in accordance with section 311, Tariff Act of 1930, as amended (19 U.S.C. 1311), shall be rewarehoused in accordance with the procedure for withdrawal and rewarehousing set forth in paragraph (g)(1) of this section. For other regulations concerning the entry and withdrawal of distilled spirits, see § 144.15 of this chapter.

(h) No merchandise manufactured in a bonded manufacturing warehouse may be withdrawn by a person other than the manufacturer either from the manufacturing warehouse or from a warehouse where the merchandise is stored awaiting direct exportation, unless an authorization of the manufacturer is endorsed on the face of the withdrawal, or the manufacturer previously and in writing has transferred the right of withdrawal.

(i) When spirits and wines are withdrawn for shipment to Puerto Rico under section 311, Tariff Act of 1930, as amended, the procedure outlined in § 7.1 of this chapter shall be followed.

(j) As proof of manufacture and exportation, the manufacturer, within 6 months from the date of demand by the port director, shall file in the case of each transaction or period of manufacture a statement certified by the warehouse proprietor showing the date and number of the bond, the quantity and identity of the dutiable or taxable merchandise used, and the quantity and description of the articles into which it has been manufactured, together with the quantities of any byproducts and waste produced. In the case of articles manufactured with the use of distilled spirits, the statement shall also be verified by the foreman or chemist of the factory and shall show the number of packages of spirits used, the marks and numbers, the number of wine, proof and taxable gallons, and the degree of proof.

(k) The same proofs of exportation shall be required as in the case of other warehouse withdrawals for exportation.

(l) When the fact of exportation of all the products has been established by such proofs and any byproducts and waste have been exported or released for consumption, the bond given by the manufacturer, or the charges against his bond, shall be canceled.

(m) Shortage, irregular delivery, and nondelivery occurring with respect to merchandise withdrawn from bonded manufacturing warehouse while it is under transportation in bond shall be charged against the bonded carrier.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 73–62, 38 FR 5630, Mar. 2, 1973; T.D. 73–175, 38 FR 17446, July 2, 1973; T.D. 78–298, 43 FR 38382, Aug. 28, 1978; T.D. 80–271, 45 FR 75641, Nov. 17, 1980; T.D. 82–204, 47 FR 49373, Nov. 1, 1982; T.D. 84–213, 49 FR 41170, Oct. 19, 1984; T.D. 89–1, 53 FR 51254, Dec. 21, 1988; T.D. 95–81, 60 FR 52295, Oct. 6, 1995]

§ 19.16 [Reserved]

SMELTING AND REFINING WAREHOUSES

§ 19.17 Application to establish warehouse; bond.

(a) *Application*. Application for the bonding of a plant of a manufacturer engaged in the smelting or refining, or both, of metal-bearing materials as provided for in section 312, Tariff Act of 1930, as amended, to reduce the metal content thereof to an unwrought metal, or metal in the form of oxides or other compounds which are obtained directly from the treatment of the dutiable materials provided for in chapters 26 and 71 through 83, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall be made by the manufacturer, to the director of the port nearest in which such plant is situated, giving the location of the premises and setting forth the work proposed to be carried on therein.

(b) [Reserved]

(c) *Discontinuance*. At the request of the proprietor the bonded status of the warehouse may be discontinued at any time provided the port director approves such discontinuance and the proprietor complies with directions of the port director with respect to the disposition of merchandise which may remain in the warehouse. The number of warehouses covered by a blanket smelting and refining bond may be reduced by discontinuance without necessitating a new bond unless the proprietor so desires.

(d) Upon the importation at any seaboard or frontier port of the United States of metal-bearing materials in any form intended for a bonded smelting or refining warehouse situated at some other port of entry, they may be forwarded under an immediate transportation without appraisement entry.

(e) *Bond*. Upon the arrival of imported metal-bearing material in any form for the purpose of being smelted or refined, or both, in bond at a port where a bonded smelting or refining warehouse is established, it shall be entered for warehouse. A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be on file. The port director shall thereupon issue a permit to the inspector to send such metal bearing materials from the importing vessel or vehicle by designated bonded vessels or vehicles to the smelting and refining warehouse named in the entry.

(f) Bonded metal-bearing materials shall be kept separate and distinct from nonbonded material until they have been sampled and weighed. The proprietor shall maintain a report of sampling, weighing, and assay of each shipment of bonded materials received into the warehouse for 5 years after liquidation of the warehouse entry for shipment.

(g) *Statement of inventory and bond charges*. Where two or more smelting or refining warehouses are included under one blanket smelting and refining bond, an overall statement must be prepared and maintained by the principal named in the bond by the 28th of each month, showing the inventory as of the close of the preceding month, of all metals on hand at each plant covered by the blanket bond and the total of bonded charges for all plants. If the warehouses covered by an overall statement are located in more than one port, each port director may choose to verify the accuracy of the inventory report only with respect to that portion of the report that relates to amounts held at a plant that is located within that port director's jurisdiction. All discrepancies which cannot be reconciled by the port director shall be reported to Headquarters, U.S. Customs

Service. If Headquarters finds that the aggregate quantity of dutiable metal at the several plants does not equal the quantity charged against the blanket bond, duties shall be collected for the quantity determined to be deficient.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 74–247, 39 FR 34650, Sept. 27, 1974; T.D. 82–204, 47 FR 49373, Nov. 1, 1982; T.D. 84–213, 49 FR 41170, Oct. 19, 1984; T.D. 89–1, 53 FR 51254, Dec. 21, 1988; T.D. 90–78, 55 FR 40166, Oct. 2, 1990; T.D. 95–99, 60 FR 62733, Dec. 7, 1995; T.D. 99–78, 64 FR 57565, Oct. 26, 1999]

§ 19.18 Smelting and refining; allowance for wastage; withdrawal for consumption.

(a) Except where absolute deductions have been allowed in the liquidation of the entry for losses on copper, lead, and zinc content of metal-bearing materials, pursuant to Chapter 26, Additional U.S. Note 1, Harmonized Tariff Schedule of the United States (see § 151.55 of this chapter), the actual percentage of losses by weight shall be allowed if more than 90 percent by weight of:

(1) The zinc content initially treated at any lead plant, (2) the copper content of the imported materials treated at any zinc plant, or (3) the copper, lead, or zinc content of the imported material initially treated at any plant other than a copper, lead, or zinc plant is lost in processing such materials. Such actual percentage of losses by weight of the metal content shall be that shown by the manufacturer's annual statement. Such losses shall be applied in the liquidation of the entry to materials entered for consumption or for warehouse, during a 12-month period beginning on the first day of the month nearest to 90 days after the close of the manufacturer's fiscal year immediately preceding such 90-day period, provided the importer makes claim therefor in writing at the time the merchandise is entered. No further wastage shall be allowed. The full dutiable contents of such metal-bearing materials, as ascertained by commercial assay made by the Government chemists, less the wastage allowance (including dutiable metals entirely lost in smelting or refining, or both), shall constitute the quantity of dutiable metal which must be either exported, duty-paid, or transferred to another bonded warehouse in order to secure the cancellation of the charge made against the proprietor's bond as shown by the warehouse or rewarehouse entry account.

(b) Upon the withdrawal for consumption of metal so smelted or refined, or both, duty shall be collected thereon without the allowance for wastage, except where the metal was transferred to a bonded Customs warehouse other than a smelting warehouse and withdrawn therefrom for consumption. However, duty-paid warehouse withdrawals for consumption may be filed with regard to metal which will be physically withdrawn in the form of smelted or refined products whether at the time of the filing of the withdrawal papers the dutiable metal covered by the bond charge being cancelled by the withdrawal is in the form of ores, concentrates, crude metals, or intermediate products. If the warehouse withdrawal for consumption covers a product which does not sustain the full wastage allowable (see § 19.22) prior to being physically released from Customs custody, a proportionate part only of such wastage may be allowed. The warehouse withdrawal and delivery permit shall state the estimated amount of the dutiable metal contained in the products, and the warehouse withdrawal shall specify the applicable wastage. A quantity of dutiable metal equivalent to the smelted or refined products covered by each withdrawal for consumption must be actually on hand at the plant or plants covered by the bond at the time of filing the withdrawals; but neither the actual ability to withdraw smelted or refined products from the warehouse nor the actual physical condition described in the withdrawal will be required at the time of filing the withdrawal.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 73–175, 38 FR 17446, July 2, 1973; T.D. 82–90, 47 FR 20753, May 14, 1982; T.D. 89–1, 53 FR 51254, Dec. 21, 1988]

§ 19.19 Manufacturers' records; annual statement.

(a) Every manufacturer engaged in smelting or refining, or both, shall immediately notify the director of the port nearest which the plant is located

of any material change in the character of the metal-bearing materials smelted or refined and of any change in the methods of smelting or refining. Each plant for which any of the deductions provided for in Chapter 26, Additional U.S. Note 1, Harmonized Tariff Schedule of the United States, is to be claimed shall maintain complete smelting and refining records showing the receipts and disposition of each shipment of materials received in the plant. If losses are to be claimed under paragraph (c) of said headnote, a record shall be kept which will become a part of the annual statement described in paragraph (b) of this section. These records shall be retained for a period of not less than 5 years. In the case of records forming the basis of such an annual statement, the period for retention shall run from the date of the related annual statement. All such records shall be made available to the port director for such inspection and verification as he may deem advisable.

(b) Every manufacturer engaged in smelting or refining, or both, must prepare and submit to the port director at the port nearest which the plant is located an annual statement for the fiscal year for the plant involved not later than 60 days after the termination of that fiscal year. The annual statement for the smelting or refining warehouse or both, shall be in lieu of the warehouse proprietors submission required by §19.12. No specific form is prescribed in which such statement shall be prepared. As basic information, the statement shall show the quantities of metal-bearing materials on hand at the beginning of the period and the dutiable contents thereof; the quantities of metal-bearing materials received during the period and the dutiable contents thereof; the total metal-bearing materials to be accounted for and the dutiable contents thereof; the quantities of metal-bearing materials on hand at the end of the period and the dutiable contents thereof; and the quantities of metal-bearing materials worked during the period and the dutiable contents thereof. The statement of the quantity of metal-bearing materials worked during the period shall show the quantity of foreign material and the quantity of domestic material put in process during the smelting operations. The statement shall contain such further information concerning the quantities and kinds of metals and intermediary products produced at the plant as will show the wastage sustained in the smelting and refining operation.

[T.D. 67–139, 32 FR 8134, June 6, 1967, as amended by T.D. 82–204, 47 FR 49374, Nov. 1, 1982; T.D. 89–1, 53 FR 51254, Dec. 21, 1988; T.D. 99–78, 64 FR 57565, Oct. 26, 1999]

§ 19.20 Withdrawal of products from bonded smelting or refining warehouses.

(a) *For exportation.* The general procedure governing warehouse withdrawals for exportation shall be followed in the case of the withdrawal for exportation of dutiable metal from a bonded smelting or refining warehouse.

(b) *For transfer to another bonded warehouse.* (1) Withdrawal for transfer to another bonded warehouse shall be at the risk and expense of the applicant, and the general regulations governing the transfer of bonded merchandise from one warehouse to another or the transfer of imported materials from a bonded storage warehouse to a bonded manufacturing warehouse shall be followed so far as applicable.

(2) In the case of transportation to another port, the transportation entry shall show the quantity of metal withdrawn the wastage applicable thereto, and the imported material from which such metal was produced, together with any dutiable metal charged on entry.

§ 19.21 Smelting and refining in separate establishments.

(a) If the operations of smelting and refining are not carried on in the same establishment, the smelted and unrefined products obtained from the smelting of imported materials in a bonded smelting warehouse may be removed therefrom for shipment to a bonded refining warehouse located at the same or another port under the general procedure for transfer from one bonded warehouse to another.

(b) When the transfer is to a bonded refining warehouse located at another port, the smelted and unrefined products or bullion obtained from the

smelting of the imported material shall be weighed, sampled, and assayed before withdrawal, the sampling to be performed under Government supervision in accordance with § 19.4 and the commercial practice in effect at the plant. A report of sampling, weight, and assay of transferred material shall be maintained for 5 years after liquidation of the warehouse entry.

(c) The withdrawal for transportation shall show the gross weight of the smelted and unrefined products withdrawn, the weight of the dutiable metal contained therein, the wastage applicable thereto and the duties properly chargeable on the withdrawn products as shown by the import entry.

(d) The rewarehouse entry covering the smelted and unrefined products at the bonded refining warehouse to which they are transferred shall be made out in accordance with the weights and duties shown on the withdrawal for transportation.

(e) Upon withdrawal of the metal from the bonded refining warehouse for export, the warehouse account of the refining warehouse shall be credited with the amount of metal so withdrawn, plus the refining wastage prescribed for said refining warehouse, plus the smelting wastage prescribed for the bonded smelting warehouse in which the smelted and unrefined products were produced, together with the amount of any dutiable metals entirely lost in the smelting or refining, or both. However, when the metal is withdrawn for consumption, duty shall be collected on an amount of metal-bearing materials in their condition as imported equivalent to that from which such metal would be producible. No allowance for either smelting or refining wastage shall be permitted, except where the metal is withdrawn from a Customs warehouse other than a bonded smelting and refining warehouse.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 82–204, 47 FR 49374, Nov. 1, 1982; T.D. 84–213, 49 FR 41170, Oct. 19, 1984]

§ 19.22 Withdrawal of metal refined in part from imported crude metal and in part from crude metal produced from imported materials.

Upon withdrawal for exportation of metal from a bonded warehouse engaged in refining, or smelting and refining, part of which metal was obtained from imported crude metal and part from crude metal produced by smelting imported materials, the warehouse account shall be credited with the quantity of metal so withdrawn, plus (a) the refining wastage allowance prescribed for that establishment, and (b) the smelting wastage allowance prescribed for the establishment in which the imported materials were smelted, and (c) any dutiable metals shown on the warehouse entry or the rewarehouse entry filed at the first-mentioned warehouse which have been lost and are attributable to the exported product. However, upon withdrawal of such refined metal for consumption, no allowance shall be made for wastage except where the withdrawal is made from a bonded Customs warehouse other than a bonded smelting and refining warehouse.

§ 19.23 Withdrawal for exportation from one port to be credited on warehouse entry account at another port.

On exportation of metal pursuant to the provisions of section 312(b)(1), Tariff Act of 1930, as amended, the general procedure covering warehouse withdrawals for exportation shall be followed. The proprietor of the plant from which the withdrawal is made shall prepare a sufficient number of copies of withdrawals on Customs Form 7512, in addition to any other copies required by the regulations, to enable the director of the port of withdrawal to forward a copy to the director of each other port where credit is to be applied. Such withdrawals shall designate the plant or plants which are to receive the credit, shall specify the warehouse entry number or numbers to which the credit is to be applied, and shall state the quantity of dutiable metal which is to be applied to each warehouse entry specified, and when any of the credits specified represent the last withdrawal against a particular warehouse entry, the words ''final withdrawal'' shall be shown on the withdrawal. When two or more plants nearest a given port are designated to receive credit, sufficient copies of the withdrawals shall be prepared to cover each such plant and

entry. If at the time of withdrawal the warehouse proprietor does not know the plants or warehouse entry numbers which are to be credited with the withdrawal, or the metallic content of the dutiable metal being exported, the preparation of the before-mentioned copies of Customs Form 7512 may be postponed for a period of not longer than 30 days from the date of the movement of the dutiable metal from the plant. In such cases, a so-called memorandum withdrawal, in the number of copies provided for in § 144.37 of this chapter, may be used in the first instance for the purpose of obtaining the required Customs record of the exportation of the dutiable metal under Customs supervision. All memorandum withdrawals shall be conspicuously endorsed ''Memorandum Withdrawal.''

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 73–175, 38 FR 17447, July 2, 1973; T.D. 89–1, 53 FR 51254, Dec. 21, 1988]

§ 19.24 Theoretical transfer without physical shipment of dutiable metal.

(a) Transfer may be made from one port of entry to another by a withdrawal for transportation and rewarehouse executed in regular form without physical shipment of the metal, provided enough like metal in any form is on hand at the establishment to which the theoretical transfer is made to satisfy the new bond obligations.

(b) The wastage allowance established for the plant from which the original withdrawal for transportation was made shall be shown on the transfer withdrawal and set up as a part of the charge against the bond at the plant to which the metal was theoretically transferred. Such wastage shall govern and be the basis for allowance when metal is withdrawn from the plant where the theoretical rewarehousing was affected.

§ 19.25 Credit to be applied under various forms of withdrawals.

(a) The warehouse entry account of the plant designated in the withdrawal to receive credit for the exportation shall be credited with the following:

(1) The quantity of dutiable metal exported.

(2) The wastage in effect on the date of entry at the plant of initial treatment of such materials.

(3) The proportion of any other dutiable metals in the importation being credited which were lost at the said plant in the production of a quantity of dutiable metal equal to that exported.

(b) If credit is being applied to a charge set up by a theoretical transfer under § 19.24 at the plant designated in the withdrawal to receive the credit, the wastages to be applied shall be those set up at such plant in connection with the theoretical transfer, irrespective of the date of the withdrawal.

(c) On the transfer of dutiable metal to a bonded storage warehouse, credit shall be applied at the plant designated in the withdrawal to receive the credit in the manner provided for in paragraph (a) of this section with respect to withdrawals for exportation. The charge so credited at the plant shall be set up on the warehouse entry account of the storage warehouse to which the dutiable metal has been transferred. In the case of the withdrawal of dutiable metal for transfer to a bonded manufacturing warehouse, credit shall be applied in the same manner at the plant designated in the withdrawal to receive the credit, but the charge set upon the warehouse entry account of the bonded manufacturing warehouse shall be limited to the quantity of dutiable metal transferred to such warehouse.

SPACE BONDED FOR THE STORAGE OF WHEAT

§ 19.29 Sealing of bins or other bonded space.

The outlets to all bins or other space bonded for the storage of imported wheat shall be sealed by affixing locks or in bond seals to the rope or chain which controls the gear mechanism for opening the outlets, or such other method which will effectively prevent the removal of, or access to, the wheat in the bonded space except under such supervision as required by §§ 19.4 and 101.2(c) of this chapter.

[T.D. 82–204, 47 FR 49374, Nov. 1, 1982, as amended by T.D. 98–22, 63 FR 11825, Mar. 11, 1998]

§ 19.30 Domestic wheat not to be allowed in bonded space.

The presence of domestic wheat in space bonded for the storage of imported wheat shall not be permitted.

§ 19.31 Bulk wheat of different classes and grades not to be commingled in storage.

All wheat shall be stored by class and grade according to the Official Grain Standards of the United States or the official standards of the Canadian Board of Grain Commissioners, in bins, compartments, or other enclosed spaces identified by clearly distinguishable insignia securely affixed thereto, so as to facilitate the maintenance of identity of the wheat. There shall be no mixing or commingling of different classes or grades of wheat in the same bin, battery of bins, or other bonded space. If the wheat is stored in bags or other transportation containers, such bags or containers shall be so marked and so placed in the warehouse that the identity of the wheat will not be lost while in storage, to permit easy access to all lots, and to facilitate inspecting, sampling, and the identification of each lot.

CROSS REFERENCE: For regulations relating to the Official U.S. Standards for Grain, see 7 CFR part 810.

§ 19.32 Wheat manipulation; reconditioning.

(a) The mixing, blending, or commingling of imported wheat and domestic wheat, or of imported wheat of different classes and grades, as an incident of transportation or as an incident of exportation under transportation and exportation entries, direct export entries, or withdrawals for exportation shall not be permitted. Applications for permission to manipulate wheat under the provisions of section 562, Tariff Act of 1930, as amended, shall be approved only after the concurrence of all interested Federal agencies has been furnished by the applicant.

(b) Where it is found that elevating, screening, blowing, fumigating, or drying of the wheat is essential to keep it in condition, the proprietor of the warehouse shall submit an application in writing to the port director. All such operations shall be performed under Customs supervision adequate to preclude unauthorized access to the wheat.

§ 19.33 General order; transportation in bond.

The provisions of §§ 19.29 through 19.32 shall be applicable to those parts of any premises in which imported wheat is stored in a general-order status, or stored pending exportation under an entry for exportation or for transportation and exportation.

§ 19.34 Customs supervision.

Port directors shall exercise such supervision and control over the transactions covered by §§ 19.29 through 19.32 as will insure that there will be no unauthorized access to the imported wheat and no unauthorized mixing, blending, or commingling of such imported wheat. Importers, exporters, proprietors of Customs bonded warehouses, bonded common carriers, and others handling imported wheat in continuous Customs custody shall maintain such records as will enable Customs officers to verify the handling to which the imported wheat has been subjected, and to establish whether there has been a proper accounting to Customs for any increase in the quantity of the wheat or shortages resulting from shrinkage or other factors. These records shall be retained for a period of 5 years from the date of the transaction. Port directors shall from time to time request the appropriate Customs officer to examine such records of importers, exporters, warehouse proprietors, bonded common carriers, and others handling such wheat in continuous Customs custody as may be deemed necessary to ascertain whether there has been any failure to comply with the applicable Customs laws and regulations.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 79–159, 44 FR 31968, June 4, 1979; T.D. 82–204, 47 FR 49374, Nov. 1, 1982]

DUTY-FREE STORES

SOURCE: Sections 19.35 through 19.39 issued by T.D. 92–81, 57 FR 37698, Aug. 20, 1992, unless otherwise noted.

§ 19.35 Establishment of duty-free stores (Class 9 warehouses).

(a) *General.* A class 9 warehouse (duty-free store) may be established for exportation of conditionally duty-free merchandise by individuals departing the Customs territory, inclusive of foreign trade zones, by aircraft, vessel, or departing directly by vehicle or on foot to a contiguous country. Such articles must accompany the individual on his person or in the same aircraft, vessel, or vehicle in which the individual departs. ''Conditionally duty-free merchandise'' means merchandise sold by a duty-free store on which duties and/or internal revenue taxes (where applicable) have not been paid. Except insofar as the provisions of this section and §§ 19.36–19.39 are more specific, the procedures for bonded warehouses apply to duty-free stores (Class 9 warehouses).

(b) *Location.* A duty-free store (class 9 warehouse) may be established or located only:

(1) Within the same port of entry from which a purchaser of duty-free store merchandise departs the Customs territory;

(2) Within 25 statute miles from the exit point through which a purchaser of duty-free store merchandise departs the Customs territory; or

(3) In the case of an airport store, within any staffed port of entry, or within 25 statute miles from any staffed port of entry.

(c) *Integrated locations.* A Class 9 warehouse with multiple noncontiguous sales and crib locations (see § 19.37(a) of this part) containing conditionally duty-free merchandise and requested by the proprietor may be treated by Customs as one location if:

(1) The proprietor can provide Customs upon demand with the proper on-hand balance of each inventory item in each storage location, sales room, crib, mobile crib, delivery cart, or other conveyance or noncontiguous location; and

(2) The recordkeeping system is centralized up to the point where a sale is made so as to automatically reduce the sale quantity by location from centralized inventory or inventory records must be updated no less frequently than at the end of each business day to reflect that day's activity.

(d) *Exit point.* The exit point referred to in paragraph (b) of this section means an area in close proximity to an actual exit for departing from the Customs territory, including the gate holding area in the case of an airport, but only if there is reasonable assurance that conditionally duty-free merchandise delivered in the gate holding area will be exported from the Customs territory. The exit point in the case of a land border or seaport duty-free store is the point at which a departing individual has no practical alternative to continuing on to a foreign country or to returning to Customs territory by passing through a U.S. Customs inspection facility. The port director's decision as to what constitutes the exit point or reasonable assurance of exportation in a given situation is final.

(e) *Notice to customers.* Class 9 warehouse proprietors shall display in prominent places where they will be noticed and read by customers signs which state clearly that any conditionally duty-free merchandise purchased from the store:

(1) Has not been subjected to any U.S. Federal duty or tax;

(2) If brought back to the United States must be declared and is subject to U.S. Federal duty and tax with personal exemption; and,

(3) Is subject to the customs laws and regulations, including possible duties and taxes, of any foreign country to which it is taken.

(f) *Security of sales rooms and cribs.* The physical and procedural security requirements of § 19.4(b)(6) of this part shall be applied to the security of the sales rooms and cribs by the port director. The proprietor shall establish procedures to safeguard the merchandise so as to accommodate the movement of purchasers and prospective purchasers of conditionally duty-free merchandise contained in duty-free sales rooms and cribs.

(g) *Approval of governmental authority.* If a state or local or other governmental authority, incident to its jurisdiction over any airport, seaport, or other exit point facility, requires that a concession or other form of approval be obtained from that authority with respect to the operation of a duty-free

store under which merchandise is delivered to or through such facility for exportation, merchandise incident to such operation may not be withdrawn for exportation and transferred to or through such facility unless the operator of the duty-free store demonstrates to the port director that the concession or approval required for the enterprise has been obtained.

[T.D. 92–81, 57 FR 37698, Aug. 20, 1992, as amended by T.D. 97–19, 62 FR 15839, Apr. 3, 1997; T.D. 00–33, 65 FR 31261, May 17, 2000]

§ 19.36 Requirements for duty-free store operations.

(a) *Withdrawals.* Merchandise withdrawn under the sales ticket procedure in § 144.37(h) of this chapter may be delivered only toindividuals departing from the Customs territory for exportation or to persons and organizations for use as specified in subpart I, part 148, of this chapter. Withdrawals of other kinds may be made from Class 9 warehouses, but only through separate withdrawals (or withdrawals under blanket permit for vessel or aircraft supplies) under an approved permit of the port director as provided in § 144.39 of this chapter.

(b) *Procedures required.* Each duty-free store shall establish, maintain, and follow written procedures to provide reasonable assurance to the port director that conditionally duty-free merchandise purchased therein will be exported from the Customs territory. A copy of any change in the procedure will be provided to the port director before it is implemented. However, receipt by Customs of the procedures of any change thereto shall not be construed as approval by Customs of the procedures. The port director is responsible for ensuring that each enterprise has established guidelines with Customs and is complying with those guidelines, giving assurance that proper supervision exists when delivery is made to the purchaser at or before the exit point. The port director may at any time require any change in the procedures deemed necessary for assurance of exportation.

(c) *Personal-use restrictions.* Any duty-free store which delivers conditionally duty-free merchandise to purchasers at an airport exit point shall establish, maintain, and enforce written restrictions on the sale of conditionally duty-free merchandise to any one individual to personal-use quantities. Personal-use quantities means quantities that are only suitable for uses other than resale, and includes reasonable quantities for household or family consumption as well as for gifts to others. Proprietors will not knowingly sell or deliver conditionally duty-free merchandise in any quantity to any individual for the purpose of resale. A copy of the restrictions and of any change thereto shall be provided to the port director prior to implementation. However, receipt of the written restrictions by Customs shall not be construed as approval by Customs of the restrictions. The port director may require any change in the restrictions deemed necessary to conform to the personal-use quantity restriction of this section.

(d) *Reimported merchandise.* Merchandise purchased in a duty-free store is not eligible for exemption from duty, or tax where applicable, under chapter 98, subchapter IV, Harmonized Tariff Schedule, if it is brought back to the United States after exportation. To enforce this restriction, the port director may require the proprietor to mark or otherwise place a distinguishing identifier on individual items of merchandise to indicate the items were sold in a U.S. duty-free store, if a pattern is disclosed in which such items are being brought back to the United States without declaration. A pattern of undeclared reimportations means a number of instances over a period of time and not isolated instances of unrelated violations. Any such marking required by the port director will be inconspicuous to the purchaser and will not detract from the value of the merchandise. The marking requirement will be limited to the items or types of merchandise noted in the pattern, and will not be extended to all merchandise of the responsible store proprietor unless all or most items are part of the pattern.

(e) *Merchandise eligible for warehousing.* Only conditionally duty-free merchandise may be placed in a bonded storage area of a Class 9 warehouse. However, domestic merchandise and merchandise which was previously

entered or withdrawn for consumption, may be brought into the bonded sales or crib area of a Class 9 warehouse for display and sale, and in the case of a crib, for delivery to purchasers. However, such merchandise must be either identified or marked ''DUTY-PAID'' or ''U.S.-ORIGIN'', or similar markings, as applicable, so that Customs officers can easily distinguish conditionally duty-free merchandise from other merchandise in the sales or crib area.

(f) *Sale of merchandise.* Conditionally duty-free merchandise for exportation at airport or seaport exit points may be sold and delivered only to purchasers who display valid tickets, or in the case of chartered or for-hire flights that have not issued tickets, other proof of impending departure from the Customs territory, and to crewmembers who have been engaged for a flight or voyage departing directly from the Customs territory with no intermediate stops in the U.S.

(g) *Inventory procedure.* Duty-free store proprietors shall maintain, at the duty-free store or at another location approved by the port director, a current inventory separately for each storage area, crib, and sales area containing conditionally duty-free merchandise by warehouse entry, or by unique identifier where permitted by the port director. Proprietors shall assure that Customs has ready access to those records, and that the records are stored in such a way as to keep transactions of multiple facilities separated. The inventory shall be reconcilable with the accounting and inventory records and the permit file folder requirements of § 19.12 (d), (e) and (f) of this part. Proprietors are subject also to the recordkeeping requirements of other paragraphs of § 19.12, as well as those of §§ 19.6(d), 19.37(d), 19.39(d) of this part, and 144.37(h)(3) of this chapter.

[T.D. 92–81, 57 FR 37698, Aug. 20, 1992, as amended by T.D. 97–19, 62 FR 15840, Apr. 3, 1997]

§ 19.37 Crib operations.

(a) *Crib.* A crib means a bonded area, separate from the storage area of a Class 9 warehouse, for the retention of a supply of articles for delivery to persons departing from the United States. It shall be located beyond the exit point, unless exception has been made under § 19.39 (a) and (b) of this part. The crib may be a permanent location or a mobile facility which is periodically moved to a location beyond the exit point. The quantity of goods in the crib may be an amount requested by the proprietor which is commercially necessary for the delivery operations for a period, if approved by the port director. The port director may increase or decrease the quantity as deemed necessary for the protection of the revenue and proper administration of U.S. laws and regulations, or may order the return to the storage area of goods remaining unsold.

(b) *Delivery and removal of merchandise.* Conditionally duty-free merchandise shall be delivered to the crib, or removed from the crib for return to the storage area, under the procedures in subpart D, part 125, and § 144.34(a), of this chapter, or under a local control system approved by the port director wherein any discrepancy found in the merchandise will be treated as if it occurred in the bonded warehouse. If delivery is made by licensed cartman, cartage vehicles shall be conspicuously marked as provided in § 112.27 of this chapter.

(c) *Delivery vehicles.* Vehicles, including mobile cribs, containing conditionally duty-free merchandise for delivery to or from a crib shall carry a listing of the articles contained therein. The proprietor shall provide, upon request by Customs, a transfer document sufficient to account for each movement of inventory among its locations. The merchandise in the vehicles shall be subject to inspection by Customs.

(d) *Retention of records.* Class 9 warehouse proprietors shall maintain records of conditionally duty-free merchandise transported beyond the exit point and returned therefrom, and Customs permits for such movements, for not less than 5 years after exportation of the articles. Such records need not be placed in permit file folders but must be filed by date of movement, destination site and warehouse entry number or by unique identifier where

permitted by the port director (see § 19.36(g)).

[T.D. 92–81, 57 FR 37698, Aug. 20, 1992, as amended by T.D. 97–19, 62 FR 15840, Apr. 3, 1997]

§ 19.38 Supervision of exportation.

(a) *Sales ticket withdrawals.* Conditionally duty-free merchandise withdrawn under the sales ticket procedure for exportation shall be exported only under Customs supervision as provided in this section and § 19.39 of this part. General Customs supervision shall be exercised as provided in § 19.4 of this part and § 101.2(c) of this chapter, and may consist of spot checks of exportation transactions, examination of articles being exported, and audits of the proprietor's records.

(b) *Supervision of ATF bonded exports.* Customs officers may conduct general supervision of exportations of cigarettes and cigars from ATF export bonded warehouses (see 27 CFR part 290) in conjunction with exportation from duty-free stores.

[T.D. 92–81, 57 FR 37698, Aug. 20, 1992, as amended by T.D. 98–22, 63 FR 11825, Mar. 11, 1998]

§ 19.39 Delivery for exportation.

(a) *Delivery to land border locations*—(1) *Land border locations. Land border location* means an exit point (see § 19.35(d)) from which individuals depart to a contiguous country by vehicle or on foot by bridge, tunnel, highway, walkway, or by ferry across a boundary lake or river, but not including departure to a contiguous country by air or sea. Deliveries from a duty-free store for exportation from such locations shall be made to the purchaser only beyond the exit point, except as specified in paragraph (a)(2) of this section.

(2) *Delivery at or before exit point.* Delivery of such merchandise may be made at or before the exit point of any location approved by Customs as of August 23, 1988. In such cases, delivery shall be done under the physical supervision of a Customs officer, or in accordance with established guidelines as required by § 19.36(b) of this part. The officer shall sign the sales ticket certifying exportation and return it to the proprietor for retention in the files. The port director may also require that the warehouse proprietor have the person receiving the article sign the same copy to certify receipt.

(b) *Delivery to seaport locations*—(1) *Seaport location. Seaport location* means an exit point (see § 19.35(d)) from which conditionally duty-free merchandise is delivered to departing individuals for exportation by vessel of more than 5 net tons which is departing directly from the Customs territory to touch and trade in a foreign country. Deliveries for exportation from such locations may be made only beyond the exit point, except as specified in paragraph (b)(2) of this section.

(2) *Delivery at or before exit point.* Delivery of such merchandise may be made at or before the exit point in the case of any locations approved by Customs as of August 23, 1988. In such cases, delivery shall be done under the physical supervision of a Customs officer, or in accordance with established guidelines as required by § 19.36(b) of this part. The officer shall sign the sales ticket certifying exportation and return it to the proprietor for retention in the files. The port director may also require that the warehouse proprietor have the person receiving the article sign the same copy to certify receipt.

(c) *Delivery to airport locations. Airport location* means an exit point from which conditionally duty-free merchandise is delivered to departing individuals for exportation on a scheduled, chartered, or ''for-hire'' airline. Delivery of conditionally duty-free merchandise to be exported from such locations may be made by one of the following five procedures:

(1) *Delivery in sterile area.* A sterile area is an area that is within the airport and to which access is restricted to those passengers departing from Customs territory. In such cases, delivery will be made directly to the purchaser (or a family member or companion travelling with the purchaser) for carrying aboard the aircraft. This method of delivery is not authorized if there is any mixture in the sterile area of individuals arriving from a foreign country, or individuals arriving or departing on a domestic flight, with individuals departing for foreign;

(2) *Passenger delivery*. Merchandise may be delivered by the cartman or duty-free store operator to the purchaser (or a family member or companion travelling with the purchaser) at or beyond the exit point for the flight. The port director may require the exit point to be delimited by marking of its boundaries, or require proper supervision in accordance with established guidelines as required by § 19.36(b) of this part, if needed for reasonable assurance that conditionally duty-free merchandise will be exported with the purchaser or a family member or companion.

(3) *Aircraft delivery*. The merchandise will be delivered by a licensed cartman for lading as baggage directly on the aircraft on which the passenger will depart. The airline will release the merchandise to the purchaser when the aircraft has departed for its foreign destination;

(4) *Unit-load delivery*. Merchandise may be sold to passengers departing from the United States at a prior port of boarding on flights proceeding to a foreign destination which are required to clear with intermediate stops in the United States, provided that all of the following conditions are met:

(i) Sales may be made only to passengers holding a through ticket on the same flight, with no stopover privileges in the United States, to a foreign destination;

(ii) Merchandise shall be placed on the aircraft on which the passenger departs the United States for carriage as passenger baggage;

(iii) Merchandise shall be placed in a container sealed with Customs seals. The sealed container(s) may be placed in the baggage compartment or on the passenger deck of the aircraft. Containers stowed in baggage compartments may, with Customs permission, be transferred to the passenger deck at an intermediate or final stop in the United States. The seal numbers shall be placed on the face of the aircraft general declaration;

(iv) A lading manifest list, in duplicate, of conditionally duty-free merchandise sold to passengers aboard the particular flight will be prepared by the proprietor. An authorized airline representative will sign for receipt, with one copy to be retained by the airline for presentation to Customs as requested at the intermediate or final port, and the duplicate copy to be returned to and retained by the proprietor for record purposes;

(v) The seals shall not be broken nor shall any of the purchases be delivered until the aircraft is secured for departure to its foreign destination at the last port. In the event that the seals are broken before that time, or the merchandise is not exported for any reason and not returned to Customs custody, demand shall be made against the importation and entry bond of the importer of record;

(5) *Cancelled or aborted flights or no-show passengers*—(i) *Cancelled or aborted flights*. The proprietor shall, upon request, make available to Customs the purchaser's name, the purchaser's airline ticket number and the identity and quantity of the merchandise delivered by the proprietor to the purchaser (if the merchandise was delivered to the airline rather than the passenger, the name of the airline employee to whom the merchandise was delivered), and the date and time of that delivery in lieu of retrieving the merchandise for safekeeping until the purchaser actually departs.

(ii) *No-show passengers*. A proprietor who delivers merchandise directly to an airline for delivery to a passenger who does not board the flight shall establish a procedure to obtain redelivery of that merchandise from the airline.

(d) *Lading manifest lists; certificate of exportation*. The proprietor shall retain copies of lading manifest lists and certificates of lading for exportation in its files for not less than 5 years after exportation by warehouse entry number or by unique identifier where permitted by the port director (see § 19.36(g)).

(e) *Delivery method*. Delivery of conditionally duty-free merchandise to persons for exportation will be made by licensed cartmen or bonded carriers under the procedures in subpart D, part 125, and § 144.34(a), of this chapter, or under a local control system approved by the port director wherein any discrepancy found in the merchandise will be treated as if it occurred in the bonded warehouse.

(f) *Return of merchandise to stock.* Whenever merchandise is withdrawn under the sales ticket procedure of § 144.37(h) of this chapter, but is undeliverable or is rejected by the purchaser, the merchandise may be returned to the duty-free store and the records, including the sales ticket and sales ticket register, amended to reflect the quantity returned to stock.

[T.D. 92–81, 57 FR 37698, Aug. 20, 1992, as amended by T.D. 97–19, 62 FR 15840, Apr. 3, 1997]

CONTAINER STATIONS

SOURCE: Sections 19.40 through 19.49 issued by T.D. 72–68, 37 FR 4186, Feb. 29, 1972, unless otherwise noted.

§ 19.40 Establishment, relocation or alteration of container stations.

(a) A container station, independent of the importing carrier, may be established at any port or portion of a port, or any other area under the jurisdiction of a port director upon the filing of an application therefore and its approval by the port director and the posting of a bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter in such amount as the port director shall require.

(b) Alterations to or relocation of a container station may be made with the permission of the director of the port in which the facility is located, or if not within a port's limits, nearest to where the facility is located. An application to alter or relocate a container station shall be accompanied by the fee required by paragraph (c) of this section.

(c)(1) Customs shall charge a fee to establish, relocate or alter a container station, and publish a general notice in the FEDERAL REGISTER and Customs Bulletin setting forth a fee schedule, to be revised periodically to reflect increased costs, to establish, relocate or alter the container station. The published revised fee schedule shall remain in effect until changed.

(2) The fee, rounded off to the nearest dollar, shall be calculated in accordance with § 24.17(d) of this chapter. The fee shall be based upon the amount of time the average service requires of the Customs officers performing the service.

[T.D. 72–68, 37 FR 4186, Feb. 29, 1972, as amended by T.D. 82–135, 47 FR 32416, July 27, 1982; T.D. 83–56, 48 FR 9854, Mar. 9, 1983; T.D. 84–213, 49 FR 41170, Oct. 19, 1984; T.D. 85–72, 50 FR 15885, Apr. 23, 1985; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 19.41 Movement of containerized cargo to a container station.

Containerized cargo may be moved from the place of unlading to a designated container station, or may be received directly at the container station from a bonded carrier after transportation in-bond, before the filing of an entry of merchandise therefor or the permitting thereof (see subpart A of part 158 of this chapter) for the purpose of breaking bulk and redelivery of the cargo. In either circumstance, excess loose cargo, as part of containerized cargo, may accompany the container to the container station.

[T.D. 82–135, 47 FR 32416, July 27, 1982]

§ 19.42 Application for transfer of merchandise.

The container station operator may file an application for the transfer of a container intact to the station. The application shall be in duplicate in the following or substantially similar format:

U.S. CUSTOMS SERVICE

APPLICATION AND PERMIT TO TRANSFER CONTAINERIZED CARGO TO A CONTAINER STATION

Date _____

Application is made to transfer the containers and their contents listed below which arrived on _____ (Carrier) on _____ (Date) at Pier ____ to the _____ (Container station)

An abstract of the carrier's manifest covering the containers by B/L No., marks, numbers, contents, consignee, etc., is attached hereto.

LIST OF CONTAINERS BY MARKS AND NUMBERS ONLY

_____

_____

_____

_____

(Signature of authorized agent of container station)

We concur: _____

(Signature of agent of importing carrier)

transfer record

Delivered to _____ (cartman), C.H.L. No. ____ in apparent good order and condition except as noted:

Truck No.	Container numbers	Date	Signature of inspector	Signature of cartman	Received signature container operator

§ 19.43 Filing of application.

The application, listing the containers by marks and numbers, may be filed at the customhouse or with the Customs inspector at the place where the container is unladen, or for merchandise transported in-bond, at the bonded carrier's facility, as designated by the port director.

[T.D. 82–135, 47 FR 32416, July 27, 1982]

§ 19.44 Carrier responsibility.

(a) If merchandise is transferred directly to a container station from an importing carrier, the importing carrier shall remain liable under the terms of its bond for the proper safekeeping and delivery of the merchandise until it is formally receipted for by the container station operator.

(b) If merchandise is transferred directly from a bonded carrier's facility to a container station or is delivered directly to the container station by a bonded carrier, the bonded carrier shall remain liable under the terms of his bond for the proper safekeeping and delivery of the merchandise until it is formally receipted for by the container station operator.

(c) In either case under paragraph (a) or (b) of this section, the importing carrier and the bonded carrier, as applicable, shall be responsible for assuring that the provisions of subpart A, part 158 of this chapter, relating to quantity determinations, and discrepancy reporting and accountability are followed.

(d) The importing carrier and the bonded carrier, as applicable, shall indicate concurrence in the transfer of the merchandise either by signing the application for transfer or by physically turning the merchandise over to the operator.

(e) The importing carrier and the bonded carrier, as applicable, shall be responsible for ascertaining that the person to whom a container is delivered for transfer to the container station is an authorized representative of the operator.

(f) The importing carrier and the bonded carrier, as applicable, shall furnish an abstract manifest showing the bill of lading number, the marks and numbers of the container, and the usual manifest description for each shipment in the container.

(g) If a container station operator chooses to collect merchandise from within the boundaries of the district (see definition of ''district'' at § 112.1) in which the container station is located and transport the merchandise to his container station, the container station operator must formally receipt for the merchandise at the time of collection, and he becomes liable under his bond for proper safekeeping of the merchandise at that time.

[T.D. 82–135, 47 FR 32416, July 27, 1982, as amended by T.D. 94–81, 59 FR 51494, Oct. 12, 1994; T.D. 95–77, 60 FR 50010, Sept. 27, 1995]

§ 19.45 Transfer of merchandise, approval and method.

Approval of the application by the port director shall serve as a permit to transfer the container and its contents to the station. Except when the container station operator is moving the

merchandise to his own station by his own vehicle, the merchandise may only be transferred to a container station by a bonded cartman or bonded carrier. The station operator, cartman or carrier shall receipt for the merchandise on both copies of the application.

[T.D. 74–54, 39 FR 4876, Feb. 18, 1974]

§ 19.46 Employee lists.

A permit shall not be granted to an operator to transfer a container or containers to a container station, if the operator, within 30 calendar days after the date of receipt of a written demand by the port director, does not furnish a written list of names, addresses, social security numbers, and dates and places of birth of persons employed by him in connection with the movement, receipt, storage or delivery of imported merchandise. Having furnished such a list, no new permit shall be issued to an operator who has not within 10 calendar days after the employment of any new personnel employed in connection with the movement, receipt, storage, or delivery of imported merchandise, advised the port director in writing of the names, addresses, social security numbers, and dates and places of birth of such new employees. The operator shall, within 10 calendar days, advise the port director if the employment of any employee is terminated. A person shall not be deemed to be employed by an operator if he is an officer or employee of an independent contractor engaged by the operator to move, receive, store, deliver, or otherwise handle imported merchandise.

§ 19.47 Security.

The space to be used for the purposes of breaking bulk and delivering cargo shall be properly secured against access by unauthorized persons, including persons not on the list of current employees furnished to the port director by the container station operator, the principal on the bond, as required by § 19.46. A suitable working and office space for the use of Customs officers and employees performing functions in the area shall also be provided.

§ 19.48 Suspension or revocation of the privilege of operating a container station; hearings.

(a) *Grounds for suspension or revocation.* The port director may revoke or suspend the privilege of operating a container station if:

(1) The privilege was obtained through fraud or the misstatement of a material fact;

(2) The container station operator refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation relative to the operation of a container station;

(3) The container station operator or an officer of a corporation which has been granted the privilege of operating a container station is convicted of or has committed acts which would constitute a felony, or a misdemeanor involving theft, smuggling, or a theft-connected crime. Any change in the employment status of the corporate officer (e.g., discharge, resignation, demotion, or promotion) prior to conviction of a felony or prior to conviction of a misdemeanor involving theft, smuggling, or a theft-connected crime, resulting from acts committed while a corporate officer, will not preclude application of this provision;

(4) The container station operator fails to retain merchandise which has been designated for examination;

(5) The container station operator does not provide secure facilities or properly safeguard merchandise within the container station;

(6) The container station operator fails to furnish a current list of names, addresses, and other information required by § 19.46; or

(7) The bond required by § 19.40 is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time.

(b) *Notice and appeal.* The port director shall suspend or revoke the privilege of operating a container station by serving notice of the proposed action in writing upon the container station operator. The notice shall be in the form of a statement specifically setting forth the grounds for revocation or suspension of the privilege and shall be final and conclusive upon the container

station operator unless he shall file with the port director a written notice of appeal. The container station operator may file a written notice of appeal from the revocation or suspension within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed in duplicate and shall set forth the response of the container station operator to the statement of the port director. The container station operator, in his notice of appeal, may request a hearing.

(c) *Hearing on appeal.* If a hearing is requested, it shall be held before a hearing officer designated by the Secretary of the Treasury or his designee within 30 days following application therefor. The container station operator shall be notified of the time and place of the hearing at least 5 days prior thereto. The container station operator may be represented by counsel at the revocation or suspension hearing. All testimony in the proceeding shall be subject to cross-examination. A stenographic record of any such proceeding shall be made and a copy thereof shall be delivered to the container station operator. At the conclusion of such proceeding or review of a written appeal, the hearing officer or the port director, as the case may be, shall forthwith transmit all papers and the stenographic record of any hearing, to the Commissioner of Customs, together with his recommendation for final action. Following a hearing and within 10 calendar days after delivery of a copy of the stenographic record, the container station operator may submit to the Commissioner of Customs, in writing, additional views and arguments on the basis of such record. If neither the container station operator nor his attorney appear for a scheduled hearing, the hearing officer shall conclude the hearing and transmit all papers with his recommendation to the Commissioner of Customs. The Commissioner shall thereafter render his decision, in writing, stating his reasons therefor, with respect to the action proposed by the hearing officer or the port director. Such decision shall be transmitted to the port director and served by him on the container station operator.

[T.D. 73–286, 38 FR 28289, Oct. 12, 1973, as amended by T.D. 88–63, 53 FR 40219, Oct. 14, 1988]

§ 19.49 Entry of containerized merchandise.

Merchandise not entered within the lay order period, or extension thereof, shall be placed in general order. The importing carrier shall issue carrier's certificates for individual shipments in a container. Entries covering merchandise transferred to a container station shall clearly show that the merchandise is at the container station.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

Sec.

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24.73 Miscellaneous claims.

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States) 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

Section 24.1 also issued under 19 U.S.C. 197, 198, 1648;

Section 24.4 also issued under 19 U.S.C. 1623, 26 U.S.C. 5007, 5054, 5061, 7805;

Section 24.11 also issued under 19 U.S.C. 1485(d);

Section 24.12 also issued under 19 U.S.C. 1524, 46 U.S.C. 31302;

Section 24.14 also issued under 19 U.S.C. 1;

Section 24.16 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1623; 46 U.S.C. 2111, 2112;

Section 24.17 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1456, 1524, 1557, 1562; 46 U.S.C. 2110, 2111, 2112;

Section 24.23 also issued under 19 U.S.C. 3332;

Section 24.32 also issued under 5 U.S.C. 5582, 5583;

Section 24.36 also issued under 26 U.S.C. 6423.

SOURCE: 28 FR 14808, Dec. 31, 1963, unless otherwise noted.

§ 24.1 Collection of Customs duties, taxes, fees, interest, and other charges.

(a) Except as provided in paragraph (b) of this section, the following procedure shall be observed in the collection of Customs duties, taxes, fees, interest, and other charges (see § 111.29(b) and 141.1(b) of this chapter):

(1) Any form of United States currency or coin legally current at time of acceptance shall be accepted.

(2) Any bank draft, cashier's check, or certified check drawn on a national or state bank or trust company of the United States or a bank in Puerto Rico or any possession of the United States if such draft or checks are acceptable for deposit by a Federal Reserve bank, branch Federal Reserve bank, or other designated depositary shall be accepted.

(3)(i) An uncertified check drawn by an interested party on a national or state bank or trust company of the United States or a bank in Puerto Rico or any possession of the United States if such checks are acceptable for deposit by a Federal Reserve bank, branch Federal Reserve bank, or other designated depositary shall be accepted if there is on file with the port director a bond to secure the payment of the duties, taxes, fees, interest, or other charges, or if a bond has not been filed, the organization or individual drawing and tendering the uncertified check has been approved by the port director to make payment in such manner. In determining whether an uncertified check shall be accepted in the absence of a bond, the port director shall use available credit data obtainable without cost to the Government, such as that furnished by banks, local business firms, better business bureaus, or local credit exchanges, sufficient to satisfy him of the credit standing or reliability of the drawer of the check. For purposes of this paragraph, a customs broker who does not have a permit for the district (see the definition of ''district'' at § 111.1 of this chapter) where the entry is filed, is an interested party for the purpose of Customs acceptance of such broker's own check, provided the broker has on file the necessary power of attorney which is unconditioned geographically for the performance of ministerial acts. Customs may look to the principal (importer) or to the surety should the check be dishonored.

(ii) If, during the preceding 12-month period, an importer or interested party has paid duties or any other obligation by check and more than one check is returned dishonored by the debtor's financial institution, the port director shall require a certified check, money order or cash from the importer or interested party for each subsequent payment until such time that the port director is satisfied that the debtor has the ability to consistently present uncertified checks that will be honored by the debtor's financial institution.

(4) A U.S. Government check endorsed by the payee to the U.S. Customs Service, a domestic traveler's check, or a U.S. postal, bank, express, or telegraph money order shall be accepted. Before accepting this form of payment the Customs cashier or other employee authorized to receive Customs collections shall require such

identification in the way of a current driver's license issued by a state of the United States, or a current passport properly authenticated by the Department of State, or a current credit card issued by one of the numerous travel agencies or clubs, or other credit data, etc., from which he can verify the identity and signature of the person tendering such check or money order.

(5) The face amount of a bank draft, cashier's check, certified check, or uncertified check tendered in accordance with this paragraph shall not exceed the amount due by more than $1 and any required change is authorized to be made out of any available cash funds on hand.

(6) The face amount of a U.S. Government check, traveler's check, or money order tendered in accordance with this paragraph shall not exceed the amount due by more than $50 and any required change is authorized to be made out of any available cash funds on hand.

(7) Credit or charge cards, which have been authorized by the Commissioner of Customs, may be used for the payment of duties, taxes, fees, and/or other charges at designated Customs-serviced locations. Payment by this manner is limited to non-commercial entries and is subject to ultimate collection from the credit card company. Persons paying by charge or credit card will remain liable for all such charges until paid. Information as to those credit card companies authorized by Customs may be obtained from Customs officers.

(8) Participants in the Automated Broker Interface may use statement processing as described in § 24.25 of this part. Statement processing allows entry/entry summaries and entry summaries to be grouped by either importer or by filer, and allows payment of related duties, taxes and fees by a single payment, rather than by individual checks for each entry. The preferred method of payment for users of statement processing is by Automated Clearinghouse.

(b) At piers, terminals, bridges, airports and other similar places, in addition to the methods of payment prescribed in paragraph (a) of this section, a personal check drawn on a national or state bank or trust company of the United States shall be accepted by Customs inspectors and other Customs employees authorized to receive Customs collections in payment of duties, taxes, fees, interest, and other charges on noncommercial importations, subject to the identification requirements of paragraph (a)(4) of this section and this paragraph. Where the amount of the check is over $25, the Customs cashier or other employee authorized to receive Customs collections will ensure that the payor's name, home and business telephone number (including area code), and date of birth are recorded on the face (front) side of the monetary instrument. In addition, one of the following will be recorded on the face side of the instrument: preferably, the payor's social security number or, alternatively, a current passport number or current driver's license number (including issuing state). A personal check received under this paragraph and a United States Government check, traveler's check, or money order received under paragraph (a) of this section by such Customs inspectors and other Customs employees shall also be subject to the following conditions:

(1) Where the amount is less than $100 and the identification requirements of paragraph (a)(4) of this section have been met, the Customs employee accepting the check or money order will place his name and badge number on the collection voucher and place the serial number or other form of voucher identification on the face side of the check or money order so that the check or money order can be easily associated with the voucher.

(2) Where the amount is $100 or more, in addition to the requirements of paragraph (b)(1) of this section the Customs employee accepting the check or money order shall obtain the approval of the Customs officer in charge who also shall personally verify the identification data and indicate his approval by initialing the collection voucher below the signature of the Customs employee who approved the receipt of the check or money order.

(3) A personal check tendered in accordance with this paragraph shall be accepted only when drawn for the amount of the duties, taxes, fees, and other charges to be paid by such check.

(c) Checks on foreign banks, foreign travelers' checks, and commercial drafts or bills of exchange subject to acceptance by the drawees shall not be accepted.

(d) Checks and other negotiable papers covering duties, taxes, fees, interest, and other Customs charges shall be made payable to the United States Customs Service.

(e) Any person who pays by check any duties, taxes, fees, interest, or other charges or obligations due the Customs Service which are not guaranteed by a Customs bond shall be assessed a charge of $30.00 for each check which is returned unpaid by a financial institution for any reason, except the charge will not be assessed if it is shown that the maker of the check was not at fault in connection with the return of the check. This charge shall be in addition to any unpaid duties, taxes, fees, interest, and other charges.

[28 FR 14808, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 24.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 24.2 Persons authorized to receive Customs collections.

Port directors, Customs cashiers, Customs inspectors, Customs dock tellers, and such other officers and employees as the port director shall designate shall receive Customs collections.

§ 24.3 Bills and accounts; receipts.

(a) Any bill or account for money due the United States shall be rendered by an authorized Customs officer or employee on an official form.

(b) A receipt for the payment of estimated Customs duties, taxes, fees, and interest, if applicable, shall be provided a payer at the time of payment if he furnishes with his payment an additional copy of the documentation submitted in support of the payment. The appropriate Customs official shall validate the additional copy as paid and return it to the payer. Otherwise, a copy of the document filed by the payer and the payer's cancelled check shall constitute evidence of payment.

(c) A copy of a Customs bill validated as paid will not normally be provided a payer. If a bill is paid by check, the copy of the Customs bill identified as ''Payer's Copy'' and the payer's cancelled check shall constitute evidence of such payment to Customs. Should a payer desire evidence of receipt, both the ''U.S. Customs Service Copy'' and the ''Payer's Copy'' of the bill and, in the case of payments by mail, a stamped, self-addressed envelope, shall be submitted. The ''Payer's Copy'' of the bill shall then be marked paid by the appropriate Customs official and returned to the payer.

(d) Every payment which is not made in person shall be accompanied by the original bill or by a communication containing sufficient information to identify the account or accounts to which it is to be applied.

(e) Except for bills resulting from dishonored checks or dishonored Automated Clearinghouse (ACH) transactions, all other bills for duties, taxes, fees, interest, or other charges are due and payable within 30 days of the date of issuance of the bill. Bills resulting from dishonored checks or dishonored ACH transactions are due within 15 days of the date of issuance of the bill.

[28 FR 14808, Dec. 31, 1963, as amended by T.D. 74–73, 39 FR 7782, Feb. 28, 1974; T.D. 79–221, 44 FR 46813, Aug. 9, 1979; T.D. 86–178, 51 FR 34959, Oct. 1, 1986; T.D. 99–75, 64 FR 56437, Oct. 20, 1999]

§ 24.3a Customs bills; interest assessment; delinquency; notice to principal and surety.

(a) *Due date of Customs bills.* Customs bills for supplemental duties, taxes and fees(increased or additional duties, taxes, and fees assessed upon liquidation or reliquidation) together with interest thereon, reimbursable services (such as provided for in §§ 24.16 and 24.17), and miscellaneous amounts (bills other than duties, taxes, reimbursable services, liquidated damages, fines, and penalties) shall be due as provided for in § 24.3(e).

(b) *Assessment of interest charges*—(1) *Bills for reimbursable services and miscellaneous amounts.* If payment is not received by Customs on or before the late payment date appearing on the bill, interest charges will be assessed

upon the delinquent principal amount of the bill. The late payment date is the date 30 calendar days after the interest computation date. The interest computation date is the date from which interest is calculated and is initially the bill date.

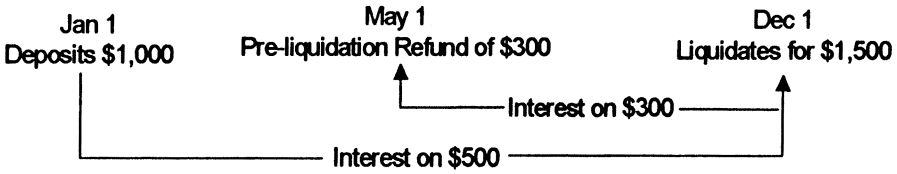
(2) *Interest on supplemental duties, taxes, fees, and interest*—(i) *Initial interest accrual.* Except as otherwise provided in paragraphs (b)(2)(i)(A) through (b)(2)(i)(C) of this section, interest assessed due to an underpayment of duties, taxes, fees, or interest shall accrue from the date the importer of record is required to deposit estimated duties, taxes, fees, and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation. An example follows:

Example: Entry underpaid as determined upon liquidation

Importer owes $500 plus interest as follows: The importer makes a $1,000 initial deposit on the required date (January 1) and the entry liquidates for $1,500 (December 1). Upon liquidation, the importer will be billed for $500 plus interest. The interest will accrue from the date payment was due (January 1) to date of liquidation (December 1).

(A) If a refund of duties, taxes, fees, or interest was made prior to liquidation or reliquidation and is determined upon liquidation or reliquidation to be excessive, in addition to any other interest accrued under this paragraph (b)(2)(i), interest also shall accrue on the excess amount refunded from the date of the refund to the date of liquidation or reliquidation of the applicable entry or reconciliation. An example follows:

Example: Pre-liquidation refund but entry liquidates for an increase

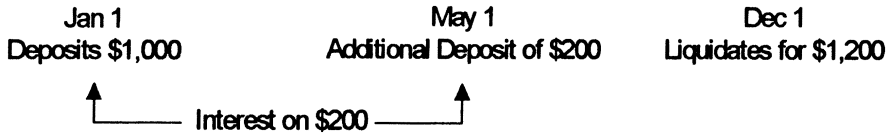


Importer owes $800 plus interest as follows: The importer makes a $1,000 initial deposit on the required date (January 1) and receives a pre-liquidation refund of $300 (May 1) and the entry liquidates for $1,500 (December 1). Upon liquidation, the importer will be billed for $800 plus interest. The interest accrues in two segments: (1) On the original underpayment ($500) from the date of deposit (January 1) to the date of liquidation (December 1); and (2) on the pre-liquidation refund ($300) from the date of the refund (May 1) to the date of liquidation (December 1).

(B) The following rules shall apply in the case of an additional deposit of duties, taxes, fees, or interest made prior to liquidation or reliquidation:

(*1*) If the additional deposit is determined upon liquidation or reliquidation of the applicable entry or reconciliation to constitute the correct remaining balance that was required to be deposited on the date the deposit was due, interest shall accrue on the amount of the additional deposit only from the date of the initial deposit until the date the additional deposit was made. An example follows:

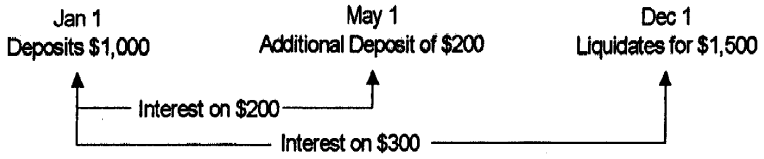
Example: Additional deposit made and entry liquidates for total amount deposited



Importer owes interest on $200 as follows: The importer makes a $1,000 initial deposit on the required date (January 1) and an additional pre-liquidation deposit of $200 (May 1) and the entry liquidates for $1,200 (December 1). Upon liquidation, the importer will be billed for interest on the original $200 underpayment from the date of the initial deposit (January 1) to the date of the additional deposit (May 1).

(*2*) If the additional deposit is determined upon liquidation or reliquidation of the applicable entry or reconciliation to be less than the full balance owed on the amount initially required to be deposited, in addition to any other interest accrued under this paragraph (b)(2)(i), interest also shall accrue on the remaining unpaid balance from the date deposit was initially required to the date of liquidation or reliquidation. An example follows:

Example: Additional deposit made and entry underpaid as determined upon liquidation

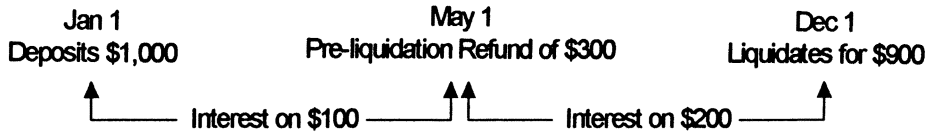


Importer owes $300 plus interest as follows:

The importer makes a $1,000 initial deposit on the required date (January 1) and an additional pre-liquidation deposit of $200 (May 1) and the entry liquidates for $1,500 (December 1). Upon liquidation, the importer will be billed for $300 plus interest. The interest accrues in two segments: (1) on the additional deposit ($200), from the date deposit was required (January 1) to the date of the additional deposit (May 1); and (2) on the remaining underpayment ($300), from the date deposit was required (January 1), to the date of liquidation (December 1).

(*3*) If an entry or reconciliation is determined upon liquidation or reliquidation to involve both an excess deposit and an excess refund made prior to liquidation or reliquidation, interest in each case shall be computed separately and the resulting amounts shall be netted for purposes of determining the final amount of interest to be reflected in the underpaid amount. An example follows:

Example: Excess pre-liquidation deposit and excess pre-liquidation refund



Importer owes $200 plus or minus net interest as follows:

The importer makes a $1,000 initial deposit on the required date (January 1) and receives a pre-liquidation refund of $300 (May 1) and the entry liquidates for $900 (December 1). Upon liquidation, the importer will be billed for $200 plus or minus net interest. The interest accrues in two segments: (1) Interest accrues in favor of the importer on the initial overpayment ($100) from the date of deposit (January 1) to the date of the refund (May 1); and (2) interest accrues in favor of the Government on the refund overpayment ($200) from the date of the refund (May 1) to the date of liquidation (December 1).

(*4*) If the additional deposit or any portion thereof is determined upon liquidation or reliquidation of the applicable entry or reconciliation to constitute a payment in excess of the amount initially required to be deposited, the excess deposit shall be treated as a refundable amount on which interest also may be payable (see § 24.36).

(C) If a depository bank notifies Customs by a debit voucher that a Customs account is being debited due to a dishonored check or dishonored Automated Clearinghouse (ACH) transaction, interest shall accrue on the debited amount from the date of the debit voucher to either the date of payment of the debt represented by the debit voucher or the date of issuance of a bill for payment, whichever date is earlier.

(ii) *Interest on overdue bills.* If duties, taxes, fees, and interest are not paid in full within the applicable period specified in § 24.3(e), any unpaid balance shall be considered delinquent and shall bear interest until the full balance is paid.

(c) *Interest rate and applicability.* (1) The percentage rate of interest to be charged on such bills will be based upon the semiannual rate(s) established under sections 6621 and 6622 of the Internal Revenue Code of 1954 (26 U.S.C. 6621, 6622). The current rate of interest will appear on the Customs bill and may be obtained from the IRS or the Customs Accounting Services, Indianapolis, Indiana. Customs will also publish the current interest rate in the Customs Bulletin and FEDERAL REGISTER on a semiannual basis.

(2) The percentage rate of interest applied to an overdue bill will be adjusted as necessary to reflect any change in the annual rate of interest.

(3) Interest on overdue bills will be assessed on the delinquent principal amount by 30-day periods. No interest charge will be assessed for the 30-day period in which the payment is actually received at the ''Send Payment To'' location designated on the bill.

(4) In the case of any late payment, the payment received will first be applied to the interest charge on the delinquent principal amount and then to payment of the delinquent principal amount.

(5) The date to be used in crediting the payment is the date on which the payment is received by Customs.

(d) *Notice*—(1) *Principal.* The principal shall be notified at the time of the initial billing, and every 30 days after the due date until the bill is paid or otherwise closed. The following elements will normally appear on the bill:

(i) Principal amount due;

(ii) Interest computation date;

(iii) Late payment date;

(iv) Accrual of interest charges if payment is not received by the late payment date;

(v) Applicable current interest rate;

(vi) Amount of interest owed;

(vii) Customs office where requests for administrative adjustments due to billing errors may be addressed; and

(viii) Transaction identification (e.g., entry number, reimbursable assignment number).

(2) *Surety.* (i) Customs will report outstanding bills on a Formal Demand on Surety for Payment of Delinquent Amounts Due, for bills more than 30 days past due (approximately 60 days after bill due date), and every month thereafter until the bill is paid or otherwise closed. The following elements will normally appear on the report:

(A) Principal amount due;

(B) Interest computation date;

(C) Late payment date;

(D) Accrual of interest charges if payment is not received by the late payment date;

(E) Applicable current interest rate;

(F) Amount of interest owed;

(G) Principal's name and address;

(H) Customs office where requests for administrative adjustments due to billing errors may be addressed; and

(I) Transaction identification (e.g., entry number, reimbursable assignment number).

(ii) Upon the written request of a surety, Customs will provide the surety a notice containing the billing information at the time of the initial billing to its principal.

[T.D. 86–178, 51 FR 34958, Oct. 1, 1986, as amended by T.D. 99–75, 64 FR 56437, Oct. 20, 1999]

§ 24.4 Optional method for payment of estimated import taxes on alcoholic beverages upon entry, or withdrawal from warehouse, for consumption.

(a) *Application to defer*. An importer, including a transferee of alcoholic beverages in a Customs bonded warehouse who wishes to pay on a semi-monthly basis the estimated import taxes on alcoholic beverages entered, or withdrawn from warehouse, for consumption by him during such a period may apply by letter to the director of each port at which he wishes to defer payment. If the importer desires the additional privilege of depositing estimated tax payments on an extended deferred basis, it must be specifically requested. An importer who receives approval from a port director to defer such payments may, however, continue to pay the estimated import taxes due at the time of entry, or withdrawal from warehouse, for consumption.

(b) *Deferred payment periods*. A period shall commence on October 24 and run through October 31, 1965; thereafter the periods shall run from the 1st day of each month through the 15th day of that month, and from the 16th day of each month through the last day of that month. An importer may begin the deferral of payments of estimated tax to a Customs port in the first deferral period beginning after the date of the written approval by the port director. An importer may use the deferred payment system until the port director advises such importer that he is no longer eligible to defer the payment of such taxes.

(c) *Content of application and supporting documents*. (1) An importer must state his estimate of the largest amount of taxes to be deferred in any semimonthly period based on the largest amount of import taxes on alcoholic beverages deposited at that port in such a period during the year preceding his application. He must also identify any existing bond or bonds that he has on file at the port and shall submit in support of his application the approval of the surety on his bond or bonds to the use of the procedure and to the increase of such bond or bonds to such larger amount or amounts as may be found necessary by the port director.

(2) Each application must include a declaration in substantially the following language:

> I declare that I am not presently barred by any port director from using the deferred payment procedure for payment of estimated taxes upon imports of alcoholic beverages, and that if I am notified by a port director to such effect I shall advise the director of any other port where approval has been given to me to use such procedure.

(d) *Use of deferred payment method*.

(1) The port director will notify the importer, or his authorized agent if requested, of approval.

(2) An importer who has received approval to make deferred payments retains the option of deferring or depositing the estimated tax on imported alcoholic beverages until the entry or withdrawal is presented to the cashier for payment of estimated duties. At the time the importer presents his entry or withdrawal for consumption to the cashier together with the estimated duty, he must either pay the estimated tax or indicate on the entry or withdrawal that he elects to defer the tax payment.

(e) *Tax deferment procedure*. If the importer elects to defer the tax payments, he shall enter on each copy of the entry or withdrawal the words ''Tax Payment Deferred,'' adjacent to the amount shown on the documents as estimated taxes, before presentation to the cashier.

(f) *Payment procedure*—(1) *Billing*. Each importer who has deferred tax payments on imported alcoholic beverages will be billed on Customs Form 6084, United States Customs Service Bill, at the end of each tax deferred period for all taxes deferred during the period. Each bill will identify each tax amount deferred and the related entry

numbers. These bills must be paid in fully by the last day of the next succeeding deferral period.

(2) *Interest on overdue accounts.* When any bill for deferred taxes is not paid within the period specified in subparagraph (f)(1) of this section, interest thereon from the date following the end of the specified period to the date of payment of the bill shall be assessed, collected, and paid in the same manner as the basic tax. The rate of interest to be assessed shall be 7 percent per annum or such other rate as is established by the Secretary of the Treasury or his delegate in accordance with 26 U.S.C. 6621(b).

(g) *Restrictions on deferring tax deposits.* An importer may not on one entry, or withdrawal from warehouse for consumption, deposit part of the estimated tax and defer the balance of the tax. The estimated tax on each entry or withdrawal must be either fully paid or deferred.

(h) *Termination of deferred payment privilege.* (1) When any bill on Customs Form 6084 for deferred taxes is not paid within the period specified in paragraph (f) of this section, a demand for payment shall be made to the surety on the importer's bond. If in the opinion of the customs officer concerned such failure to make timely payment of estimated deferred taxes warrants the withdrawal of the tax deferral privilege, he will advise the importer of the withdrawal of such privilege. In all instances of failure to pay timely the deferred taxes on alcoholic beverages withdrawn from warehouse for consumption, further withdrawals from the warehouse entry on which the tax is delinquent will be refused until payment is made of the amount delinquent.

(2) The termination at any port of the tax deferral privilege for failure to pay timely any deferred estimated tax shall be at the discretion of the Customs officer concerned. Termination of the privilege for any other reason shall be subject to the approval of the Commissioner of Customs. Notice of termination of the tax deferral privilege at any port will be disseminated to all other Customs ports.

(3) Renewal of the tax deferral privilege after it has been withdrawn at any port may be made only upon approval of the Commissioner of Customs.

(i) *Duration of deferred payment privilege.* The deferred payment privilege once approved by the port director will remain in effect until terminated under the provisions of paragraph (h) or the importer or surety requests termination.

(j) *Entries for consumption or warehouse after an importer is delinquent.* An importer who is delinquent in paying deferred taxes may make entries for consumption or for warehousing, or withdrawals for consumption from warehouse entries on which no delinquency exists, upon deposit of all estimated duties or taxes.

(k) *Rate of tax.* The estimated taxes must be paid on the basis of the rates in effect upon entry, or withdrawal from warehouse, for consumption, unless in accordance with section 315 of the Tariff Act of 1930, as amended, another date is applicable and not on the basis of the rates of tax in effect on the date deferred payment is made.

[28 FR 14808, Dec. 31, 1963, as amended by T.D. 56510, 30 FR 13359, Oct. 21, 1965; T.D. 67–31, 32 FR 493, Jan. 18, 1967; T.D. 75–278, 40 FR 51420, Nov. 5, 1975; T.D. 76–258, 41 FR 38767, Sept. 13, 1976; T.D. 84–213, 49 FR 41170, Oct. 19, 1984; T.D. 95–77, 60 FR 50011, Sept. 27, 1995; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 24.5 Filing identification number.

(a) *Generally.* Each person, business firm, Government agency, or other organization shall file Customs Form 5106, Notification of Importer's Number or Application for Importer's Number, or Notice of Change of Name or Address, with the first formal entry which is submitted or the first request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection. A Customs Form 5106 shall also be filed for the ultimate consignee for which such entry is being made. Customs Form 5106 may be obtained from any Customs Office.

(b) *Preparation of Customs Form 5106.* (1) The identification number to be used when filing Customs Form 5106 shall be:

(i) The Internal Revenue Service employer identification number, or

(ii) If no Internal Revenue Service employer identification number has

been assigned, the Social Security number.

(2) If neither an Internal Revenue Service employer identification number nor a Social Security number has been assigned, the word ''None'' shall be written on the line provided for each of these numbers on Customs Form 5106 and the form shall be filed in duplicate.

(c) *Assignment of importer identification number*. Upon receipt of a Customs Form 5106 without an Internal Revenue Service employer identification number or a Social Security number, an importer identification number shall be assigned and entered on the Customs Form 5106 by the Customs office where the entry or request for services is received. The duplicate copy of the form shall be returned to the filing party. This identification number shall be used in all future Customs transactions when an importer number is required. If an Internal Revenue Service employer identification number, a Social Security number, or both, are obtained after an importer number has been assigned by Customs, a new Customs Form 5106 shall not be filed unless requested by Customs.

(d) *Optional additional identification*. Customs Form 5106 contains blocks for a two-digit suffix code which may be written in as an addition to the Internal Revenue Service employer identification number to provide optional additional identification. The two-digit suffix code may be used by a business firm having branch office operations to permit the firm to identify transactions originating in its branch offices, or by vessel owners to permit them to identify transactions associated with particular vessels. A separate Customs Form 5106 shall be required to report the specific suffix code and the name and address for each branch office or vessel to be identified. Transactions may be associated with a specific branch office or vessel by reporting the appropriate identification number, including the two-digit suffix code, on Customs Form 7501 or the request for services. Suffix codes may be either numeric, alphabetic, or a combination of both numeric and alphabetic, except that the letters O, Z, and I may not be used. The blocks may be left blank if the firm or vessel owner has no use for them and a ''00'' suffix will be automatically assigned.

(e) *Retention of importer identification number*. An importer identification number shall remain on file until 1 year from the date on which it is last used on Customs Form 7501 or a request for services. If not used for 1 year and there is no outstanding transaction to which it must be associated, the importer identification number will be removed from Customs files. To engage in future transactions described in paragraph (a) of this section, the person, business firm, Government agency, or other organization, previously covered by an importer identificatign number, must file another Customs Form 5106.

(f) *''Freezing'' importer identification information*. Those importers identifying Customs transactions through the procedure specified in paragraph (d) of this section and desiring to ensure that they receive such Customs transaction notifications as may be issued may request Customs to ''freeze'' the name and address information, regardless of what is shown on the Customs Form 5106 or request for services, by designating the name and title/position of the individual in their company authorized to effect name/address changes to the Importer's Record Number (IRN) identification information, and specifying the IRNs and suffixes to be frozen and the mailing address and/or physical location address of the company where Customs notifications are to be directed. The request must be made in a separate writing on letterhead paper signed by the importer of record or his agent, whose name and title are clearly indicated. Participation in the ''Freeze'' Program is voluntary. Requests to participate should be sent to: U.S. Customs Service, Accounting Services—Accounts Receivable, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, Attn: Freeze Program.

[T.D. 78–7, 42 FR 64681, Dec. 28, 1977, as amended by T.D. 84–129, 49 FR 23166, June 5, 1984; T.D. 93–43, 58 FR 34367, June 25, 1993]

§ 24.11 Notice to importer or owner of increased or additional duties, taxes, fees and interest.

Any increased or additional duties, taxes, fees or interest found due upon liquidation or reliquidation shall be billed to the importer of record, or to the actual owner if the following have been filed with Customs:

(a) A declaration of the actual owner in accordance with section 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)), and § 141.20 of this chapter; and

(b) A bond on Customs Form 301 in accordance with § 141.20 of this chapter.

[T.D. 99–75, 64 FR 56439, Oct. 20, 1999]

§ 24.12 Customs fees; charges for storage.

(a) The following schedule of fees prescribed by law or hereafter in this paragraph shall be made available to the public at all Customs offices. When payment of such fee is received by a Customs employee a receipt therefor shall be issued.

(1) [Reserved]

(2) No fee will be charged for furnishing an official certificate if the request is made to Customs at the time the entry summary is filed. However, Customs shall charge and collect a fee of $10.00 for each hour or fraction thereof for time spent by each clerical, professional or supervisor in finding the documents and furnishing an official certification if the request is made after the entry documents are filed, plus a charge of 15 cents per page for photcopying. The fee may be revised periodically by publication of a general notice in the FEDERAL REGISTER and *Customs Bulletin* setting forth the revised fee. The published revised fee shall remain in effect until changed.

(b) [Reserved]

(c) The rates charged for storage in Government-owned or rented buildings shall not be less than the charges made at the port by commercial concerns for the storage and handling of merchandise. Except as to an examination package covered by an application for an entry by appraisement, storage shall be charged on any examination package for any period it remains in the appraiser's store after 2 full working days following the day on which the permit to release or transfer was issued. As to an examination package covered by an application for an entry by appraisement, storage shall be charged for any period it remains in the appraiser's store after 2 full working days following the day of issuance to the importer of oral or written notice of the amount of duties or taxes required to be deposited or that the package is ready for delivery. If the port director finds that circumstances make it impractical to remove examination packages from the appraiser's store within the 2-day period, he may extend the period for not to exceed 3 additional working days, without storage charges. In computing the 2 working days, and any authorized extension, (1) the day on which the permit to release or transfer is issued, or the day on which the notice is issued of the amount of duties or taxes that shall be deposited or that the package is ready for delivery, whichever is applicable, (2) Saturdays, (3) Sundays, and (4) National holidays, shall be excluded.

(d) Pursuant to the progressive clearance procedures set forth in § 122.88 of this chapter, when airlines commingle domestic (stopover) passengers who have already cleared Customs at their port of arrival and are continuing on to another U.S. destination, with international passengers who are arriving at their port of arrival and have not yet cleared Customs, a progressive clearance fee of $2.00 per domestic (stopover) passenger reinspection in the U.S. will be charged by Customs to the affected airlines to offset the additional cost to Customs of reinspecting passengers who have already been cleared. The fee is in addition to any other charges currently incurred, such as overtime services, but will not apply to passengers reinspected on an overtime basis if the cost of performing such reinspection is reimbursed to Customs in accordance with 19 U.S.C. 1451. The fee will not apply to the reinspection of non-revenue producing passengers, including but not limited to, employees of the carrier and their dependents, deadhead crew, employees of other carriers who may be assessed a service charge by the transporting carrier, and other persons to whom the carrier is authorized to provide free transportation pursuant to 14 CFR part

233. The airline industry will be notified at least 90 days in advance of the date of any change in the amount of the fee necessitated by either an increase or decrease in costs to Customs, but no new fee shall take effect before January 1, 1986.

[28 FR 14808, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 24.12, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 24.13 Car, compartment, and package seals; kind, procurement.

(a) Customs seals accepted pursuant to § 24.13a of this chapter shall be used in sealing openings, packages, conveyances, or articles requiring the security provided by such sealing.

(b) Red in-bond and high security red in-bond seals used for sealing imported merchandise shipped between ports in the United States shall be stamped ''U.S. Customs in Bond.'' Uncolored seals used to seal containers of commercial traveler's samples transiting the United States as provided by § 123.52 of this chapter shall be stamped ''Canada-United States Customs.'' [U.S. Transit], and uncolored seals used to seal containers of commercial traveler's samples transiting the United States as provided by § 123.52 of this chapter shall be stamped ''Canada-United States Customs.'' Blue in-transit seals used to seal merchandise transiting foreign territory or waters between ports in the United States as provided in § 123.24 of this chapter shall be stamped ''U.S. Customs In-Transit.'' Yellow in-transit seals used on rail shipments of merchandise and on containers of commercial traveler's samples transiting Canada between U.S. ports as provided in §§ 123.24 and 123.51 of this chapter shall be stamped [U.S. Customs]

[Can. Transit] for use on railroad cars, and ''United States-Canada Customs'' for use on samples. Uncolored seals used for Customs purposes other than for (1) shipping in bond, (2) shipping by other than a bonded common carrier in accordance with section 553, Tariff Act of 1930, as amended, or (3) shipping in transit shall be stamped ''U.S. Customs.'' All seals (except uncolored in-transit seals on containers of commercial traveler's samples and seals for use on airline liquor kits) shall be stamped with the name of the port for which they are ordered. Each strap seal shall be stamped with a serial number. Each automatic metal seal shall be stamped with a symbol number and, when required, with a serial number.

(c) *Purchase of seals.* Bonded carriers of merchandise, commerical associations representing the foregoing or comparable organizations approved by the port director under paragraph (f) of this section, a foreign trade zone operator and bonded warehouse proprietors may purchase quantity supplies of in-bond and in-transit seals from manufacturers approved under the provisions of § 24.13a. The order shall be prepared by the purchaser and, except as hereinafter noted, shall be confined to seals for use at one port and shall specify the kind and quantity of seals desired, the name of the port at which they are to be used, and the name and address of the consignee to whom they are to be shipped. Seals for use on airline liquor kits need not specify the name of the port at which they are to be used, and orders for such seals need not be confined to seals for use at one port. Carriers and bonded warehouse proprietors may purchase small emergency supplies of in-bond and in-transit seals from port directors, who will keep a supply of such seals for this purpose. An order for green or uncolored in-transit seals shall be submitted to the office of the Director of Customs-Excise Inspection, Ottowa, Canada, for approval and forwarding to the manufacturer. An order for green strap-in bond seals for use on railroad cars must stipulate that the seals are to be consigned to the collector of customs and excise in Canada at the port indicated on the seals for entry purposes and storage under Customs lock and key.

(d) The manufacturer or supplier shall ship the seals to the consignee named in the order and shall advise the director of the port to which the seals are shipped as to the kind and quantity of seals shipped, the name of the port (where required), serial numbers, and symbol number (where required) stamped thereon, the name and address

of the consignee, and the date of shipment.

(e) [Reserved]

(f) *Port director approval required.* In-bond seals may be purchased only by a foreign trade zone operator or Customs bonded warehouse proprietor, a customs bonded carrier, a nonbonded carrier permitted to transport articles in accordance with section 553, Tariff Act of 1930, as amended (19 U.S.C. 1553) or in the case of red in-bond and high security red in-bond seals, the carrier's commercial association or comparable representative approved by the port director. In-transit seals may be purchased by a bonded or other carrier of merchandise or, in the case of blue in-transit seals, by the carrier's commercial association or comparable representative approved by the port director. Except for uncolored in-transit seals, uncolored Customs seals may not be purchased by private interests and shall be furnished by port directors for authorized use without charge. In-bond and in-transit seals sold by port directors shall be charged for at the rate of 10 cents per seal, except for high security red in-bond seals which shall be charged for at the current manufacturer's list price for the quantity purchased.

[28 FR 14808, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 24.13, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 24.13a Car, compartment, and package seals; and fastenings; standards; acceptance by Customs.

(a) *General standards.* The seals and fastenings, together, shall

(1) Be strong and durable;

(2) Be capable of being affixed easily and quickly;

(3) Be capable of being checked readily and identified by unique marks (such as a logotype) and numbers;

(4) Not permit removal or undoing without breaking, or tampering without leaving traces;

(5) Not permit use more than once; and

(6) Be made as difficult as possible to copy or counterfeit.

(b) *Seal specifications.* (1) The shape and size of the seal shall be such that any identifying marks are readily legible.

(2) Each eyelet in a seal shall be of a size corresponding to that of the fastening used, and shall be positioned so that the fastening will be held firmly in place when the seal is closed.

(3) The material used shall be sufficiently strong to prevent accidental breakage, early deterioration (due to weather conditions, chemical action, etc.) or undetectable tampering under normal usage.

(4) The material used shall be selected with reference to the sealing system used.

(c) *Fastening specifications.* (1) The fastening shall be strong and durable and resistant to weather and corrosion.

(2) The length of the fastening used shall not enable a sealed aperture to be opened or partly opened without the seal or fastening being broken or otherwise showing obvious damage.

(3) The material used shall be selected with reference to the sealing system used.

(d) *Identification marks.* (1) If the seal is to be purchased and used by U.S. Customs, the seal or fastening, as appropriate, shall be marked to show that it is a U.S. Customs seal by application of the words ''U.S. Customs'' and a unique identification number on the seal.

(2) If the seal is to be used by private industry (i.e., a shipper, manufacturer, or carrier), it must be clearly and legibly marked with a unique company name (or logotype) and identification number.

(e) *Customs acceptance.* Seals will be considered as acceptable for use and/or purchase by U.S. Customs as soon as the manufacturer attests that the seals have been tested and meet or exceed the standards provided in paragraphs (a) through (d) of this section, and will continue to be considered acceptable until such time as it is demonstrated that they do not meet the standards. A manufacturer may attest to the qualification of a specific seal, or to an entire product line of seals as of a certain date. Any addition of a seal to a group of seals attested to as a group would

require specific acceptance of that seal by Customs.

(f) *Testing*. All testing of seals deemed necessary before Customs acceptance will be done by the manufacturer or by a private laboratory, and not by Customs. However, Customs reserves the right to test, or to have tested, seals that have been accepted by Customs.

(g) *Records*. The manufacturer's attestation that a seal meets or exceeds the standards specified in this section and, if deemed necessary by Customs, the seal test record shall be sent to the Assistant Commissioner, Field Operations, Headquarters, U.S. Customs Service, Washington DC 20229.

[T.D. 81–185, 46 FR 36842, July 16, 1981, as amended by T.D. 91–77, 56 FR 46114, Sept. 10, 1991]

§ 24.14 Salable Customs forms.

(a) Customs forms for sale to the general public shall be designated by the Commissioner of Customs, or his delegate. Customs forms which are designated as salable shall meet the following conditions: (1) The form is distributed to private parties for use in completing customs transactions; (2) the quantity used nationwide annually is sufficient to justify the administrative costs involved in selling the form and accounting for the collections involved therein, or the form is primarily for the use of a special group; (3) distribution is or can generally be made in lots of 100 or more; (4) the form is normally distributed to commercial concerns (customhouse brokers, freight forwarders, vessel agents, carriers, regular commercial importers, etc.) rather than to or for the use of individuals or others (tourists, churches, schools, occasional importers, etc.) for noncommercial purposes.

(b) The price of each salable Customs form shall be established by the Commissioner of Customs, or his delegate, and shall be adjusted periodically as the varying costs of printing and distribution require. A list of salable customs forms showing the price at which each is sold shall be prominently posted in each customhouse in a location accessible to the general public.

(c) Customs forms for sale to the general public, except unusually large or otherwise unsuitable forms, shall normally be prepared in units containing 100 copies. If a completely prepared bill or receipt is presented by the purchaser at the time of the purchase, the port director's paid stamp shall be impressed thereon; otherwise, no receipt shall be given.

[28 FR 14808, Dec. 31, 1963, as amended by T.D. 75–132, 40 FR 24519, June 9, 1975]

§ 24.16 Overtime services; overtime compensation and premium pay for Customs Officers; rate of compensation.

(a) *General*. Customs services for which overtime compensation is provided for by section 5 of the Act of February 13, 1911, as amended (19 U.S.C. 267), or section 451, Tariff Act of 1930, as amended (19 U.S.C. 1451), shall be furnished only upon compliance with the requirements of those statutes for applying for such services and giving security for reimbursement of the overtime compensation, unless the compensation is nonreimbursable under the said section 451, or section 53 of the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1741). Reimbursements of overtime compensation shall be collected by the port director from the applicants for the services. Customs Officers entitled to overtime compensation and premium pay, pursuant to the provisions of the Customs Officer Pay Reform legislation (19 U.S.C. 261 and 267, as amended), shall not receive pay or other compensation for that work under any other provision of law. Reimbursable overtime services shall not be furnished to an applicant who fails to cooperate with the Customs Service by filing a timely application therefor during regular hours of business when the need for the services can reasonably by foreseen, nor in any case until the maximum probable reimbursement is adequately secured.

(b) *Definitions*. For purposes of this section, the following words and phrases have the meanings indicated:

(1) *The Act* refers to Part II, Subchapter D of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66.

(2) *Administrative workweek* means a period of seven consecutive calendar

days beginning Sunday and continuing through the following Saturday.

(3) *Base pay* means the rate of pay fixed by law or administrative action for the position held by the Customs Officer.

(4) *Callback* means the irregular or occasional overtime work performed by a Customs Officer either on a day when work was not regularly scheduled for that officer or which begins at least one hour after the end of the officer's regularly-scheduled tour of duty and ends at least one hour before the beginning of the following regularly-scheduled assignment and requires the officer to return to a place of work.

(5) ''Commute compensation'' means the compensation which a Customs Officer is entitled to receive, in excess of the officer's base pay, for returning to work, under certain conditions, to perform an overtime work assignment. Commute compensation, within the limits prescribed by the Act, shall be treated as overtime compensation, and is includable for Federal retirement benefit purposes.

(6) *Continuous assignment* means the grouping of multiple overtime assignments, performed by the same Customs Officer(s), which are separated by periods of non-work, into a single unit for computation of pay purposes.

(7) *Customs Officer* means only those individuals assigned to position descriptions entitled ''Customs Inspector,'' ''Supervisory Customs Inspector,'' ''Canine Enforcement Officer,'' ''Supervisory Canine Enforcement Officer,'' ''Customs and Border Protection Officer,'' ''Supervisory Customs and Border Protection Officer,'' ''Customs and Border Protection Agriculture Specialist,'' or ''Supervisory Customs and Border Protection Agriculture Specialist.''

(8) *Fiscal year pay cap* refers to the statutory maximum, in effect for the year involved, in overtime and premium pay a Customs Officer shall receive in that fiscal year. This aggregate limit may be waived by the Commissioner of Customs or his/her designee in individual cases in order to prevent excessive costs or to meet emergency requirements of the Customs Service.

(9) *Holiday* means any day designated as a holiday by a Federal statute or declared by an Executive order.

(10) *Intermittent employee* is a non-full-time employee who does not have a regularly-scheduled tour of duty.

(11) *Majority of hours*, within the context of night work differentials, means more than half of the hours of the daily regularly-scheduled tour of duty.

(12) *Night work* means regularly-scheduled work performed by a Customs Officer on tours of duty, in which a majority of the hours worked occur between the hours of 3:00 p.m. and 8:00 a.m.

(13) *Overtime pay* means the compensation which a Customs Officer is entitled to receive, in excess of the officer's base pay, for performing officially-assigned work in excess of the 40 hours of the officer's regularly-scheduled administrative workweek or in excess of 8 hours in a day, which may include commute compensation as defined at paragraph (b)(5) of this section. Overtime pay, within the limits prescribed by the Act, is includable for Federal retirement benefit purposes.

(14) *Premium pay differential* means the compensation which a Customs Officer is entitled to receive, in excess of the officer's base pay, for performing officially-assigned work on holidays, Sundays and at night. Premium pay is not includable for Federal retirement benefit purposes.

(15) *Regularly-scheduled administrative workweek* means, for a full-time employee, the 40 hour period within an administrative workweek within which the employee is regularly scheduled to work, exclusive of any overtime; for a part-time employee, it means the officially prescribed days and hours within an administrative workweek during which the employee is regularly scheduled to work.

(c) *Application and bond*. (1) Except as provided for in paragraphs (c)(2) and (4) of this section, an application for inspectional services of Customs Officers at night or on a Sunday or holiday, Customs Form 3171, supported by the required cash deposit or bond, shall

be filed in the office of the port director before the assignment of such officers for reimbursable overtime services. The cash deposit to secure reimbursement shall be fixed by the port director or authorized representative in an amount sufficient to pay the maximum probable compensation and expenses of the Customs Officers, or the maximum amount which may be charged by law, whichever is less, in connection with the particular services requested. The bond to secure reimbursement shall be on Customs Form 301, containing the appropriate bond conditions set forth in subpart G, part 113 of this chapter (see §§ 113.62, 113.63, 113.64 and 113.73), and in an amount to be fixed by the port director, unless another bond containing a provision to secure reimbursement is on file. A bond given on Customs Form 301, containing the appropriate bond conditions set forth in subpart G, part 113 of this chapter (see §§ 113.62, 113.63, 113.64 and 113.73), to secure the payment of overtime services rendered private aircraft and private vessels shall be taken without surety or cash deposit in lieu of surety, and the bond shall be modified to so indicate.

(2) Prior to the expected arrival of a pleasure vessel or private aircraft the port director may designate a Customs Officer to proceed to the place of expected arrival to receive an application for night, Sunday, or holiday services in connection with the arrival of such vessel or aircraft, together with the required cash deposit or bond. In each such case the assignment to perform services shall be conditional upon the receipt of the appropriate application and security. Where the security is a cash deposit, the receipt may be properly inscribed to make it serve as a combined receipt for cash deposit in lieu of bond and request for overtime services, in lieu of filing a request for overtime services on Customs Form 3171.

REQUEST FOR OVERTIME SERVICES

Permit Number _____

I hereby request overtime services on _____, 19—, at ___ a.m., p.m., in connection with the entry of my aircraft (vessel).

_____

(Pilot, Owner, or Person in Charge)

(3) An application on Customs Form 3171 for overtime services of Customs Officers, when supported by the required cash deposit or a continuous bond, may be granted for a period not longer than for 1 year. In such a case, the application must show the exact times when the overtime services will be needed, unless arrangements are made so that the proper Customs Officer will be notified timely during official hours in advance of the services requested as to the exact times that the services will be needed.

(4) Inspectional services will be provided to owners or operators of aircraft without charge for overtime on Sundays and holidays between the hours of 8:00 a.m. and 5:00 p.m. Applications for inspectional services for aircraft during those hours shall be filed as set forth in paragraph (c)(1) of this section, but without cash deposit or bond.

(d) *Work Assignment Priorities*. The establishment of regularly-scheduled administrative tours of duty and assignments of Customs Officers to overtime work under this section shall be made in accordance with the following priorities, listed below in priority order:

(1) *Alignment*. Tours of duty should be aligned with the Customs workload.

(2) *Least Cost*. All work assignments should be made in a manner which minimizes the cost to the government or party in interest. Decisions, including, but not limited to, what hours should be covered by a tour of duty or whether an assignment should be treated as a continuous assignment or subject to commute compensation, should be based on least cost considerations. However, base pay comparison of eligible employees shall not be used in the determination of staffing assignments.

(3) *Annuity integrity*. For Customs Officers within 3 years of their statutory retirement eligibility, the amount of overtime that can be worked is limited to the average yearly number of overtime hours the Customs Officer worked during his/her career with the Customs Service. If the dollar value of the average yearly number of overtime hours worked by such Customs Officer exceeds 50 percent of the applicable statutory pay cap, then no overtime earning limitation based on this annuity

integrity provision would apply. Waivers concerning this annuity integrity limitation may be granted by the Commissioner of Customs or the Commissioner's designee in individual cases in order to prevent excessive costs or to meet emergency requirements of Customs.

(e) *Overtime Pay*. (1) A Customs Officer who is officially assigned to perform work in excess of the 40 hours in the officer's regularly-scheduled administrative workweek or in excess of 8 hours in a day shall be compensated for such overtime work performed at 2 times the hourly rate of the officer's base pay, including any locality pay, but not including any premium pay differentials for holiday, Sunday, or night work.

(2) The computation of the amount of overtime worked by a Customs Officer is subject to the following conditions:

(i) *Overtime that is less than one hour*. A quarter of an hour shall be the smallest fraction of an hour used for paying overtime under this subpart.

(ii) *Absence during overtime*. Except as expressly authorized by statute, regulation, or court order (i.e., military leave, court leave, continuation of pay under the workers compensation law, and back pay awards), a Customs Officer shall be paid for overtime work only when the officer reports as assigned.

(f) *Special provisions relating to overtime work on a callback basis*—(1) *Minimum duration and callback requirements*. Any work for which overtime pay is authorized and for which the Customs Officer is required to return to a place of work shall be treated as being at least 2 hours in duration, but only if such work begins at least 1 hour after the end of any previous regularly-scheduled work assignment and ends at least 1 hour before the beginning of the following regularly-scheduled work assignment. An unpaid meal period shall not be considered a break in service for purposes of callback.

(2) *Commute compensation—Eligibility*. A Customs Officer shall be compensated for overtime when the officer is called back and officially assigned to perform work that:

(i) Is in excess of the 40 hours in the officer's regularly-scheduled administrative workweek or in excess of 8 hours in a day;

(ii) Begins at least 1 hour after the end of any previous regularly-scheduled work assignment;

(iii) Commences more than 2 hours prior to the start of the officer's next regularly-scheduled work assignment;

(iv) Ends at least 1 hour before the beginning of the officer's next regularly-scheduled work assignment; and,

(v) Commences less than 16 hours after the officer's last regularly-scheduled work assignment. The 16 hours shall be calculated from the end of the Customs Officer's last regularly-scheduled work assignment.

(3) *Commute compensation—Amount*. Commute compensation under this section shall be in an amount equal to 3 times the hourly rate of the Customs Officer's base pay for a one hour period, which includes applicable locality pay, but does not include any premium pay differentials for holiday, Sunday or night work. The Customs Officer shall be entitled to this amount for an eligible commute regardless of the actual commute time. However, an unpaid meal period shall not be considered a break in service for purposes of commute compensation.

(4) *Maximum Compensation for Multiple Assignments*. If a Customs Officer is assigned to perform more than one overtime assignment, in which the officer is required to return to a place of work more than once in order to complete the assignment, and otherwise satisfies the callback requirements of paragraph (f)(1) of this section, then the officer shall be entitled to commute compensation each time the officer returns to the place of work provided that each assignment commences less than 16 hours after the officer's last regularly-scheduled work assignment. However, in no case shall the compensation be greater than if some or all of the assignments were treated as one continuous callback assignment.

(g) *Premium pay differentials*. Premium pay differentials may only be paid for non-overtime work performed on holidays, Sundays, or, at night (work performed, in whole or in part, between the hours of 3:00 p.m. and 8:00 a.m.). A Customs Officer shall receive

payment for only one of the differentials for any one given period of work. The order of precedence for the payment of premium pay differentials is holiday, Sunday, and night work.

(1) *Holiday differential.* A Customs Officer who performs any regularly-scheduled work on a holiday shall receive pay for that work at the officer's hourly rate of base pay, which includes authorized locality pay, plus premium pay amounting to 100 percent of that base rate. Holiday differential premium pay will be paid only for time worked. Intermittent employees are not entitled to holiday differentials.

(i) When a holiday is designated by a calendar date, for example, January 1, July 4, November 11, or December 25, the holiday will be observed on that date regardless of Saturdays and Sundays. Customs Officers who perform regularly-scheduled, non-overtime, tours of duty on those days shall be paid the holiday differential. Holidays not designated by a specific calendar date, such as President's Day (the third Monday in February), shall be observed on that date, and Customs Officers who perform regularly-scheduled, non-overtime, work on those days shall be paid the holiday differential.

(ii) Inauguration Day (January 20 of each fourth year after 1965), is a legal public holiday for the purpose of the Act. Customs Officers whose duty locations are in the District of Columbia, or Montgomery and Prince George counties in Maryland, or Arlington and Fairfax counties in Virginia, or in the cities of Alexandria and Falls Church in Virginia, who perform regularly-scheduled, non-overtime, work on that day shall be paid the holiday differential. When Inauguration Day falls on Sunday, the next succeeding day selected for the public observance of the inauguration of the President is the legal public holiday.

(iii) If a legal holiday falls on a Customs Officer's regularly-scheduled day off, the officer shall receive a holiday ''in lieu of'' that day. Holidays ''in lieu of'' shall not be granted for Inauguration Day. A Customs Officer who works on an ''in lieu of'' holiday shall be paid the holiday differential.

(iv) If a Customs Officer is assigned to a regularly-scheduled, non-overtime, tour of duty which contains hours within and outside the 24-hour calendar day of a holiday—for example, a tour of duty starting at 8 p.m. on a Monday holiday following a scheduled day off on Sunday and ending at 4 a.m. on Tuesday—the Customs Officer shall receive the holiday differential (up to 8 hours) for work performed during that shift. If the Customs Officer is assigned more than one regularly-scheduled, non-overtime, tour of duty which contains hours within and outside the 24-hour calendar day of a holiday—for example, a tour of duty starting at 8 p.m. on the Wednesday before a Thursday holiday and ending at 4 a.m. on Thursday with another regularly-scheduled, non-overtime, tour of duty starting at 8 p.m. on the Thursday holiday and ending at 4 a.m. on Friday—the management official in charge of assigning work shall designate one of the tours of duty as the officer's holiday shift and the officer shall receive holiday differential (up to 8 hours) for work performed during the entire period of the designated holiday shift. The Customs Officer shall not receive holiday differential for any of the work performed on the tour of duty which has not been designated as the holiday shift but will be eligible for Sunday or night differential as appropriate.

(v) Customs Officers who are regularly scheduled, but not required, to work on a holiday shall receive their hourly rate of base pay for that 8-hour tour plus any Sunday or night differential they would have received had the day not been designated as a holiday. To receive holiday pay under this paragraph, the Customs Officer must be in a pay status (at work or on paid leave), either the last work day before the holiday or the first work day following the holiday.

(vi) A Customs Officer who works only a portion of a regularly-scheduled, non-overtime, holiday shift will be paid the holiday differential for the actual hours worked and the appropriate differential (Sunday or night) for the remaining portion of the shift such officer was not required to work. The night differential premium pay shall be calculated based on the rate applicable to the entire shift.

(2) *Sunday differential.* A Customs Officer who performs any regularly-scheduled work on a Sunday that is not a Federal holiday shall receive pay for that work at the officer's hourly rate of base pay, which includes authorized locality pay, plus premium pay amounting to 50 percent of that base rate. Sunday differential premium pay will be paid only for time worked and is not applicable to overtime work performed on a Sunday. A Customs Officer whose regularly-scheduled work occurs in part on a Sunday, that is not a Federal holiday, and in part on the preceding or following day, will receive the Sunday differential premium pay for the hours worked between 12:01 a.m. and 12 Midnight on Sunday. Intermittent employees are not entitled to Sunday differentials.

(3) *Night work differentials.* A Customs Officer who performs any regularly-scheduled night work shall receive pay for that work at the officer's hourly rate of base pay, including locality pay as authorized, plus the applicable premium pay differential, as specified below, but shall not receive such night differential for work performed during overtime assignments. When all or the majority of the hours of a Customs Officer's regularly-scheduled work occur between 3 p.m. and 8 a.m., the officer shall receive a night differential premium for all the hours worked during that assignment. Intermittent employees are not entitled to night differentials.

(i) *3 p.m. to Midnight.* If more than half of the hours of a Customs Officer's regularly-scheduled shift occur between the hours of 3 p.m. and 12 Midnight, the officer shall be paid at the officer's hourly rate of base pay and shall also be paid a premium of 15 percent of that hourly rate of base pay for all the hours worked.

(ii) *11 p.m. to 8 a.m.* If more than half of the hours of a Customs Officer's regularly-scheduled shift occur between the hours of 11 p.m. and 8 a.m., the officer shall be paid at the officer's hourly rate of base pay and shall also be paid a premium of 20 percent of that hourly rate of base pay for all the hours worked.

(iii) *7:30 p.m. to 3:30 a.m. Shift.* If the regularly-scheduled shift of a Customs Officer is 7:30 p.m. to 3:30 a.m., the officer shall be paid at the officer's hourly rate of base pay and shall also be paid a premium of 15 percent of that hourly rate of base pay for the work performed between 7:30 p.m. and 11:30 p.m. and 20 percent of that hourly rate of base pay for the work performed between 11:30 p.m. and 3:30 a.m.

(iv) *Work Scheduled During Two Differential Periods.* A Customs Officer shall only be paid one night differential rate per regularly-scheduled shift, except as provided for in paragraph (iii) above. A Customs Officer whose regularly-scheduled work occurs during two separate differential periods shall receive the night differential premium rate which applies to the majority of hours scheduled.

(v) *Night Work Which Occurs in Part on a Sunday.* When a Customs Officer's regularly-scheduled shift occurs in part on a Sunday, the officer shall receive Sunday differential pay for those hours of the work which are performed during the 24 hour period of the Sunday, and the night differential pay for those hours which do not fall on the Sunday. For example, a Customs Officer who is assigned and works a shift which starts at 8 p.m. Sunday and ends at 4 a.m. Monday, shall receive 4 hours of Sunday premium pay and 4 hours of night pay. The night differential pay shall be calculated based on the rate applicable to the particular tour of duty.

(h) *Limitations.* Total payments for overtime/commute, and differentials for holiday, Sunday, and night work that a Customs Officer is paid shall not exceed any applicable fiscal year pay cap established by Congress. The Commissioner of Customs or the Commissioner's designee may waive this limitation in individual cases to prevent excessive costs or to meet emergency requirements of the Customs Service. However, compensation awarded to a Customs Officer for work not performed, which includes overtime awards during military leave or court leave, continuation of pay under workers compensation law, and awards made in accordance with back pay settlements, shall not be applied to any applicable pay cap calculations.

[28 FR 14808, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 24.16, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 24.17 Reimbursable services of Customs employees.

(a) Amounts of compensation and expenses chargeable to parties-in-interest in connection with services rendered by Customs employees during regular hours of duty or on Customs overtime assignments (19 U.S.C. 267, 1451), under one or more of the following circumstances shall be collected from such parties-in-interest and deposited by port directors as repayments to the appropriation from which paid.

(1) When a Customs employee is assigned on board a vessel or vehicle under authority of section 457, Tariff Act of 1930, to protect the revenue, the owner or master of such vessel or vehicle shall be charged the full compensation and authorized travel and subsistence expenses of such employee from the time he leaves his official station until he returns thereto.

(2) When a Customs employee is assigned on board a vessel under authority of section 458, Tariff Act of 1930, to supervise the unlading of such vessel, the master or owner of such vessel shall be charged the full compensation of such employee for every day consumed in unlading after the expiration of 25 days after the date of the vessel's entry.

(3) When a Customs employee is assigned under authority of section 304, Tariff Act of 1930, as amended, to supervise the exportation, destruction, or marking to exempt articles from the duty provided for in such section, the importer of such merchandise shall be charged the full compensation and authorized travel and subsistence expenses of such employee from the time he leaves his official station until he returns thereto.

(4) When a Customs employee is assigned pursuant to § 101.4 of this chapter to a Customs station or other place which is not a port of entry for service in connection with the entry or clearance of a vessel, the owner, master, or agent of the vessel shall be charged the full compensation and authorized travel and subsistence expenses of such employee from the time he leaves his official station until he returns. When a Customs employee is so assigned to render service in connection with the entry or delivery of merchandise only, the private interest shall be charged only for the authorized travel and subsistence expenses incurred by such employee from the time he leaves his official station until he returns thereto except that no collection need be made if the total amount chargeable against one importer for one day amounts to less than 50 cents (see § 101.4(b) of this chapter). Where the amount chargeable is 50 cents or more, but less than $1, a minimum charge of $1 shall be made.

(5) When a Customs employee is assigned under authority of section 447, Tariff Act of 1930, to make entry of a vessel at a place other than a port of entry or to supervise the unlading of cargo, the private interest shall be charged the full compensation and authorized travel and subsistence expenses of such employee from the time he leaves his official station until he returns thereto.

(6) [Reserved]

(7) When a Customs employee is assigned on any vessel or vehicle, under authority of section 456, Tariff Act of 1930, while proceeding from one port to another, the master or owner of such vessel or vehicle shall be charged the full compensation and authorized travel and subsistence expenses of such employee from the time he leaves his official station until he returns thereto, or, in lieu of such expenses, the master or owner may furnish such employee the accommodations usually supplied to passengers.

(8) When a Customs employee is assigned under authority of section 562, Tariff Act of 1930, as amended, to supervise the manipulation of merchandise at a place other than a bonded warehouse, the compensation and expenses of such employee shall be reimbursed to the Government by the party in interest. A Customs officer so assigned is not acting as a customs warehouse officer, since the services have no connection with a customs bonded warehouse.

(9) When a Customs employee is assigned to supervise the destruction of merchandise pursuant to section 557(c),

Tariff Act of 1930, as amended, at a place where a Customs employee is not regularly assigned, the full compensation and expenses of such employee shall be reimbursed to the Government by the party in interest.

(10) When a Customs employee is assigned to supervise the labeling of imported merchandise in accordance with the provisions of §§ 11.12(b), 11.12a(b), 11.12b(b) of the regulations of this chapter or the removal or obliteration of prohibited markings and trade marks from merchandise which has been detained or seized in accordance with the provisions of §§ 11.13(c) and 11.17(b) of the regulations of this chapter or to supervise the exportation or destruction of any such merchandise, the compensation and expenses of such Customs employee shall be reimbursed to the Government by the party in interest.

(11) When a Customs employee is assigned to supervise examination, sampling, weighing, repacking, segregation, or other operation on merchandise in accordance with §§ 151.4, 151.5, 158.11, 158.14, and 158.42 of this chapter, the compensation and other expenses of such employee shall be reimbursed to the Government by the party-in-interest except when a warehouse proprietor is liable therefor.

(12) When a Customs employee is assigned to a centralized hub facility for the purpose of processing express consignment shipments under part 128 of this chapter, the compensation (including overtime) and expenses of such employee shall be reimbursed to the Government by the centralized hub facility.

(13) When a Customs employee is assigned to an express consignment carrier facility for the purpose of processing express consignment shipments under part 128 of this chapter, the cost (including overtime) of the inspectional services provided by such employee shall be reimbursed to Customs by the express consignment carrier facility.

(14) When a Customs employee is assigned to provide Customs services at an airport or other facility under 19 U.S.C. 58b, the facility shall reimburse to the Government an amount equal to the salary and expenses of such employee (including overtime) plus any other expenses incurred in providing those Customs services at the facility.

(b) When a Customs employee is assigned to render services the nature of which is such that the private interest is required to reimburse the Government for his compensation and on the same assignment performs services for which compensation is not reimbursable, a charge shall be made to the private interest for the full compensation of the Customs employee unless the time devoted to each class of service can be clearly segregated.

(c) The charge for any service enumerated in this section for which expenses are required to be reimbursed shall include actual transportation expenses of a Customs employee within the port limits and any authorized travel expenses of a Customs employee, including per diem, when the services are performed outside the port limits irrespective of whether the services are performed during a regular tour of duty or during a Customs overtime assignment. No charge shall be made for transportation expenses when a Customs employee is reporting to as a first daily assignment, or leaving from as a last daily assignment, a place within or outside the port limits where he is assigned to a regular tour of duty. No charge shall be made for transportation expenses within the port limits or travel expenses, including per diem, outside the port limits in connection with a Customs overtime assignment for which reimbursement of expenses is not covered by this section.

(d) *Computation charge for reimbursable services.* The charge to be made for the services of a Customs employee on a regular workday during his basic 40-hour workweek shall be computed at a rate per hour equal to 137 percent of the hourly rate of regular pay of the particular employee with an addition equal to any night pay differential actually payable under 5 U.S.C. 5545. The rate per hour equal to 137 percent of the hourly rate of regular pay is computed as follows:

	Hours	Hours
Gross number of working hours in 52 40-hour weeks		2,080

	Hours	Hours
Less:		
9 Legal public holidays—New Years Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Teterans Day, Thanksgiving Day, and Christmas Day ..	72	.....
Annual Leave—26 days	208	.....
Sick Leave—13 days	104	384
Net number of working hours	.....	1,696
Gross number of working hours in 52 40-hour weeks		2,080
Working hour equivalent of Government contributions for employee uniform allowance, retirement, life insurance and health benefits computed at 11½ percent of annual rate of pay of employee		239
Equivalent annual working hour charge to Customs appropriation		2,319
Ratio of annual number of working hours charged to Customs appropriation to net number of annual working hours 2,319/1,696=137 percent.		

(1) The charge to be made for the reimbursable services of a Customs employee to perform on a holiday or outside the established basic workweek shall be the amount actually payable to the employee for such services under the Federal Employees Pay Act of 1945, as amended (5 U.S.C. 5542(a), 5546), or the Customs overtime laws (19 U.S.C. 267, 1451), or both, as the case may be. When such services are performed by an intermittent when-actually-employed employee, the charge for such services shall be computed at a rate per hour equal to 108 percent of the hourly rate of the regular pay of such employee to provide for reimbursement of the Government's contribution under the Federal Insurance Contributions Act, as amended (25 U.S.C. 3101, *et seq.)*, and employee uniform allowance. The time charged shall include any time within the regular working hours of the employee required for travel between the duty assignment and the place where the employee is regularly employed excluding lunch periods, charged in multiples of 1 hour, any fractional part of an hour to be charged as 1 hour when the services are performed during the regularly scheduled tour of duty of the officer or between the hours of 8 a.m. and 5 p.m. on weekdays when the officer has no regularly scheduled tour of duty. In no case shall the charge be less than $1.

(2) The necessary transportation expenses and any authorized per diem expenses of a Customs employee assigned to perform reimbursable services at a location at which he is not regularly assigned shall be reimbursed by the responsible party.

(3) When a Customs employee is regularly assigned to duty at more than one location, the charge for his compensation and transportation expenses in going from one location to another shall be equitably apportioned among the parties concerned. However, no charge shall be made for transportation expenses when a Customs employee is reporting to as a first assignment, or leaving from as a last assignment, a place where he is regularly assigned to duty.

(4) Upon a failure to pay such charges when due, or to comply with the applicable laws and regulations, the port director shall report the facts to the Accounting Services—Accounts Receivable, which shall take appropriate action to collect the charges.

(e) The reimbursable charge for customs overtime compensation shall be computed in accordance with §24.16.

(f) *Medicare Compensation Costs*. In addition to other expenses and compensation chargeable to parties-in-interest as set forth in this section, such persons shall also be required to reimburse Customs in the amount of 1.35 percent of the reimbursable compensation expenses incurred. Such payment will reimburse Customs for its share of Medicare costs.

[28 FR 14808, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §24.17, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§24.18 Preclearance of air travelers in a foreign country; reimbursable cost.

(a) Preclearance is the tentative examination and inspection of air travelers and their baggage at foreign places where U.S. Customs personnel are stationed for that purpose.

(b) At the request of an airline, travelers on a direct flight to the United States from a foreign place described in paragraph (a) of this section may be

precleared prior to departure from such place. A charge based on the excess cost to Customs of providing preclearance services as defined in paragraph (c) of this section shall be made to the airline.

(c) The reimbursable excess cost is the difference between the cost of examining and inspecting air travelers and their baggage upon arrival in the United States assuming no preclearance was provided, and the cost of providing preclearance for air travelers at the place of departure. Such excess cost shall include all items attributable to the preclearance operation. This does not include the salary of personnel regularly assigned to a preclearance station other than approved salary differentials related to the foreign assignment and the salary of relief details made necessary by reason of the nature of the operation. In addition, such cost shall include the following allowances and expenses:

(1) Housing allowances;

(2) Post of duty allowances;

(3) Education allowances;

(4) Transportation cost incident to the assignment to the foreign station and return, including transportation of family and household effects;

(5) Home leave and associated transportation costs; and

(6) Equipment, supplies and administrative costs including costs of supervising the preclearance installation.

(d) The reimbursable excess cost described in paragraph (c) of this section shall be determined for each preclearance installation. On the basis of the excess cost figure for each installation, the excess cost of providing preclearance service for a biweekly pay period shall be determined. The initial schedule of biweekly excess cost will be based on the actual excess cost for fiscal year 1969. Thereafter, a quarterly (ending with the pay period closely corresponding to June 30, September 30, December 31, and March 31) cost analysis will be conducted and the schedule of biweekly excess costs will be adjusted so that the current biweekly excess cost schedule will reflect the actual excess costs of the previous quarter. Such schedules of biweekly costs for each installation shall be published in the FEDERAL REGISTER. The biweekly excess cost in effect at an installation at the time the charge is made shall be used in calculating the prorated charge for preclearance service for each airline in accordance with paragraph (e) of this section.

(e) The charge to each airline for preclearance service shall be its prorated share of the applicable excess cost prorated to the aircraft receiving such services during the billing period on the following basis:

(1) Five percent shall be distributed equally among the airlines serviced.

(2) Ten percent shall be distributed proportionately as the number of clearances serviced bears to the total number of clearances.

(3) Eighty-five percent shall be distributed proportionately as the number of passengers and/or crew serviced for each airline bears to the total number of passengers and/or crew serviced.

(f) Customs services for which overtime compensation is provided for by section 5 of the Act of February 13, 1911, as amended (19 U.S.C. 267), and the expenses recovered thereunder are governed by § 24.16 and are in no way affected by this section. (63 Stat. 290; 31 U.S.C. 483a)

[T.D. 70–34, 35 FR 1161, Jan. 29, 1970, as amended by T.D. 85–123, 50 FR 29953, July 23, 1985]

§ 24.21 Administrative overhead charges.

(a) *Reimbursable and overtime services.* An additional charge for administrative overhead costs shall be collected from parties-in-interest who are required to reimburse Customs for compensation and/or expenses of Customs officers performing reimbursable and overtime services for the benefit of such parties under §§ 24.17 and 24.16, respectively, of this part. The cost of the charge for administrative overhead shall be 15 percent of the compensation and/or expenses of the Customs officers performing the service.

(b) *Other services.* An additional charge for administrative overhead costs shall be collected from parties-in-interest who are required to reimburse Customs for compensation and/or expenses of Customs officers performing various services for the benefit of such

parties. The cost of the charge for administrative overhead shall be 15 percent of the compensation and/or expenses of the Customs officers performing the service. The fees, whether billed or not, include, but are not limited to:

(1) Navigation fees for vessel services in § 4.98;

(2) [Reserved]

(3) Fee to establish container stations in § 19.40;

(4) Fee for furnishing the names and addresses of importers of merchandise appearing to infringe a registered patent in § 24.12(a)(3);

(5) Charge for storing merchandise in a Government-owned or rented building in § 24.12(c);

(6) Charge for the sale of in-bond and in-transit seals in § 24.13(f);

(7) Charge for the sale of Customs forms in § 24.14(b);

(8) Charge for preclearing aircraft in a foreign country in § 24.18;

(9) Fee for issuing a customhouse broker's license in § 111.12(a);

(10) Fee for designating a carrier or freight forwarder as a carrier of Customs bonded merchandise in § 112.12(a);

(11) Fee for issuing a Customs bonded cartman's license in § 112.22(a)(2);

(12) Fee for recording of trademarks in § 133.3;

(13) Fee for renewing, or recording a change in name of owner, or of ownership of, a trademark in §§ 133.5(d), 133.6(b), 133.7(a)(3);

(14) Fee for recording of trade name in § 133.13(b);

(15) Fee for recording a copyright in § 133.33(b); and

(16) Fee for renewing, or recording a change in name of owner, or of ownership of, a copyright in §§ 133.35(b)(2), 133.36(b), 133.37(a)(3);

(c) *No administrative overhead charge.* No additional charge for administrative overhead costs discussed in paragraphs (a) and (b) of this section shall be collected if (1) imposition of such charge is precluded by law; (2) there is a formal accounting system for determining administrative overhead for a service, in which case that system shall be used for determining the cost of the charge for administrative overhead; or (3) the charge for administrative overhead for a service is specifically provided for elsewhere in this chapter.

[T.D. 84–231, 49 FR 46122, Nov. 23, 1984, as amended by T.D. 95–99, 60 FR 62733, Dec. 7, 1995; T.D. 99–64, 64 FR 43266, Aug. 10, 1999]

§ 24.22 Fees for certain services.

(a) *Definitions.* For purposes of this section:

(1) The term *vessel* includes every description of watercraft or other contrivance used or capable of being used as a means of transportation on water but does not include any aircraft.

(2) The term *arrival* means arrival at a port of entry in the customs territory of the United States or at any place serviced by any such port of entry.

(3) The expression *calendar year* means the period from January 1 to December 31 of any particular year.

(4) The term *ferry* means any vessel which is being used to provide transportation only between places that are no more than 300 miles apart and which is being used to transport only:

(i) Passengers, and/or

(ii) Vehicles, or railroad cars, which are being used, or have been used, in transporting passengers or goods.

(b) *Fee for arrival of certain commercial vessels.*

(1) *Vessels of 100 net tons or more.*

(i) *Fee.* Except as provided in paragraphs (b)(2) and (b)(4) of this section, a processing fee in the amount of $397 shall be tendered by the master, licensed deck officer, or purser upon arrival of any commercial vessel of 100 net tons or more which is required to enter under § 4.3 of this chapter or upon arrival of any U.S.-flag vessel of 100 net tons or more proceeding coastwise under § 4.85 of this chapter. The fee shall be collected for each arrival regardless of the number of arrivals taking place in the course of a single voyage.

(ii) *Fee limitation.* No fee or portion thereof shall be collected under paragraph (b)(1)(i) of this section for the arrival of a vessel during any calendar year after a total of $5,955 in fees has been paid under paragraphs (b)(1)(i) and (b)(2)(i) of this section for all arrivals of such vessel during such calendar year, provided that adequate proof of such total payment is submitted to Customs.

(2) *Barges and other bulk carriers from Canada or Mexico.*

(i) *Fee.* A processing fee of $100 shall be tendered upon arrival of any barge or other bulk carrier which arrives from Canada or Mexico either in ballast or transporting only cargo laden in Canada or Mexico. The fee shall be collected for each arrival regardless of the number of arrivals taking place in the course of a single voyage. For purposes of this paragraph, the term ''barge or other bulk carrier'' means any vessel, other than a ferry, which is not self-propelled or which transports fungible goods that are not packaged in any form.

(ii) *Fee limitation.* No fee or portion thereof shall be collected under paragraph (b)(2)(i) of this section for the arrival of a barge or other bulk carrier during any calendar year after a total of $1,500 in fees has been paid under paragraphs (b)(1)(i) and (b)(2)(i) of this section for all arrivals of such vessel during such calendar year, provided that adequate proof of such total payment is submitted to Customs.

(3) *Prepayment.* The vessel operator, owner, or agent may at any time prepay the maximum calendar year amount specified in paragraph (b)(1)(ii) or (b)(2)(ii) of this section, or any remaining portion of that amount if individual arrival fees have already been paid on the vessel for that calendar year. Prepayment must be made at a CBP port office. When prepayment is for the remaining portion of a maximum calendar year amount, certified copies of receipts (Customs Form 368 or 368A) issued for individual arrival fee payments during the calendar year must accompany the payment.

(4) *Exceptions.* The following vessels are exempt from payment of the fees specified in paragraphs (b)(1) and (b)(2) of this section:

(i) Foreign passenger vessels making at least three trips a week from a port in the United States to the high seas and returning to the same U.S. port without having touched any foreign port or place, even though formal entry is still required;

(ii) Any vessel which, at the time of arrival, is being used solely as a tugboat;

(iii) Any government vessel for which no report of arrival or entry is required as provided in § 4.5 of this chapter; and

(iv) A ferry except for a ferry that began operations on or after August 1, 1999, and operates south of 27 degrees latitude and east of 89 degrees longitude.

(c) *Fee for arrival of a commercial truck.*

(1) *Fee.* The driver or other person in charge of a commercial truck shall, upon arrival, proceed to Customs and tender the sum of $5 for the services provided. The fee shall not apply to any commercial truck which, at the time of arrival, is being transported by any vessel other than a ferry. For purposes of this paragraph, the term ''commercial truck'' means any self-propelled vehicle, including an empty vehicle or a truck cab without a trailer, which is designed and used for the transportation of commercial merchandise or for the transportation of non-commercial merchandise on a for-hire basis.

(2) *Fee limitation.* No fee shall be collected under paragraph (c)(1) of this section for the arrival of a commercial truck during any calendar year once a prepayment of $100 has been made and a decal has been affixed to the vehicle windshield as provided in paragraph (c)(3) of this section.

(3) *Prepayment.* The owner, agent, or person in charge of a commercial vehicle may at any time prepay a fee of $100 to cover all arrivals of that vehicle during a calendar year or any remaining portion of a calendar year. Prepayment must be made in accordance with the procedures set forth in this paragraph and paragraph (i) of this section. Prepayment may be sent by mail, with a properly completed Customs Form 339, Annual User Fee Decal Request, to the following address: Bureau of Customs and Border Protection, Decal Program Administrator, P.O. Box 382030, Pittsburgh, PA 15250–8030. Alternatively, the decal request and prepayment by credit card may be made via the Internet through the ''Traveler Information'' links at CBP's website (*http://www.cbp.gov*). A third option, prepayment at the port, is subject to the port director's discretion to maintain user fee decal inventories. Once

the prepayment has been made under this paragraph, a decal will be issued to be permanently affixed by adhesive to the lower left hand corner of the vehicle windshield or on the left wing window, and otherwise in accordance with the accompanying instructions, to show that the vehicle is exempt from payment of the fee for individual arrivals during the applicable calendar year or any remaining portion of that year.

(d) *Fee for arrival of a railroad car.*

(1) *Fee.* Except as provided in paragraph (d)(6) of this section, a fee of $7.50 shall be charged for the arrival of each loaded or partially loaded passenger or commercial freight railroad car. The railroad company receiving a railroad car in interchange at a port of entry or, barring interchange, the company moving a car in line haul service into the customs territory of the United States, shall be responsible for payment of the fee. Payment of the fee shall be made in accordance with the procedures set forth in paragraph (d)(3) or (d)(4) of this section. For purposes of this paragraph, the term ''railroad car'' means any carrying vehicle, measured from coupler to coupler and designed to operate on railroad tracks, other than a locomotive or a caboose.

(2) *Fee limitation.* No fee shall be collected under paragraph (d)(1) of this section for the arrival of a railroad car during any calendar year once a prepayment of $100 has been made as provided in paragraph (d)(3) of this section, provided that adequate records are maintained to enable Customs to verify any such prepayment.

(3) *Prepayment.* As an alternative to the payment procedures set forth in paragraph (d)(4) of this section, a railroad company may at any time prepay a fee of $100 to cover all arrivals of a railroad car during a calendar year or any remaining portion of a calendar year. The prepayment, accompanied by a letter setting forth the railroad car number(s) covered by the payment, the calendar year to which the payment applies, a return address, and any additional information required under paragraph (i) of this section, must be mailed to: Customs and Border Protection, National Finance Center, Collections Section, P.O. Box 68907, Indianapolis, IN 46268 (or, if for overnight delivery, to: the same addressee at 6026 Lakeside Blvd., Indianapolis, IN 46278).

(4) *Statement filing and payment procedures.* (i) The Association of American Railroads (AAR), the National Railroad Passenger Corporation (AMTRAK), and any railroad company preferring to act individually, shall file monthly statements with Customs, and shall make payment of the arrival fees to Customs, in accordance with the procedures set forth in paragraphs (d)(4) (ii) and (i) of this section. Each monthly statement shall indicate:

(A) The number of railroad cars subject to the arrival fee during the relevant period;

(B) The number of such railroad cars pulled by each carrier; and

(C) The total processing fees due from each carrier for the relevant period.

(ii) AMTRAK and railroad companies acting individually shall file each monthly statement within 60 days after the end of the applicable calendar month, and the fees covered by each statement shall be remitted with the statement. Monthly statements prepared by the AAR on behalf of individual railroad companies shall be filed within 60 days after the end of the applicable calendar month, and each railroad company shall remit the fees as calculated for it by the AAR within 60 days after the end of that calendar month. In cases of conflict between the AAR and an individual railroad company regarding calculation of the fees, the railroad company shall timely remit the amount as calculated by the AAR even if the dispute is unresolved. Subsequent settlements may be accounted for by an explanation in, and adjustment of, the next payment to Customs. Payment must be made in accordance with this paragraph and paragraph (i) of this section and must be sent by mail to the following address: Customs and Border Protection, National Finance Center, Collections Section, P.O. Box 68907, Indianapolis, IN 46268 (or, if for overnight delivery, to: the same addressee at 6026 Lakeside Blvd., Indianapolis, IN 46278).

(5) *Maintenance of records.* The AAR, AMTRAK, and each railroad company preparing and filing its own statements

shall maintain all documentation necessary for Customs to verify the accuracy of the fee calculations and to otherwise determine compliance under the law. Such documentation shall be maintained in the United States for a period of 5 years from the date of fee calculation. The AAR, AMTRAK, and each railroad company preparing and filing its own statements shall provide to Customs the name, address, and telephone number of a responsible officer who is able to verify any statements or records required to be filed or maintained under this section, and shall promptly notify Customs of any changes in identifying information previously submitted.

(6) *Exceptions*. The following railroad cars are exempt from payment of the fee specified in paragraph (d)(1) of this section:

(i) Any railroad car whose journey originates and terminates in the same country, provided that no passengers board or disembark from the train and no cargo is loaded or unloaded from the car while the car is within any country other than the country in which the car originates and terminates, including any such railroad car which is set out for repairs outside the United States and then returned to on-line service without having undergone loading or unloading of passengers or cargo during the repair period;

(ii) Any railroad car transporting only containers, bins, racks, dunnage and other fixed or loose equipment or materials which have been used for enclosing, supporting or protecting commercial freight; and

(iii) Any railroad car which, at the time of arrival, is being transported by any vessel other than a ferry.

(e) *Fee for arrival of a private vessel or private aircraft*. (1) *Fee*. Except as provided in paragraph (e)(3) of this section, the master or other person in charge of a private vessel or private aircraft must, upon first arrival in any calendar year, proceed to CBP and tender the sum of $25 to cover services provided in connection with all arrivals of that vessel or aircraft during that calendar year. A properly completed Customs Form 339, Annual User Fee Decal Request, must accompany the payment. Upon payment of the annual fee, a decal will be issued to be permanently affixed by adhesive to the vessel or aircraft, in accordance with accompanying instructions, as evidence that the fee has been paid. Except in the case of private aircraft, and aircraft landing at user fee airports authorized under 19 U.S.C. 58b, all overtime charges provided for in this part remain payable notwithstanding payment of the fee specified in this paragraph.

(2) *Prepayment*. A private vessel or private aircraft owner or operator may, at any time during the calendar year, prepay the $25 annual fee specified in paragraph (e)(1) of this section. Prepayment must be made in accordance with the procedures set forth in this paragraph and paragraph (i) of this section. Prepayment may be sent by mail, along with a properly completed Customs Form 339, Annual User Fee Decal Request, to the following address: Customs and Border Protection, Decal Program Administrator, P.O. Box 382030, Pittsburgh, PA 15250–8030. Alternatively, the decal request and prepayment by credit card may be made via the Internet through the ''Traveler Information'' links at CBP's website (*http://www.cbp.gov*). A third option, prepayment at the port, is subject to the port director's discretion to maintain user fee decal inventories.

(3) *Exceptions*. The following are exempt from payment of the fee specified in paragraph (e)(1) of this section:

(i) Private pleasure vessels of less than 30 feet in length, so long as they are not carrying any goods required to be declared to Customs;

(ii) Any private pleasure vessel granted a cruising license under § 4.94 of this chapter, during the term of the license; and

(iii) Any private vessel which, at the time of arrival, is being transported by any vessel other than a ferry.

(f) *Fee for dutiable mail*. The addressee of each item of dutiable mail for which a Customs officer prepares documentation shall be assessed a processing fee in the amount of $5. When the merchandise is delivered by the Postal Service, the fee shall be shown as a separate item on the entry and collected at the time of delivery of the merchandise along with any duty and taxes due.

When Customs collects the fee directly from the importer or his agent, the fee will be included as a separate item on the informal entry or entry summary document.

(g) *Fees for arrival of passengers aboard commercial vessels and commercial aircraft*—(1) *Fees.* (i) Subject to paragraphs (g)(1)(ii) and (g)(3) of this section, a fee of $5 must be collected and remitted to CBP for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States, other than Canada, Mexico, one of the territories and possessions of the United States, or one of the adjacent islands, in either of the following circumstances:

(A) When the journey of the arriving passenger originates in a place outside the United States other than Canada, Mexico, one of the territories or possessions of the United States, or one of the adjacent islands; or

(B) When the journey of the arriving passenger originates in the United States and is not limited to Canada, Mexico, territories and possessions of the United States, and adjacent islands.

(ii) Subject to paragraph (g)(3) of this section, a fee of $1.75 must be collected and remitted to Customs for services provided in connection with the arrival of each passenger aboard a commercial vessel from Canada, Mexico, one of the territories and possessions of the United States, or one of the adjacent islands, regardless of whether the journey of the arriving passenger originates in a place outside the United States or in the United States.

(iii) For purposes of this paragraph (g), the term ''territories and possessions of the United States'' includes American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, and the term ''adjacent islands'' includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

(iv) For purposes of this paragraph (g), a journey, which may encompass multiple destinations and more than one mode of transportation, will be deemed to originate in the location where the person's travel begins under cover of a transaction which includes the issuance of a ticket or travel document for transportation into the customs territory of the United States.

(v) For purposes of this paragraph (g), the term ''passenger'' means a natural person for whom transportation is provided and includes an infant whether a separate ticket or travel document is issued for the infant or the infant occupies a seat or is held or carried by another passenger.

(vi) For purposes of paragraph (g)(1)(ii) of this section, the term ''commercial vessel'' includes any ferry that began operations on or after August 1, 1999, and operates south of 27 degrees latitude and east of 89 degrees longitude.

(vii) In the case of a commercial vessel making a single voyage involving two or more United States ports, the applicable fee prescribed under paragraph (g)(1)(i) or (g)(1)(ii) of this section is required to be charged only one time for each passenger.

(2) *Fee chart.* The chart set forth below outlines the application of the fees specified in paragraphs (g)(1)(i) and (ii) of this section with reference to the place where the passenger's journey originates and with reference to the place from which the passenger arrives in the United States (that is, the last stop on the journey prior to arrival in the United States). In the chart:

(i) SL stands for ''Specified Location'' and means Canada, Mexico, any territories and possessions of the United States, and any adjacent islands;

(ii) The single asterisk (*) means that the journey originating in the United States is limited to travel to one or more Specified Locations;

(iii) The double asterisk (**) means that the journey originating in the United States includes travel to at least one place other than a Specified Location; and

(iv) N/A indicates that the facts presented in the chart preclude application of the fee.

Place where journey originates (see (g)(1)(iv))	Fee status for arrival from SL		Fee status for arrival from other than SL	
	Vessel	Aircraft	Vessel	Aircraft
SL	$1.75	No fee	No fee	No fee
Other than SL or U.S.	$1.75	No fee	$5	$5
U.S.*	$1.75	No fee	N/A	N/A
U.S.**	$1.75	No fee	$5	$5

(3) *Exceptions.* The fees specified in paragraph (g)(1) of this section will not apply to the following categories of arriving passengers:

(i) Crew members and persons directly connected with the operation, navigation, ownership or business of the vessel or aircraft, provided that the crew member or other person is traveling for an official business purpose and not for pleasure;

(ii) Diplomats and other persons in possession of a visa issued by the United States Department of State in class A–1, A–2, C–2, C–3, G–1 through G–4, or NATO 1–6;

(iii) Persons arriving as passengers on any aircraft used exclusively in the governmental service of the United States or a foreign government, including any agency or political subdivision of the United States or foreign government, so long as the aircraft is not carrying persons or merchandise for commercial purposes. Passengers on commercial aircraft under contract to the U.S. Department of Defense are exempted if they have been precleared abroad under the joint DOD/CBP Military Inspection Program;

(iv) Persons arriving on an aircraft due to an emergency or forced landing when the original destination of the aircraft was a foreign airport;

(v) Persons who are in transit to a destination outside the United States and for whom CBP inspectional services are not provided;

(vi) Persons departing from and returning to the same United States port as passengers on board the same vessel without having touched a foreign port or place; and

(vii) Persons arriving as passengers on board a commercial vessel traveling only between ports that are within the customs territory of the United States.

(4) *Fee collection procedures.* (i) Each air or sea carrier, travel agent, tour wholesaler, or other party issuing a ticket or travel document for transportation into the customs territory of the United States is responsible for collecting from the passenger the applicable fee specified in paragraph (g)(1) of this section, including the fee applicable to any infant traveling without a separate ticket or travel document. The fee must be separately identified with a notation ''Federal inspection fees'' on the ticket or travel document issued to the passenger to indicate that the required fee has been collected. A fee relative to an infant traveling without a ticket or travel document may be identified instead with the notation on a receipt or other document issued for that purpose or to record the infant's travel. If the ticket or travel document, or a receipt or other document issued relative to an infant traveling without a ticket or travel document, is not so marked and was issued in a foreign country, the fee must be collected by the departing carrier upon departure of the passenger from the United States. If the fee is collected at the time of departure from the United States, the carrier making the collection must issue a receipt to the passenger. U.S.-based tour wholesalers who contract for passenger space and issue non-carrier tickets or travel documents must collect the fee in the same manner as a carrier.

(ii) Collection of the fee under paragraph (g)(1)(i) of this section will include the following circumstances:

(A) When a through ticket or travel document is issued covering (or a receipt or other document issued for an infant traveling without a ticket or travel document indicates that the infant's journey is covering) a journey into the customs territory of the United States which originates in and arrives from a place outside the United States other than Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island;

(B) When a return ticket or travel document is issued (or a receipt or other document that indicates an infant traveling without a return ticket or travel document is issued) in connection with a journey which originates in the United States, includes a stop in a place other than Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island, and the return arrival to the United States is from a place other than one of these specified places; and

(C) When a passenger on a journey in transit through the United States to a foreign destination arrives in the customs territory of the United States from a place other than Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island, is processed by CBP, and the journey does not originate in one of these specified places.

(iii) Collection of the fee under paragraph (g)(1)(ii) of this section will include the following circumstances:

(A) When a through ticket or travel document is issued covering (or a receipt or other document issued for an infant traveling without a ticket or travel document indicates that the infant's journey is covering) a journey into the customs territory of the United States from Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island;

(B) When a return ticket or travel document is issued (or a receipt or other document that indicates an infant traveling without a return ticket or travel document is issued) in connection with a journey which originates in the United States and the return arrival to the United States is from Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island; and

(C) When a passenger on a journey in transit through the United States to a foreign destination arrives in the customs territory of the United States from Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island and is processed by CBP.

(5) *Quarterly payment and statement procedures*. Payment to CBP of the fees required to be collected under paragraph (g)(1) of this section must be made no later than 31 days after the close of the calendar quarter in which the fees were required to be collected from the passenger. Payment of the fees must be made, in accordance with the procedures set forth in this paragraph and paragraph (i) of this section, by the party required to collect the fee under paragraph (g)(4)(1) of this section. Each quarterly fee payment must be sent to the following address: Customs and Border Protection, National Finance Center, Collections Section, P.O. Box 68907, Indianapolis, IN 46268 (or, if for overnight delivery, to: the same addressee at 6026 Lakeside Blvd., Indianapolis, IN 46278). Overpayments and underpayments may be accounted for by an explanation with, and adjustment of, the next due quarterly payment to CBP. The quarterly payment must be accompanied by a statement that includes the following information:

(i) The name and address of the party remitting payment;

(ii) The taxpayer identification number of the party remitting payment;

(iii) The calendar quarter covered by the payment;

(iv) The total number of tickets for which fees were required to be collected, the total number of infants traveling without a ticket or travel document for which fees were required to be collected, and the total amount of fees collected and remitted; and

(v) For commercial vessel passengers, the total number of tickets for which fees were required to be collected, the total number of infants traveling without a ticket or travel document for which fees were required to be collected, the total amount of fees collected and remitted to CBP, and a separate breakdown of the foregoing information relative to the $5 vessel passenger fee collected and remitted under paragraph (g)(1)(i) of this section and the $1.75 vessel passenger fee collected and remitted under paragraph (g)(1)(ii) of this section.

(6) Each carrier contracting with a U.S.-based tour wholesaler is responsible for notifying Customs of each flight or voyage so contracted, the number of spaces contracted for on each flight or voyage, and the name,

address and taxpayer identification number of the tour wholesaler, within 31 days after the close of the calendar quarter in which such a flight or voyage occurred.

(7) *Maintenance of records.* Each air or sea carrier, travel agent, tour wholesaler, or other party affected by this paragraph shall maintain all such documentation necessary for Customs to verify the accuracy of fee calculations and to otherwise determine compliance under the law. Such documentation shall be maintained in the United States for a period of 5 years from the date of fee calculation. Each such affected party shall provide to Customs the name, address, and telephone number of a responsible officer who is able to verify any statements or records required to be filed or maintained under this section, and shall promptly notify Customs of any changes in the identifying information previously submitted.

(8) *Limitation on charges.* Except in the case of costs reimbursed under § 24.17(a)(14) of this part, Customs services provided to passengers arriving in the United States on scheduled airline flights (as defined in § 122.1(k) of this chapter and operating within the requirements of subpart D of part 122 of this chapter) shall be provided at no cost to airlines and airline passengers other than the fee specified in paragraph (g)(1) of this section.

(h) *Annual customs broker permit fee.* Customs brokers are subject to an annual fee for each district permit and for a national permit held by an individual, partnership, association, or corporation, as provided in § 111.96(c) of this chapter. The annual fee for each district permit must be submitted to the port through which the broker was granted the permit. The annual fee for a national permit must be submitted to the port through which the broker's license is delivered.

(i) *Information submission and fee remittance procedures.* In addition to any information specified elsewhere in this section, each payment made by mail must be accompanied by information identifying the person or organization remitting the fee, the type of fee being remitted (for example, railroad car, commercial truck, private vessel), and the time period to which the payment applies. All fee payments required under this section must be in the amounts prescribed and must be made in U.S. currency, or by check or money order payable to Customs and Border Protection, in accordance with the provisions of § 24.1 of this part. Authorization for making payments electronically can be obtained by writing to the National Finance Center, Collections Section, 6026 Lakeside Blvd., Indianapolis, IN 46278. Where payment is made at a CBP port, credit cards will be accepted only where the port is equipped to accept credit cards for the type of payment being made. If payment is made by check or money order, the check or money order must be annotated with the appropriate class code. The applicable class codes and payment locations for each fee are as follows:

(1) Fee under paragraph (b)(1) of this section (commercial vessels of 100 net tons or more other than barges and other bulk carriers from Canada or Mexico): class code 491. Payment location: port of arrival for each individual arrival (fee to be collected by CBP at the time of arrival) or prepayment at the port in accordance with paragraph (b)(3) of this section;

(2) Fee under paragraph (b)(2) of this section (barges and other bulk carriers from Canada or Mexico): class code 498. Payment location: port of arrival for each individual arrival (fee to be collected by CBP at the time of arrival) or prepayment at the port in accordance with paragraph (b)(3) of this section;

(3) Fee under paragraph (c) of this section (commercial vehicles): for each individual arrival, class code 492; for prepayment of the maximum calendar year fee, class code 902. Payment location: port of arrival for each individual arrival (fee to be collected by CBP at the time of arrival) or prepayment in accordance with paragraph (c)(3) of this section;

(4) Fee under paragraph (d) of this section (railroad cars): for each individual arrival (under the monthly payment and statement filing procedure), class code 493; for prepayment of the maximum calendar year fee, class code 903. Payment location: for individual

arrivals (monthly payment and statement filing), see paragraph (d)(4)(ii) of this section; for prepayment, see paragraph (d)(3) of this section;

(5) Fee under paragraph (e) of this section (private vessels and aircraft): for private vessels, class code 904; for private aircraft, class code 494. Payment location: port of arrival for each individual arrival (fee to be collected by CBP at the time of arrival) or prepayment in accordance with paragraph (e)(2) of this section;

(6) Fee under paragraph (f) of this section (dutiable mail): class code 496. Payment location: see paragraph (f) of this section;

(7) Fee under paragraph (g)(1)(i) of this section (the $5 fee for commercial vessel and commercial aircraft passengers): class code 495. Payment location: see paragraph (g)(5) of this section;

(8) Fee under paragraph (g)(1)(ii) of this section (the $1.75 fee for commercial vessel passengers): class code 484. Payment location: see paragraph (g)(5) of this section; and

(9) Fee under paragraph (h) of this section (customs broker permits): for district permits, class code 497; for national permits, class code 997. Payment location: see paragraph (h) of this section.

(j) *Treatment of fees as Customs duty*—(1) *Administration and enforcement*. Unless otherwise specifically provided in this chapter, all administrative and enforcement provisions under the Customs laws and regulations, other than those laws and regulations relating to drawback, shall apply with respect to any fee provided for under this section, and with respect to any person liable for the payment of such fee, as if such fee is a Customs duty. For purposes of this paragraph, any penalty assessable in relation to an amount of Customs duty, whether or not any such duty is in fact due and payable, shall be assessed in the same manner with respect to any fee required to be paid under this section.

(2) *Jurisdiction*. For purposes of determining the jurisdiction of any court or agency of the United States, any fee provided for under this section shall be treated as if such fee is a Customs duty.

[T.D. 93–85, 58 FR 54282, Oct. 21, 1993, as amended by T.D. 94–1, 58 FR 69470, Dec. 30, 1993; 59 FR 8853, Feb. 24, 1994; T.D. 98–56, 63 FR 32944, June 16, 1998; CBP Dec. 03–13, 68 FR 43627, July 24, 2003]

§ 24.23 Fees for processing merchandise.

(a) *Definitions*. The following definitions apply for the purposes of this section:

(1) *Centralized hub facility*. A *centralized hub facility* is a separate, unique, single purpose facility normally operating outside of Customs operating hours approved by the port director for entry filing, examination, and release of express consignment shipments, as provided for in part 128 of this chapter on July 30, 1990.

(2) *Entered or released*. Merchandise is *entered or released* if the merchandise is:

(i) Released under a special permit for immediate delivery under 19 U.S.C. 1448(b);

(ii) Entered or released from Customs custody under 19 U.S.C. 1484(a)(1)(A); or

(iii) Withdrawn from warehouse for consumption.

(3) *Express consignment carrier facility*. An *express consignment carrier facility* is a separate or shared specialized facility approved by the port director solely for the examination and release of express consignment shipments, as provided for in part 128 of this chapter on July 30, 1990.

(4) *Manual entry or release*. Any reference to a *manual* formal or informal entry or release shall not include:

(i) Any formal or informal entry or release filed by an importer or broker who is operational for cargo release through the Automated Broker Interface (ABI) of the Customs Automated Commercial System (ACS) at any port within the United States;

(ii) Any formal or informal entry or release filed at a port where cargo selectivity is not fully implemented if filed by an importer or broker who is operational for ABI entry summary; or

(iii) Any informal entry or any Line Release filed at a part where cargo selectivity is fully implemented if filed by an importer or broker who is operational for ABI entry summary.

(5) *Small airport or other facility.* A *small airport or other facility* is any airport or other facility which has been designated as a user fee facility under 19 U.S.C. 58b and at which more than 25,000 informal entries were processed during the preceding fiscal year.

(b) *Fees*—(1) *Formal entry or release*—(i) *Ad valorem fee*—(A) *General.* Except as provided in paragraph (c) of this section, merchandise that is formally entered or released is subject to the payment to Customs of an ad valorem fee of 0.21 percent. The fee shall be due and payable to Customs by the importer of record of the merchandise at the time of presentation of the entry summary and shall be based on the value of the merchandise as determined under 19 U.S.C. 1401a.

(B) *Maximum and minimum fees.* Subject to the provisions of paragraphs (b)(1)(ii) and (d) of this section relating to the surcharge and to aggregation of the ad valorem fee respectively, the ad valorem fee charged under paragraph (b)(1)(i)(A) of this section shall not exceed $485 and shall not be less than $25.

(ii) *Surcharge for manual entry or release.* In the case of any formal manual entry or release of merchandise, a surcharge of $3 shall be assessed and shall be in addition to any ad valorem fee charged under paragraphs (b)(1)(i)(A) and (B) of this section.

(2) *Informal entry or release.* (i) Except as provided in paragraphs (b)(2)(ii) and (c) of this section, merchandise that is informally entered or released is subject to the payment to Customs of a fee of:

(A) $2 if the entry or release is automated and not prepared by Customs personnel;

(B) $6 if the entry or release is manual and not prepared by Customs personnel; or

(C) $9 if the entry or release, whether automated or manual, is prepared by Customs personnel.

(ii) With respect to the processing of merchandise that is informally entered or released at a centralized hub facility, an express consignment carrier facility, or a small airport or other facility, the following payments shall be made in lieu of the specific fees provided for in paragraph (b)(2)(i) of this section:

(A) In the case of a centralized hub facility or small airport or other facility, payment by the facility in an amount equal to the reimbursement (including overtime) which the facility is required to make during the fiscal year under § 24.17 of this chapter; and

(B) In the case of an express consignment carrier facility, payment by the facility in an amount equal to the cost (including overtime) of the Customs inspectional services provided at the facility during the fiscal year for which Customs is reimbursed under § 24.17 of this chapter.

(c) *Exemptions and limitations.* (1) The ad valorem fee, surcharge, and specific fees provided for under paragraphs (b)(1) and (b)(2)(i) of this section shall not apply to:

(i) Except as provided in paragraph (c)(2) of this section, articles provided for in chapter 98, Harmonized Tariff Schedule of the United States (HTSUS; 19 U.S.C. 1202);

(ii) Products of insular possessions of the U.S. (General Note 3(a)(iv), HTSUS);

(iii) Products of beneficiary countries under the Caribbean Basin Economic Recovery Act (General Note 7, HTSUS);

(iv) Products of least-developed beneficiary developing countries (General Note 4(b)(i), HTSUS); and

(v) Merchandise described in General Note 19, HTSUS, merchandise released under 19 U.S.C. 1321, and merchandise imported by mail.

(2) In the case of any article provided for in subheading 9802.00.60 or 9802.00.80, HTSUS:

(i) The surcharge and specific fees provided for under paragraphs (b)(1)(ii) and (b)(2)(i) of this section shall remain applicable; and

(ii) The ad valorem fee provided for under paragraph (b)(1)(i) of this section shall be assessed only on that portion of the cost or value of the article upon which duty is assessed under subheadings 9802.00.60 and 9802.00.80.

(3) The ad valorem, surcharge, and specific fees provided for under paragraphs (b)(1) and (b)(2)(i) of this section shall not apply to goods originating in Canada or Mexico within the meaning of General Note 12, HTSUS (see also 19 U.S.C. 3332), where such goods qualify to be marked, respectively, as goods of

Canada or Mexico pursuant to Annex 311 of the North American Free Trade Agreement and without regard to whether the goods are marked. For qualifying goods originating in Mexico, the exemption applies to goods entered or released (as defined in this section) after June 29, 1999. Where originating goods as described above are entered or released with other goods that are not originating goods, the ad valorem, surcharge, and specific fees shall apply only to those goods which are not originating goods.

(4) In the case of agricultural products of the U.S. that are processed and packed in a foreign trade zone, the ad valorem fee provided for under paragraph (b)(1)(i) of this section shall be applied only to the value of any material used to make the container for such merchandise, but only if that merchandise is subject to entry and the container is of a kind normally used for packing such merchandise.

(5) The ad valorem fee, surcharge, and specific fees provided for under paragraphs (b)(1) and (b)(2)(i) of this section shall not apply to products of Israel that are entered, or withdrawn from warehouse for consumption, on or after September 16, 1998 (the effective date of a determination published in the FEDERAL REGISTER on September 1, 1998, under section 112 of the Custons and Trade Act of 1990).

(6) [Reserved]

(7) The ad valorem fee, surcharge, and specific fees provided under paragraphs (b)(1) and (b)(2)(i) of this section will not apply to goods that qualify as originating goods under § 202 of the United States-Chile Free Trade Agreement Implementation Act (see also General Note 26, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2004.

(d) *Aggregation of ad valorem fee.* (1) Notwithstanding any other provision of this section, in the case of entries of merchandise made under any temporary monthly entry program established by Customs before July 1, 1989, for the purpose of testing entry processing improvements, the ad valorem fee charged under paragraph (b)(1)(i) of this section for each day's importations at an individual port shall be the lesser of the following, provided that those importations involve the same importer and exporter:

(i) $400; or

(ii) The amount determined by applying the ad valorem rate under paragraph (b)(1)(i)(A) of this section to the total value of such daily importations.

(2) The fees as determined under paragraph (d)(1) of this section shall be paid to Customs at the time of presentation of the monthly entry summary. Interest shall accrue on the fees paid monthly in accordance with section 6621 of the Internal Revenue Code of 1986.

(e) *Treatment of fees as Customs duty*—(1) *Administration and enforcement.* Unless otherwise specifically provided in this chapter, all administrative and enforcement provisions under the Customs laws and regulations, other than those laws and regulations relating to drawback, shall apply with respect to any fee provided for under this section, and with respect to any person liable for the payment of such fee, as if such fee is a Customs duty. For purposes of this paragraph, any penalty assessable in relation to an amount of Customs duty, whether or not any such duty is in fact due and payable, shall be assessed in the same manner with respect to any fee required to be paid under this section.

(2) *Jurisdiction.* For purposes of determining the jurisdiction of any court or agency of the United States, any fee provided for under this section shall be treated as if such fee is a Customs duty.

[T.D. 91–33, 56 FR 15039, Apr. 15, 1991; 56 FR 25721, June 5, 1991, as amended by T.D. 94–1, 58 FR 69470, Dec. 30, 1993; T.D. 94–32, 59 FR 15046, Mar. 31, 1994; T.D. 95–29, 60 FR 18348, Apr. 11, 1995; T.D. 97–82, 62 FR 51770, Oct. 3, 1997; T.D. 99–1, 63 FR 71372, Dec. 28, 1998; T.D. 99–61, 64 FR 42031, Aug. 3, 1999; T.D. 00–81, 65 FR 68886, Nov. 15, 2000; T.D. 02–14, 67 FR 15098, Mar. 29, 2002; CBP Dec. 05–07, 70 FR 10884, Mar. 7, 2005]

§ 24.24 Harbor maintenance fee.

(a) *Fee.* Commercial cargo loaded on or unloaded from a commercial vessel is subject to a port use fee of 0.125 percent (.00125) of its value if the loading or unloading occurs at a port within

the definition of this section, unless exempt under paragraph (c) of this section or one of the special rules in paragraph (d) of this section is applicable.

(b) *Definitions*. For the purpose of this section:

(1) *Port* means any channel or harbor (or component thereof) in the customs territory of the United States which is not an inland waterway and is open to public navigation and at which Federal funds have been used since 1977 for construction, maintenance or operation. It does not include channels or harbors deauthorized by Federal law before 1985. A complete list of the ports subject to the harbor maintenance fee is set forth below:

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS SUBJECT TO HARBOR MAINTENANCE FEE

[Section 1402 of Pub. L. 99–662, as amended]

Port code, port name and state	Port descriptions and notations
Alabama	
1901—Mobile	
Alaska	
3126—Anchorage	Includes Seldovia Harbor, and Homer. Movements between these points are intraport.
3106—Dalton Cache	Includes Haines Harbor.
3101—Juneau	Includes only Hoonah Harbor. Fee does not apply to Juneau Harbor.
3102—Ketchikan	Includes Metlakatla Harbor. Fee does not apply to Wades Cove.
3127—Kodiak	
3112—Petersburg	Includes Wrangell Narrows.
3125—Sand Point	Includes Humboldt, King Cove and Iliuliuk Harbor. Fee does not apply to Dutch Harbor.
3115—Sitka	Includes Sergius-Whitestone Narrows.
—St. Paul	
California	
2802—Eureka	Includes Crescent City.
Los Angeles/Long Beach Ports 2709—Long Beach Harbor 2704—Los Angeles 2713—Port Hueneme 2712—Ventura	Includes Ventura, Port Hueneme, Channel Islands Harbor, Santa Barbara, Marina Del Ray, Los Angeles and Long Beach. Movements between these points are intraport.
2805—Monterrey	
2719—Moro Bay	Includes only Moro Bay.
2501—San Diego	Includes San Diego River and Mission Bay, and Oceanside Harbor.
2707—San Luis	
San Francisco Bay Area Ports * 2813—Alameda 2830—Carquinez Strait 2815—Crockett 2820—Martinez 2811—Oakland 2821—Redwood City 2812—Richmond 2816—Sacramento 2809—San Francisco 2828—San Joaquin 2829—San Pablo Bay 2827—Selby 2810—Stockton 2831—Suisun Bay	Includes all points inshore of the Golden Gate Bridge on the bays and the straits and on the Napa, Sacramento and San Joaquin Rivers, and on the deep water channels to Sacramento and Stockton. Movements between points above Suisun Bay (Longitude 122 degrees West at Port Chicago) are intraport. Movements between points below Longitude 122 degrees West and the Golden Bridge are all intraport. All other movements are interport.
Connecticut	
0410—Bridgeport	Includes Housatonic River, and Stamford Harbor, and Wilson Point Harbor. Movements between these points are intraport.
0411—Hartford	Includes all points on the Connecticut River between Hartford and Long Island Sound. Movements within this area are intraport.
0412—New Haven	
0413—New London	Includes all points on the Thames River from the mouth to, and including Norwich, CT. Also includes Groton, CT.
Delaware	
Delaware River Ports, DE, NJ, PA * 1102—Chester, PA 1107—Camden, NJ 1113—Gloucester, NJ 1118—Marcus Hook, PA 1105—Paulsboro, NJ 1101—Philadelphia, PA 1103—Wilmington, DE	Includes all points on the Delaware River from Trenton to the sea at a line between Cape Henlopen and Cape May, all points on the lower four miles of the Christina River, Delaware, and all points on the lower six miles of Schuylkill River, Pennsylvania. Fee applies to all movements on the Chesapeake and Delaware Canal east of U.S. Highway 13. Includes Absecon Inlet (Atlantic City) and Cold Spring Inlet. Movements within this area are intraport.

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS SUBJECT TO HARBOR MAINTENANCE FEE—Continued

[Section 1402 of Pub. L. 99–662, as amended]

Port code, port name and state	Port descriptions and notations
District of Columbia	
Potomac River Ports, DC, MD, VA* 5402—Alexandria, VA 5401—Washington, DC	Includes all points on the Potomac River (see Chesapeake Bay Ports map) from a line between Point Lookout and the Little Wicomico River at Chesapeake Bay to and including Washington and Alexandria. Movements between these points are intraport.
Florida	
1807—Boca Grande	
1805—Fernandina Beach	
5205—Fort Pierce	
1803—Jacksonville	
5202—Key West	
5201—Miami	
1818—Panama City 1819—Pensacola 1816—Port Canaveral 5203—Port Everglades	For HMF purposes, also includes Carrabelle and Port St. Joe.
Tampa Bay Ports* 1814—St Petersburg 1801—Tampa	Includes Alafia River, Port Manatee, Port Sutton, Port Tampa Weedon Island, and all other points on or approached using the Tampa Harbor Channel inshore of the Sunshine Skyway Bridge. Movements between these points are intraport.
5204—West Palm Beach	
Georgia	
1701—Brunswick 1703—Savannah	Includes St. Marys River.
Hawaii	
3202—Hilo	Includes Kawaihae.
3201—Honolulu	Includes Barbers Point Harbor.
3203—Kahului	Includes Kaunakakai Harbor.
3204—Nawiliwili-Port Allen	Includes both Nawiliwili and Port Allen.
Illinois	
Southern Lake Michigan Ports 3901—Chicago, IL 3904—East Chicago, IN 3905—Gary, IN	Includes Waukegan Harbor, IL, Indiana Harbor (East Chicago, IN) Calumet Harbor, the Chicago River (up to the North Avenue Bridge) and the Chicago Harbor. Fee applies at the ports of Michigan City and Burns Waterway Harbor, IN. Fee does not apply at Buffington Harbor or Gary Harbor. Movements within an area from Waukegan, IL to Michigan City, IN are intraport.
Indiana	
Southern Lake Michigan Ports 3901—Chicago, IL 3904—East Chicago, IN 3905—Gary, IN	Includes Waukegan Harbor, IL. Indiana Harbor (East Chicago, IN) Calumet Harbor, the Chicago River (up to the North Avenue Bridge) and the Chicago Harbor. Fee applies at the ports of Michigan City and Burns Waterway Harbor, IN. Fee does not apply at Buffington Harbor or Gary Harbor. Movements within an area from Waukegan, IL to Michigan City, IN are intraport.
Louisiana	
2017—Lake Charles	Includes all points on the Calcasieu River and Pass. Also includes Mermentau River from Catfish Point Control Structure to the Gulf.
Mississippi River Ports/Baton Rouge and Vicinity*. 2004—Baton Rouge 2010—Gramercy	Includes all river points from River Mile 115 Above Head of Passes (AHP) at the St. Charles Parish-Jefferson Parish line, to River Mile 233.9 AHP at Baton Rouge. Includes Destrehan, Good Hope, and St. Rose. Movements between these points are intraport.
Mississippi River Ports/New Orleans and Vicinity*. 2002—New Orleans 2005—Port Sulphur	Includes all river points from River mile 115 Above Head of Passes (AHP) to Mile 21.6 Below Head of Passes (BHP) via Southwest Pass and to Mile 14.7 BHP via South Pass. Also includes all points on the Inner Harbor Navigation Canal, Avondale, and the Mississippi River Gulf Outlet. Movements between these points are intraport.
2001—Morgan City*	Includes Atchafalaya River from Morgan City to the Gulf. Includes all points on the Houma Navigation Canal, and points on the Gulf Intra-coastal Waterway between Mile 49.8 West and Mile 107.0 West. Movements between these points are intraport.
Maine	
0102—Bangor	
0111—Bath	
0131—Portsmouth, NH	
0132—Belfast	Includes all Penobscot River points (Bucksport and Winterport), and Georges River. Fee does not apply at Belfast, Searsport, Sandy Point, or Castine Harbor.
0101—Portland	

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS SUBJECT TO HARBOR MAINTENANCE FEE—Continued

[Section 1402 of Pub. L. 99–662, as amended]

Port code, port name and state	Port descriptions and notations
Maryland	
Chesapeake Bay Ports, MD * ..... 1303—Baltimore 1302—Cambridge 1301—Annapolis	Includes all Maryland points on the Chesapeake Bay and its tributary waters except for the Potomac Rivers. Also includes the Waterway from the Delaware River to the Chesapeake Bay west of U.S. 13 highway bridge. Movements between these points are intraport. (Also see Chesapeake Bay Ports: VA.)
Massachusetts	
0401—Boston	Includes all of the Port of Boston inshore of Castle Island on the Inner Harbor and Chelsea and Mystic River and all points on the Weymouth Fore, and Town and Black Rivers, and Dorchester Bay. Also includes Plymouth Harbor. Movements between points on the Saugus River in the North and Plymouth Harbor in the South are intraport.
0404—Gloucester	
0407—Fall River	
Michigan	
3843—Alpena	Fee does not apply to Stoneport.
Monroe/Detroit/Harbor Beach 3801—Detroit 3802—Port Huron	Includes Monroe, Detroit, and the Detroit River, St. Clair River, Port Huron and all points on the Rouge and Black Rivers. Fee also applies at Harbor Beach, MI. All movements within this area between Monroe and Harbor Beach, MI are intraport.
3808—Escanaba	Fee applies at all points on the little Bay de Noc above Escanaba, including Gladstone and Kipling. Movements within an area from Escanaba to the Mackinac Bridge are intraport. Fee does not apply at Escanaba.
South Central Lake Superior Ports ... 3809—Marquette 3842—Presque Isle	Includes Ontonagon Harbor, all points on the Harbor, all points on the Keweenaw Waterway, Presque Isle Harbor and Marquette and Grand Marais. Movements between all Michigan ports on Lake Superior are intraport.
Eastern Lake Michigan Ports ..... 3815—Muskegon 3816—Grand Haven 3844—Ferrysburg	Fee applies at Charlevoix, Frankfort, Portage Lake, Manatee, Ludington, Pentwater Harbor, Ferrysburg, White Lake Harbor, Muskegon, Grand Haven, and South Haven, Holland, and St. Joseph/Benton Harbor, MI. All movements between Eastern Lake Michigan ports are intraport.
Upper Lake Huron Ports ..... 3803—Sault Ste. Marie 3804—Saginaw-Flint-Bay City 3843—Alpena	Includes all points on the St. Mary's River, the ports of Cheyboygan, Alpena, Bay City, and Saginaw River. Does not include Alabaster, Cacit, Port Dolomite, Port Inland, Port Gypum or Stoneport. Movements within an area from Sault Ste. Marie and the Saginaw River are intraport.
Minnesota	
Duluth/Superior Area Ports ..... 3601—Duluth 3602—Ashland 3608—Superior 3614—Silver Bay	Fee applies at Two Harbors and Duluth, MN, and Superior, WI. Fee also applies at Ashland and Port Wing, WI and Grand Marais, MN. Fee does not apply at Taconite, or Silver Bay, MN. All movements between Silver Bay, MN and Ashland, WI are considered intraport.
Mississippi	
1902—Gulfport ..... 1903—Pascagoula	Does not include Bienville.
New Hampshire	
0131—Portsmouth, NH	
New Jersey	
Delaware River Ports, DE, NJ, PA * .. 1102—Chester, PA 1107—Camden, NJ 1113—Gloucester, NJ 1118—Marcus Hook, PA 1105—Paulsboro, NJ 1101—Philadelphia, PA 1103—Wilmington, DE	Includes all points on the Delaware River from Trenton to the sea at a line between Cape Henlopen and Cape May, all points on the lower four miles of the Christina River, Delaware, and all points on the lower six miles of the Schuylkill River, PA. Fee applies to all movements on the Chesapeake and Delaware Canal east of U.S. Highway 13. Includes Absecon Inlet (Atlantic City) and Cold Spring Inlet. Movements between these points are intraport.
1003—Newark	See New York Harbor.
1004—Perth Amboy	See New York Harbor.
New York	
New York Harbor, NY, NJ * ..... 1001—New York 1003-Newark 1004—Perth Amboy	Includes all points in New York and New Jersey with the Port of New York on the waters inshore of a line between Sandy Hook and Rockaway Point and south of Tappan Zee Bridge on the Hudson and west of Throgs Neck Bridge of the East River. Movements between these and all points within the New York Port District boundaries described in New York Code (Chapter 154, Laws of New York, 1921), are intraport.
1002—Albany *	Includes all points on the Hudson River between Tappan Zee Bridge and the Troy Lock and Dam. Movements between points within this area are intraport.

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS SUBJECT TO HARBOR MAINTENANCE FEE—Continued

[Section 1402 of Pub. L. 99–662, as amended]

Port code, port name and state	Port descriptions and notations
0901—Buffalo-Niagara Falls	Includes Buffalo Harbor, Black Rock Channel and Tonawanda Harbor, and all points on Cattaraugus Creek, and Dunkirk Harbor. Movements between these points are intraport.
0706—Cape Vincent	
0701—Ogdensburg	
0904—Oswego	
0903—Rochester	
0905—Sodus Point	Includes Little Sodus Bay Harbor, and Great Sodus Bay Harbor.
North Carolina	
1511—Beaufort-Morehead City	Includes Ocracoke Inlet. Movements within this area are intraport.
1501—Wilmington	Includes all points on the Cape Fear and Northeast Cape Fear Rivers inshore of the Atlantic Ocean entrance. Movements within this area are intraport.
Ohio	
Lake Erie Ports	Includes Toledo, Sandusky, Huron, Lorain, Cleveland, Fairport, Ashtabula, Conneaut and Erie. Movements between these points are intraport. Fee does not apply at Marblehead.
4108—Ashtabula	
4101—Cleveland	
4109—Conneaut	
4106—Erie, PA	
4111—Fairport	
4117-Huron	
4121—Lorain	
4105—Toledo-Sandusky	
Oregon	
Columbia River Ports, OR, WA	Includes all points on the Columbia River downstream of Bonneville Dam, and all points on the Willamette River downstream of River Mile 21. Includes the Multnoma Channel, the Skipanon Channel, and Oregon Slough. Movements between points within this area are intraport.
2901—Astoria, OR	
2904—Portland, OR	
2909—Kalama, WA	
2905—Longview, WA	
2908—Vancouver, WA	
2903—Coos Bay	Includes Port Orford, the Siuslaw River, and Umpaqua River. Movements between these points are intraport.
2902—Newport	Includes Tillamook Bay, and Yaguina Bay and Harbor.
Pennsylvania	
Delaware River Ports, DE, NJ, PA *	Includes all points on the Delaware River from Trenton to the sea at a line between Cape Henlopen and Cape May, all points on the lower four miles of the Christina River, Delaware, and all points on the lower six miles of the Schuykill River, Pennsylvania. Fee applies to all movements on the Chesapeake and Delaware Canal east of U.S. Highway 13. Includes Absecon Inlet (Atlantic City) and Cold Spring Inlet. Movements between these points are intraport.
1102—Chester, PA	
1107—Camden, NJ	
1113—Gloucester, NJ	
1118—Marcus Hook, PA	
1105—Paulsboro, NJ	
1101—Philadelphia, PA	
1103—Wilmington, DE	
Puerto Rico	
4907—Mayaguez	
4908—Ponce	Does not include Guayanilla and Tallaboa.
4909—San Juan	Includes Arecibo.
Rhode Island	
0502—Providence	Federal project limit: Providence River East of Prudence Island just above Dyer Island and ending at Hurricane Barrier at Fox Point. The areas west of Prudence Island, including Quonset Point, Patience Island, Warwick Neck and Greenwich Bay are not subject to the fee.
South Carolina	
1601—Charleston	Includes the Ashley River, Cooper River, Shipyard River, and Port Royal Harbor. Movements within this area are intraport.
1602—Georgetown	
Texas	
2301—Brownsville	Includes Port Isabel and Brazos Island Harbor. Movements between these points are intraport.
5312—Corpus Christi	
5311—Freeport	
Galveston Bay Ports *	Includes Port Bolivar and all points on Galveston Bay in Galveston County. Movements between points within this area are intraport.
5310—Galveston	
5306—Texas City	

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS SUBJECT TO HARBOR MAINTENANCE FEE—Continued

[Section 1402 of Pub. L. 99–662, as amended]

Port code, port name and state	Port descriptions and notations
5301—Houston*	Includes Bayport, Baytown, and all other points on or accessed via the Houston Ship Channel from the Liberty/Chambers county line on the north to the Chambers/Galveston county line to the south. Movements within this area are intraport.
5313—Port Lavaca	Includes Matagorda Ship Channel.
Sabine Ports*	Includes Port Neches, Sabine Pass and all other points on the Sabine-Neches Waterway. Movements between these points are intraport.
2104—Beaumont	
2103—Orange	
2101—Port Arthur	
2102—Sabine	
Virginia	
Potomac River Ports, DC, MD, VA*	Includes all points on the Potomac River (see Chesapeake Bay Ports map) from a line between Point Lookout and the Little Wicomico River at Chesapeake Bay to and including Washington and Alexandria. Movements between these points are intraport.
5402—Alexandria, VA	
5401—Washington, DC	
Chesapeake Bay Ports,VA*	Includes all Virginia points on the Chesapeake Bay inshore of a line from Cape Henry to Cape Charles, and tributary waters including the ports of Hampton Roads. Does not include the Potomac River or the James River above the James River Bridge at Newport News. Movements between points within this area are intraport. (Also see Chesapeake Bay Ports, MD.)
1406—Cape Charles	
1402—Newport News	
1401—Norfolk	
James River Ports, VA	Includes all points on the James River above the James River Bridge at Newport News. Movements between these points are intraport.
1408—Hopewell	
1404—Richmond/Petersburg	
Washington	
3003—Aberdeen	Includes Grays Harbor and Yaguina Bay and Harbor. Movements between these points are intraport.
Puget Sound Ports, WA*	Fee applies only at ports listed. Bellingham includes all of Bellingham Bay and tributary waters north of Chuchanut Bay on the east, and Portage Island on the west. Port Everett includes all of Port Dardner (an arm of Possession Sound) between Elliott Point on the south to, and including, the Snahomish River on the north. The port of Olympia includes all points on Budd Inlet extending from Cooper and Dofflemyer Point on the north to, and including, the city of Olympia on the south. The fee applies to all points within the Inner Harbor of the Port of Seattle, including Salmon Bay, Lakes Union and Washington, the Lake Washington Ship Canal, and Kenmore Navigation Channel. Includes all points on Elliott Bay and tributary waters between West Point on the north and Duwamish Head on the south. Fee applies at all points within Tacoma Harbor including all of Commensement Bay and tributary waters between Browns Point on the east and Point Defiance on the west. Movements between these ports and any other U.S. points on Puget Sound or the Strait of Juan de Fuca east of Cape Flattery are intraport.
3005—Bellingham	
3006—Everett	
3007—Port Angeles	
3001—Seattle	
3002—Tacoma	
3026—Olympia	
3010—Anacortes	Includes only access channel and berthing areas adjacent to Anacortes Industrial Park off 30th Street.
Columbia River Ports, WA, OR	Includes all points on the Columbia River downstream of Bonneville Dam, and all points on the Willamette River downstream of River mile 21. Includes the Multnoma Channel, the Skipanon Channel, and Oregon Slough. Movements between points within this area are intraport.
2901—Astoria, OR	
2904—Portland, OR	
2909—Kalama, WA	
2905—Longview, WA	
2908—Vancouver, WA	
Wisconsin	
3602—Ashland	See Duluth/Superior Area Ports, MN.
Green Bay/Marinette Area Ports	Fee applies to all movements between points along the Sturgeon Bay and Lake Michigan Ship Canal. Fee also applies to Green Bay, Oconto, and Menominee/Marinette. Movements between points from Menominee and points along the Sturgeon Bay and Lake Michigan Ship Canal are intraport.
3703—Green Bay	
3702—Marinette	
Western Lake Michigan Ports	Includes the ports of Milwaukee, Racine, and Sheboygan, MN. All movements between these points are intraport.
3701—Milwaukee	
3708—Racine	
3707—Sheboygan	

*Indicates that a map of this area is available from the Budget Division, Office of Finance, U.S. Customs Service, Room 6328, 1301 Constitution Ave., NW., Washington, DC 20229; tel. 202–927–0034.

(2) *Commercial cargo* means, unless exempted by paragraphs (c) (1) and (2) of this section, merchandise transported on a commercial vessel and passengers transported for compensation or hire. Whenever the term ''cargo'' is used, it means merchandise, but not passengers.

(3) *Commercial vessel* means, unless exempted by paragraph (c)(3) of this section, any vessel used in transporting commercial cargo by water for compensation or hire, or in transporting commercial cargo by water in the business of the owner, lessee or operator of the vessel.

(4) *Ferry* means any vessel which arrives in the U.S. on a regular schedule during its operating season at intervals of at least once each business day.

(5) *Humanitarian assistance* is considered to be assistance which is required for the survival of the affected population in cases of, or in preparation for, emergencies of all kinds. Such relief assistance would include, but is not limited to: food items, shelter, clothing, basic home utensil kits, and small electric generators.

(6) *Development assistance* is considered to be assistance similar to that provided for pursuant to chapter 1 of part 1 of the 1961 Foreign Assistance Act, as amended, 22 U.S.C. 2151–1(b). Such development assistance would include, but is not limited to, aid to promote: Agricultural productivity, reduction of infant mortality, reduction of rates of unemployment and underemployment, and an increase in literacy.

(7) *Non-profit* means an organization or cooperative exempt from income taxation pursuant to 26 U.S.C. 501(c)(3).

(c) *Exemptions*. The following are not subject to the fee:

(1) Bunker fuel, ship's stores, sea stores and vessel equipment.

(2) Fish or other aquatic animal life, caught and not previously landed on shore.

(3) Ferries engaged primarily in the transport of passengers and their vehicles between points within the U.S. or between the U.S. and contiguous countries.

(4) Certain loadings and unloadings of cargo in Alaska, Hawaii, or the possessions of the U.S. as defined in this paragraph.

(i) Descriptions of exempt loadings/unloadings:

(A) Cargo loaded on a vessel in a port in the U.S. mainland for transportation to Alaska, Hawaii, or any possession of the U.S. for ultimate use or consumption in Alaska, Hawaii, or any possession of the U.S.

(B) Cargo loaded on a vessel in Alaska, Hawaii, or any possession of the U.S. for transportation to the U.S. mainland for ultimate use or consumption in the U.S. mainland.

(C) Cargo described in paragraph (c)(4)(i)(A) of this section unloaded in Alaska, Hawaii, or any possession of the U.S.

(D) Cargo described in paragraph (c)(4)(i)(B) of this section unloaded in the U.S. mainland.

(E) Cargo loaded on a vessel in Alaska, Hawaii, or a possession of the U.S. and unloaded in the state or possession in which loaded.

(ii) For purposes of paragraph (c)(4) of this section:

(A) *Cargo* does not include crude oil with respect to Alaska.

(B) *U.S. mainland* means the continental U.S. excluding Alaska.

(C) *Possessions* of the U.S. means Puerto Rico, Guam, American Samoa, U.S. Virgin Islands, the Northern Mariana Islands and the Pacific Trust Territories.

(5) Commercial vessels, if any fuel used to move the cargo is subject to the Inland Waterway Fuel Tax (See section 4042, Internal Revenue Code of 1954, as amended by Pub. L. 95–502 and Pub. L. 99–662).

(6) Cargo entering the U.S. in bond for transportation and direct exportation to a foreign country, unless, with respect to cargo exported to Canada or Mexico;

(i) The Secretary of the Treasury determines that Canada or Mexico has imposed a substantially equivalent port use fee on commercial vessels or commercial cargo using ports of their countries; or

(ii) A study made pursuant to the Water Resources Development Act of 1986 (Pub. L. 99–662) finds that the fee is not likely to cause significant economic loss to a U.S. port or diversion of a significant amount of cargo to a port in a contiguous country.

(7) Cargo or vessels of the U.S. or any agency or instrumentality of the U.S.

(8) Cargo owned or financed by nonprofit organizations or cooperatives which is certified by the U.S. Customs

Service as intended for use in humanitarian or development assistance overseas, including contiguous countries.

(i) The donated cargo is required to be certified as intended for use in humanitarian or development assistance overseas by Customs. Subsequent to the payment of the fee, a request for refund should be made on an Amended Quarterly Summary Report, Customs Form 350, and forwarded to the Office of Finance, U.S. Customs Service, Headquarters, Washington, DC 20229. To permit certification, supporting evidence that the entity donating the cargo is a nonprofit organization or cooperative should be included along with supporting evidence that the cargo was intended for humanitarian or development assistance overseas. A description of the cargo listed in the shipping documents and a brief summary of the intended use of the goods, if such use is not reflected in the documents, are acceptable evidence for certification purposes. Copies of the Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349, should be attached for each quarter that a refund is requested.

(ii) Each nonprofit organization or cooperative claiming the exemption under this subpart shall maintain documentation pertaining to the exemption for a period of 5 years. The documentation shall be made available for inspection by Customs in accordance with the provisions of §§ 162.1a through 162.1i of this chapter.

(d) *Special rules*—(1) *Intraport*. The fee is not to be assessed on the mere movement of commercial cargo within a port.

(2) *Same vessel, same cargo*. If a fee is assessed when cargo is loaded on a vessel, the unloading of the same cargo from that vessel is not subject to the fee. If a fee is assessed when cargo is unloaded from a vessel, the reloading of the same cargo on that vessel is not subject to the fee.

(3) *De minimis for individual shipments*. The fee shall not be assessed on loadings or unloadings of cargo in which:

(i) *For imported cargo:* The shipment would be entitled to be entered under informal entry procedures as provided for in § 143.21 of this chapter.

(ii) *For domestic cargo:* The value of the shipment does not exceed $1,000.

(4) *De minimis for quarterly payments*. Quarterly payment is not required if the total value of all shipments for which a fee was assessed for the quarter does not exceed $10,000.

(e) *Collections, supplemental payments, and refunds*—(1) *Domestic vessel movements*—(i) *Time and place of liability*. Subject to the exemptions and special rules of this section, when cargo is loaded on a commercial vessel at a port within the definition of this section to be transported between ports in the U.S. or is unloaded from a commercial vessel at a port within the definition of this section after having been transported between ports in the U.S., the shipper (the person or corporation who pays the freight) of that cargo is liable for the payment of the port use fee at the time of unloading. The fee will be imposed only once on a movement pursuant to paragraph (d)(2) of this section. The fee is to be based upon the value of the cargo as determined by standard commercial documentation where such documentation is available. Otherwise, the value is to be determined under 19 U.S.C. 1401a as if it were imported merchandise. The Vessel Operation Report (Army Corps of Engineers Form 3925) is to be completed and submitted to the Army Corps of Engineers in accordance with the procedures set forth in 33 CFR Ch. II, part 207. The shipper's name, either the internal revenue service or social security number of the shipper and the tax exemption code (as it appears in the Vessel Operation Report instructions) claimed for the shipment are to be included on the Vessel Operation Report.

(ii) *Fee payment*. The shipper whose name appears on the Vessel Operation Report shall pay the accumulated fees on a quarterly basis in accordance with paragraph (f) of this section by mailing a check or money order payable to the U.S. Customs Service for all fees for which he is liable for the quarter and a Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349, to U.S. Customs Service, P.O. Box 70915, Chicago, Illinois 60673–0915.

(2) *Import vessel movements*—(i) *Time and place of liability*. Subject to the exemptions and special rules of this section, when imported cargo is unloaded from a commercial vessel at a port within the definition of this section, and destined for either consumption, warehousing, or foreign trade zone admission, the importer of that cargo, or in the case of foreign trade zones, the person or corporation responsible for bringing merchandise into the zone, is liable for the payment of the port use fee at the time of unloading. The fee is based on the U.S. Customs appraised value of the shipment pursuant to 19 U.S.C. 1401a, the same basis as that used for duty payment. The fee shall be collected on all formal entries, including warehouse entries and temporary importation under bond entries, and admissions into foreign trade zones.

(ii) *Fee payment*. The port use fee on unloading of imported cargo shall be paid in accordance with the normal Customs collection procedures set forth in §§ 24.1 and 141.1 of this chapter, except as provided for merchandise admitted into foreign trade zones in paragraph (e)(2)(iii) of this section. The U.S. Customs Entry Summary Form (Customs Form 7501), is to be completed with the amount of the fee shown and identified on the form. The fee shall be paid by the importer by adding it to any normal duty, tax or fee payable at the time of formal entry processing.

If no other duty, tax, or fee is imposed on the shipment, and the fee exceeds $3, a check or money order for the amount of the fee shall be attached to the Customs entry forms submitted.

(iii) *Foreign trade zones*. In cases where imported cargo is unloaded from a commercial vessel at a port within the definition of this section and admitted into a foreign trade zone, the applicant for admission (the person or corporation responsible for bringing merchandise into the zone) who becomes liable for the fee at the time of unloading pursuant to paragraph (e)(3)(i) of this section, shall pay all fees for which he is liable on a quarterly basis in accordance with paragraph (f) of this section by mailing a check or money order payable to the U.S. Customs Service for all fees for the quarter and a Harbor Maintenance Fee Quarterly Summary Sheet, Customs Form 349, to U.S. Customs Service, P.O. Box 70915, Chicago, Illinois 60673–0915. Fees shall be paid for all shipments unloaded and admitted to the zone, or in the case of direct deliveries under §§ 146.39 and 146.40 of this chapter, unloaded and received in the zone under the bond of the foreign trade zone operator.

(3) *Passengers*—(i) *Time and place of liability*. Subject to the exemptions and special rules of this section, when a passenger boards or disembarks a commercial vessel at a port within the definition of this section, the operator of that vessel is liable for the payment of the port use fee. The fee is to be based upon the value of the actual charge for transportation paid by the passenger or on the prevailing charge for comparable service if no actual charge is paid. The vessel operator on each cruise is liable only once for the port use fee for each passenger.

(ii) *Fee payment*. The operator of the passenger-carrying vessel shall pay the accumulated fees on a quarterly basis in accordance with paragraph (f) of this section by mailing a check or money order payable to the U.S. Customs Service for all fees for which he is liable for the quarter and a Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349.

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

0915. The address to mail requests for refunds of quarterly-paid harbor maintenance fees is: U.S. Customs Service, HMT Refunds, 6026 Lakeside Blvd., Indianapolis, IN, 46278.

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

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

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

(A) *Refund request.* For export fee payments made prior to July 1, 1990, the exporter (the name that appears on the SED or equivalent documentation authorized under 15 CFR 30.39(b)) or its agent must submit a letter of request for a refund specifying the grounds for the refund and identifying the specific payments made. The letter must be accompanied by the proof of payment set forth in paragraph (e)(4)(iv)(C) of this section. For export fee payments made on or after July 1, 1990, supporting documentation is not required with the refund request. For these payments, the request must specify the grounds for the refund, identify the quarters for which a refund is sought, and contain the following additional information: the exporter's name, address, and employer identification number (EIN); the name and EIN of any freight forwarder or other agent that made export fee payments on the exporter's behalf; and a name, telephone number, and facsimile number of a contact person.

(B) *Refund procedure—(1) Processing order; power of attorney.* Generally, a properly filed refund request will be processed in the chronological order of its receipt. A refund request filed on behalf of an exporter by an agent other than a freight forwarder must be supported by a power of attorney or letter signed by the exporter authorizing the representation. A refund request filed by an agent other than a freight forwarder that lacks a power of attorney or authorization letter will not be processed unless one or the other is submitted. A refund request filed by a freight forwarder does not require a power of attorney or authorization letter to be processed; however, if Customs has not received a power of attorney or authorization letter for an exporter covered in a freight forwarder's refund request and that exporter has filed a separate refund request on its own behalf, that freight forwarder's entire refund request will be removed from the chronological processing order and processed after the processing of all exporter refund requests is completed.

(2) HMT Payment Report and Report/Certification. In processing a request for a refund, Customs will conduct a search of its records (Customs electronic database and paper document sources) and produce for issuance to the exporter (or its agent, as appropriate) a ''Harbor Mantenance Tax Payment Report'' (HMT Payment Report) that lists all payments reflected in those records for the entire period the fee was in effect. Customs will also produce for issuance to the exporter a ''Harbor Maintenance Tax Refund Report and Certification'' (Report/Certification) that lists all payments supported by paper documentation, either retained by Customs (relative to payments made on and after July 1, 1990) or submitted by the exporter with its refund request (relative to payments

made at any time the fee was in effect). Where a refund request was filed on the exporter's behalf by an agent other than a freight forwarder, a power of attorney or authorization letter must be filed with Customs before Customs will issue these reports. The Report/Certification sets forth the total amount of the refund that Customs believes it owes the exporter for the payments listed in that report (minus any previous refunds). Pre-July 1, 1990, payments listed in the HMT Payment Report for which paper documentation has not been provided by the exporter will not be listed in the Report/Certification. The exporter has 120 days from the date the HMT Payment Report and the Report/Certification are issued (the 120-day period) to sign and return to Customs the Report/Certification in order to receive the refund set forth in that report and/or to submit to Customs a request for a Revised Report/Certification. Where the exporter chooses to receive the refund set forth in the Report/Certification, the exporter must sign and return the report to Customs. Customs will issue the refund upon receipt of the signed report.

(*3*) *Revised Report/Certification*. A request for a Revised Report/Certification must be accompanied by documentation to support any payments not listed in the Report/Certification or corrections to listed payments. See paragraph (e)(4)(iv)(C) of this section regarding acceptable documentation. If an exporter (or its agent, as appropriate) both signs and returns to Customs a Report/Certification and requests a Revised Report/Certification, Customs will not, when reviewing the request for a Revised Report/Certification, approve for refund any corrections to the payments that were listed in the signed Report/Certification; Customs will, however, in that circumstance, consider approving any additional payments that were not listed in the signed Report/Certification. If an exporter does not sign and return to Customs a Report/Certification, but requests a Revised Report/Certification, Customs will consider approving for refund corrections to the payments listed in the Report/Certification and additional payments. Where the exporter requests a Revised Report/Certification, Customs will review the documentation submitted with the request, make a determination, and, within 60 days of the request's receipt, issue a Revised Report/Certification that lists all payments approved for refund and the total amount of the refund owed. In order to receive the refund set forth in a Revised Report/Certification, the exporter must sign and return it to Customs. Customs will issue the refund upon its receipt of the signed report. An exporter, within the 120-day period, may submit additional requests for a Revised Report/Certification, with appropriate documentation, to cover any payments not approved for refund in a Revised Report/Certification previously issued by Customs.

(*4*) *Protest*. For purposes of filing a protest under 19 U.S.C. 1514 (and 19 CFR part 174), unless issuance of a Revised Report/Certification is pending, any payments not approved for refund in a Report/Certification or a Revised Report/Certification issued by Customs within the 120-day period will be considered denied as of the date the period expires; a protest covering such payments must be filed within 90 days of that date. For any payments not approved for refund in a Revised Report/Certification issued after expiration of the 120-day period, a protest may be filed within 90 days of that report's issuance.

(*5*) *Significance of signed Report/Certification and Revised Report/Certification*. A Report/Certification or Revised Report/Certification must be signed by an officer of the company duly authorized to bind the company or by an agent (such as a broker or freight forwarder) representing the exporter in seeking a refund under this section. A Report/Certification or Revised Report/Certification signed by the exporter or its agent and received by Customs constitutes the exporter's agreement that the amount of the refund set forth in the report is accurate and Customs payment of that refund amount is in full accord and satisfaction of all payments approved for refund in the report. The signed Report/Certification or Revised Report/Certification also represents the exporter's release, waiver, and abandonment of all claims, excluding claims for interest, against the

Government, its officers, agents, and assigns for costs, attorney fees, expenses, compensatory damages, and exemplary damages arising out of the payments approved for refund in the report. When an agent, including a freight forwarder, signs a Report/Certification or Revised Report/ Certification on behalf of an exporter(s), the agent certifies that it is acting on the exporter's behalf and will use due diligence to forward the refund to the exporter, and, in the event the agent does not forward the refund to the exporter, will notify Customs and return the refund to Customs within one year of its receipt of the refund. Upon receipt of the signed Report/Certification or Revised Report/Certification, Customs releases, waives, and abandons all claims other than fraud against the exporter, its officers, agents, or employees arising out of all payments approved for refund in the report.

(C) *Documentation.* For payments made prior to July 1, 1990, supporting documentation is required to obtain a refund and must be submitted in accordance with paragraphs (e)(4)(iv)(A) and/or (B)(*3*) of this section. For payments made on and after July 1, 1990, supporting documentation is not required to obtain a refund, unless the exporter seeks to prove corrections of payments listed in the Report/Certification (if the exporter did not sign and return it to Customs) and/or additional payments not listed in a Report/Certification, in accordance with paragraph (e)(4)(iv)(B)(*3*) of this section. The supporting documentation that Customs will accept as establishing entitlement to a refund, whether submitted with a refund request or a request for a Revised Report/Certification, is whichever of the following documents Customs accepted with the payment at the time it was made: a copy of the Export Vessel Movement Summary Sheet; where an Automated Summary Monthly Shipper's Export Declaration was filed, a copy of a letter containing the exporter's identification, its employer identification number (EIN), the Census Bureau reporting symbol, and, the quarter for which the payment was made; or a copy of a Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349, for the quarter covering the refund requested. Customs also will consider other documentation offered as proof of payment of the fee, such as cancelled checks and/or affidavits from exporters attesting to the fact that all quarterly harbor maintenance tax payments made by the exporter were made exclusively for exports, and will accept that other documentation as establishing entitlement for a refund only if it clearly proves the payments were made for export harbor maintenance fees in the amounts sought to be refunded and were made by the party requesting the refund or the party on whose behalf the refund was requested.

(f) *Quarterly payments.* All quarterly payments required by this section must be received no later than 31 days after the close of the quarter being paid. Quarterly periods end on the last day of March, June, September, and December.

(g) *Maintenance of records.* Each importer, applicant for admission of cargo into a foreign trade zone, shipper and cruise vessel operator affected by this section shall maintain all such documentation necessary for Customs to verify the accuracy of fee computations and to otherwise determine compliance under the law. Such documentation shall be maintained for a period of 5 years from the date of fee calculation. The affected parties shall advise the Director, Accounting Services—Accounts Receivable, P.O. Box 68903, Indianapolis, Indiana 46268, of the name, address, and telephone number of a responsible officer who shall be able to verify any records required to be maintained under this paragraph. The Director of Accounting Services, shall be promptly notified of any changes in the identifying information submitted. The records shall be maintained and made available for inspection, copying, reproduction or other official use by Customs in accordance with the provisions of part 163 of this chapter.

(h) *Penalties/liquidated damages for failure to pay harbor maintenance fee and file summary sheet.* (1) *Amount of penalty or damages.* Any party (including the importer, or shipper) who fails to pay the harbor maintenance fee and file the summary sheet at the time specified by

regulation shall incur a penalty equal to the amount of liquidated damages assessable for late filing of an entry summary pursuant to the provisions of § 142.15 of this chapter. An importer shall be liable for payment of liquidated damages under the basic importation and entry bond, for failure to pay the harbor maintenance fee, as provided in such bond.

(2) *Application for relief*. The party shall follow the procedures set forth in part 171 of this chapter in filing an application for relief. Any application to cancel liquidated damages incurred shall be made in accordance with part 172 of this chapter.

(3) *Mitigation*. Any penalty assessed under this provision shall be mitigated in a manner consistent with guidelines relating to cancellation of claims for liquidated damages for late filing of entry summaries. Any liquidated damages assessed under this provision shall be mitigated in a manner consistent with guidelines published by the authority of the Commissioner of Customs for cancellation of claims for untimely payment of estimated duties, taxes and charges.

(i) *Privacy Act notice*. Whenever an identification number is requested on the summary sheets provided for in paragraph (e) of this section, the disclosure of the social security number is mandatory when an internal revenue service number is not disclosed. Identification numbers are solicited under the authority of Executive Order 9397 and Pub. L. 99–662. The identification number provides unique identification of the party liable for the payment of the harbor maintenance fee. The number will be used to compare the information on the summary sheets with information submitted to the government on other forms required in the course of shipping or importing merchandise, which contain the identification number, *e.g.*, Vessel Operation Report, to verify that the information submitted is accurate and current. Failure to disclose an identification number may cause a penalty pursuant to paragraph (h) of this section. The above information is set forth pursuant to the Privacy Act of 1974 (Pub. L. 93–579).

[T.D. 87–44, 52 FR 10201, Mar. 30, 1987; 52 FR 10970, Apr. 6, 1987, as amended by T.D. 91–44, 56 FR 21446, May 9, 1991; T.D. 92–4, 57 FR 609, Jan. 8, 1992; T.D. 92–7, 57 FR 2457, Jan. 22, 1992; T.D. 93–37, 58 FR 30983, May 28, 1993; T.D. 97–45, 62 FR 30449, June 4, 1997; 62 FR 45157, Aug. 26, 1997; 62 FR 51774, Oct. 3, 1997; T.D. 98–64, 63 FR 40823, July 31, 1998; T.D. 99–64, 64 FR 43266, Aug. 10, 1999; T.D. 00–57, 65 FR 53574, Sept. 5, 2000; T.D. 01–25, 66 FR 16857, Mar. 28, 2001; T.D. 01–34, 66 FR 21086, Apr. 27, 2001; T.D. 01–46, 66 FR 34818, July 2, 2001; T.D. 02–24, 67 FR 31953, May 13, 2002]

§ 24.25 Statement processing and Automated Clearinghouse.

(a) *Description*. Statement processing is a voluntary automated program for participants in the Automated Broker Interface (ABI), allowing the grouping of entry/entry summaries and entry summaries on a daily basis. The related duties, taxes, fees, and interest may be paid with a single payment. The preferred method of payment is by Automated Clearinghouse (ACH) debit or ACH credit, except where the importer of record has provided a separate check payable to the ''U.S. Customs Service'' for Customs charges (duties, taxes, or other debts owed Customs (see § 111.29(b) of this chapter)). A particular statement payment must be accomplished entirely through ACH or completely by check or cash. A mixing of payment methods for a single statement will not be accepted. ACH debit (see paragraph (b)(2) of this section) is an arrangement in which the filer electronically provides payment authorization for the Treasury-designated ACH processor to perform an electronic debit to the payer's bank account; ACH credit is described in § 24.26. The payment amount will then be automatically credited to the account of the Department of the Treasury. If a filer chooses to use statement processing for entries of quota-class merchandise and other special classes of merchandise designated by Customs Headquarters under § 142.13(b) of this chapter, he must also use statement processing as a normal course of business for the largest possible portion (see § 24.25(d)) of his eligible non-special class entries; further, he must use the ACH payment

mechanism to pay all his ABI statements containing entries for quota-class merchandise. In no circumstance will check or cash be acceptable for payment of ABI statements containing entries for quota-class merchandise.

(b) *How to elect participation*—(1) *Statement processing.* An ABI filer must notify Customs in writing of the intention to utilize statement processing.

(2) *Automated Clearinghouse debit.* If an ABI filer pays his statements through ACH debit, rather than by check, he must provide to Customs the bank routing number and the bank account number for each account from which ACH payments are to be electronically debited. Upon the determination by Customs that the ABI filer has the necessary software to participate and otherwise qualifies to participate in ACH, Customs shall assign a unique identifying payer's unit number to the participant and the Treasury-designated ACH processor. This unique number assigned by Customs will alert the ACH processor as to which bank and account to issue the electronic debit. If a client of a ABI filer opts to pay Customs charges from his own account through an ABI filer, the client must provide directly to Customs the bank transit routing number and the bank account number for each of his accounts from which ACH payments can be electronically debited. Customs will then assign a unique payer's unit number to each of his accounts and provide the assigned unit number directly to the client and the Treasury-designated ACH processor. The client would then provide the appropriate payer's unit number to his broker to pay his statements through ABI. It is the responsibility of the participant to ensure that all bank account information is accurate and that the correct unique payer's unit number is utilized for each ACH transaction.

(c) *Procedure for filer.* (1) The filer shall transmit entry/entry summary and entry summary data through ABI indicating whether payment for a particular entry summary will be by individual check or by using statement processing. If statement processing is indicated, the filer shall designate whether the entry summary is to be grouped by importer or broker, and shall provide a valid scheduled statement date (within 10 days of entry, but not a Saturday, Sunday or holiday).

(2) Customs shall provide a preliminary statement to the ABI filer on the scheduled statement date. The preliminary statement shall contain all entry/entry summaries and entry summaries scheduled for that statement date. The preliminary statement shall be printed by the filer, who will review the statement entries and the statement totals, assemble the required entry summaries as listed in the statement, and present them to Customs with the preliminary statement. This presentation must be made within 10 working days after entry of the merchandise. If a filer elects to perform deletions from the preliminary statement (other than items related to special classes of merchandise provided for in §142.13(b) of this chaper), the filer shall notify Customs in such manner as designated by Customs Headquarters. Any entry number deleted from a statement may be paid by an individual check or scheduled for another statement by transmitting the entry summary data through ABI with a future payment date.

(3) The ABI filer using statement processing is responsible for ensuring that payment is made within 10 days of the entry of the related merchandise.

(4) When payments are made through ACH, Customs shall, upon acceptance of the ACH debit payment authorization or ACH credit payment, identify the preliminary statement as paid and shall post the appropriate amounts to the related entries. The final statement generally shall be available to the filer the day following the acceptance of the ACH payment; this final statement may be utilized as evidence that statement payment has occurred through an ACH transaction. In other instances, a cancelled check may serve as evidence of payment.

(d) *Choice of excluding certain entries from statement processing.* An ABI filer using statement processing, generally, has the right to inform Customs electronically whether he desires that a particular entry summary be paid by individual payment or through statement processing. If a filer opts to use statement processing for entry/entry

summaries for quota-class and other special classes of merchandise defined in § 142.13(b) of this chapter, he shall use statement processing in the normal course of business for the largest possible portion of his eligible non-special class entries also; further, he shall pay for these entry/entry summaries through ACH. If a filer opts to use statement processing and, therefore, ACH for entry/entry summaries for special classes of merchandise defined in § 142.13(b) of this chapter, these entry/entry summaries cannot be deleted from a statement. A filer who excludes or deletes entries from the statement process and ACH should be prepared to articulate a sound business reason why these exclusions or deletions have occurred. If Customs believes that a broker is using ACH for his quota-class entries and not using statement processing and ACH for the largest possible portion of his eligible non-special class entries, the ABI participant may be consulted by Customs as to why he has not used statement processing and ACH for certain entries. If Customs is not satisfied, after such consultation, that there were sound articulable business reasons for the exclusion or deletion of non-special class entries, Customs may disqualify the participant from using statement processing/ACH for quota-class entries.

(e) *Scheduled statement date.* Entry/entry summaries and entry summaries must be designated for statement processing within 10 working days after the date of entry. It is the responsibility of the ABI filer using statement processing to ensure that the elected scheduled statement date is within that 10-day timeframe. Customs will not warn the filer if the scheduled statement date given is late.

[T.D. 89–104, 54 FR 50497, Dec. 7, 1989, as amended by T.D. 98–51, 63 FR 29125, May 28, 1998; T.D. 99–75, 64 FR 56439, Oct. 20, 1999; CBP Dec. 03–13, 68 FR 43630, July 24, 2003]

§ 24.26 Automated Clearinghouse credit.

(a) *Description.* Automated Clearinghouse (ACH) credit is an optional payment method that allows a payer to transmit statement processing payments (see § 24.25) or deferred tax payments (see § 24.4) or bill payments (see § 24.3) electronically, through its financial institution, directly to the Customs account maintained by the Department of the Treasury.

(b) *Enrollment procedure.* A payer interested in enrolling in the ACH credit program must indicate such interest by providing the following information to the Financial Management Services Center, U.S. Customs Service, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278: Payer name and address; payer contact name(s); payer telephone number(s) and facsimile number; payer identification number (importer number or Social Security number or Customs assigned number); and 3-digit filer code.

(c) *Routing and format instructions.* Following receipt of the enrollment information, the Financial Management Services Center will provide the payer with specific ACH credit routing and format instructions and will advise the payer that the following information must be provided to its financial institution when originating its payments: Company name; company contact person name and telephone number; company identification number (coded Internal Revenue Service employer identification number or DUNS number or Customs assigned number); company payment description; effective date; receiving company name; transaction code; Customs transit routing number and Customs account number; payment amount; payer identifier (importer number or Social Security number or Customs assigned number or filer code if the payer is a broker who is the importer of record); document number (daily statement number, entry or warehouse withdrawal number for a deferred tax payment, or bill number); payment type code; settlement date; and document payment amount.

(d) *Prenotification procedure.* Before effecting any payments of funds through the ACH credit process, the payer must follow a prenotification procedure, involving a non-funds message transmission through its financial institution to the Customs account, in order to validate the routing instructions. When the routing instructions are validated, the Financial Management Services Center will notify the

payer that the prenotification transaction has been accepted and that payments may be originated on or after the tenth calendar day following the prenotification acceptance date.

(e) *Payment origination procedures.* (1) *General.* Once the payer has received authorization to begin originating ACH credit payments under paragraph (d) of this section, the payer, through its financial institution, must originate each payment transaction to the Customs account no later than one business day prior to the payment due date. The payer's account will be charged by the financial institution on the settlement date identified in the transaction. The payer is responsible for following the routing and format instructions provided by Customs and for ensuring the accuracy of the information when originating each payment. Improperly formatted or erroneous information provided by the payer will delay the prompt posting of the payment to the receivable.

(2) *Procedures for daily statement filers.* The procedures set forth in § 24.25(c) for ABI filers using statement processing remain applicable when payment is effected through ACH credit. However, when the ABI filer is a customs broker who is not the importer of record and thus is not responsible for the payment, the ABI filer must provide the statement number and statement amount to the importer of record at least one business day prior to the due date so that the importer of record can originate the payment.

(f) *Date of collection.* The date that the ACH credit payment transaction is received by Customs shall be the collection date which equates to the settlement date. The appropriate daily statement or entry or warehouse withdrawal or bill shall be identified as paid as of that collection date.

(g) *Removal from the ACH credit program.* If a payer repeatedly provides improperly formatted or erroneous information when originating ACH credit payments, the Financial Management Services Center may advise the payer in writing to refrain from using ACH credit and to submit its payments by bank draft or check pursuant to § 24.1 or, in the case of daily statement payments, to use the ACH debit payment method under § 24.25.

[T.D. 98–51, 63 FR 29125, May 28, 1998]

§ 24.32 Claims; unpaid compensation of deceased employees and death benefits.

(a) A claim made by a designated beneficiary or a surviving spouse for unpaid compensation due an officer or employee at the time of his death shall be executed on standard Form 1153, Claim of Designated Beneficiary and/or Surviving Spouse for Unpaid Compensation of Deceased Civilian Employee. A claim made by anyone other than a designated beneficiary or surviving spouse for unpaid compensation due an officer or employee at the time of his death shall be executed on standard Form 1155, Claim for Unpaid Compensation of Deceased Civilian Employee. The claims shall be forwarded to the Customs office where the deceased was employed.

(b) Claims for death benefits, either in the form of an annuity or lump-sum payment of the amount to the credit of the deceased officer or employee in the Retirement and Disability Fund shall be executed on standard Form 100, Application for Death Benefit, and forwarded together with a certified copy of the public record of death directly to the Office of Personnel Management, Washington, DC 20415.

[28 FR 14808, Dec. 31, 1963, as amended by T.D. 91–77, 56 FR 46114, Sept. 10, 1991]

§ 24.34 Vouchers; vendors' bills of sale; invoices.

(a) Vouchers or invoices for transportation and related services which are intended for payment from official funds shall contain the following certification signed by the claimant:

> I certify that the above bill is correct and just and that payment has not been received.

Vouchers, vendors' bills of sale, or invoices for purchases or services other than personal do not require the foregoing certification.

(b) Every voucher shall be in the name of the person or persons furnishing the service or supplies, except in the case of a service or supplies paid for in an emergency by a Customs officer or employee, in which case the

voucher may be in the name of the officer or employee who made the payment.

(c) The signature of a claimant made by a mark shall be attested in each case by a disinterested witness.

(d) The dates appearing on vouchers and on receipts filed in support thereof shall always be the actual dates of the transactions recorded or action taken thereon. As many copies in memorandum form, duly authenticated if desired, may be prepared as administrative or other requirements demand.

(e) When an erasure, interlineation, or change of any kind is made in a voucher after it has been certified by the claimant, such correction or change shall be initialed and dated by the claimant.

(f)(1) Vouchers for passenger transportation furnished Customs officers or employees on Government transportation requests, standard Form 1169, and vouchers for transportation of freight and express furnished on Government bills of lading, standard Form 1103, issued by Customs officers or employees shall be rendered on Public Voucher for Transportation Charges, standard Form 1171 or 1113, respectively, to the Customs office to be billed as indicated on the transportation request or bill of lading.

(2) Charges for freight or express must not be included on the same vouchers with charges for passenger transportation. The words ''Passenger,'' ''Freight,'' or ''Express,'' as the case may be, should be printed or otherwise placed by the carrier immediately above the title of the voucher form. Original Government bills of lading, standard Form 1103, or transportation requests, standard Form 1169, or certificates in lieu thereof, standard Forms 1108 or 1172, respectively, shall be attached to these vouchers.

§ 24.36 Refunds of excessive duties, taxes, etc.

(a) When it is found upon, or prior to, liquidation or reliquidation of an entry or reconciliation that a refund of excessive duties, taxes, fees or interest (at the rate determined in accordance with § 24.3a(c)(1)) is due, a refund shall be prepared in the name of the person to whom the refund is due, as determined under paragraphs (b) and (c) of this section. If an authority to mail checks to someone other than the payee, Customs Form 4811, is on file, the address of the payee shall be shown as in care of the address of the authorized persons. If a power of attorney is on file, the address of the payee may be shown as in care of the address of such attorney, if requested. A Form 4811 received by Customs will not be effective if a Customs transaction requiring the use of the owner's importer number has not been made within 3 years from the date the Form 4811 was filed or if there is no unliquidated entry on file to which such number is to be associated. For purposes of this section:

(1) Except as otherwise provided in paragraphs (a)(1)(i) through (a)(1)(iii) of this section, the refund shall include interest on the excess moneys deposited with Customs, and such interest shall accrue from the date the duties, taxes, fees or interest were deposited or, in a case in which a proper claim is filed under 19 U.S.C. 1520(d) and subpart D of Part 181 of this chapter, from the date such claim is filed, to the date of liquidation or reliquidation of the applicable entry or reconciliation. An example follows:

Example: Entry liquidates for a refund

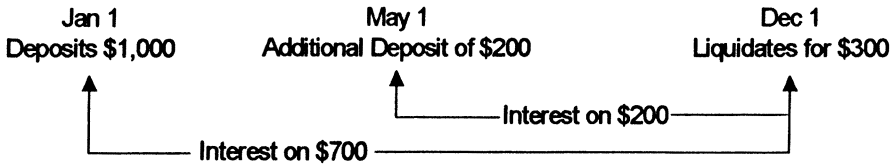
Importer is owed a refund of $600 plus interest as follows:

The importer makes a $1,000 initial deposit (January 1) and the entry liquidates for $400

(December 1). Upon liquidation, the importer will be owed a refund of $600 plus interest. The interest will accrue from the date of deposit (January 1) to the date of liquidation (December 1).

(i) If an additional deposit of duties, taxes, fees or interest was made prior to liquidation or reliquidation and if any portion of that additional deposit was in excess of the amount required to be deposited, in addition to any other interest accrued under this paragraph (a)(1), the refund also shall include interest accrued on the excess additional deposit from the date of the additional deposit to the date of liquidation or reliquidation of the applicable entry or reconciliation. An example follows:

Example: Additional deposit made and entry liquidates for a refund

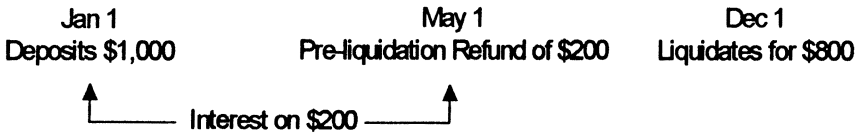


Importer is owed a refund of $900 plus interest as follows:
The importer makes a $1,000 initial deposit (January 1) and an additional pre-liquidation deposit of $200 (May 1) and the entry liquidates for $300 (December 1). Upon liquidation, the importer will be refunded $900 plus interest. The interest accrues in two segments: (1) On the additional deposit overpayment ($200), from the date of the additional deposit (May 1) to the date of liquidation (December 1); and (2) on the initial deposit overpayment ($700), from the date of deposit (January 1) to the date of liquidation (December 1).

(ii) In the case of a refund of duties, taxes, fees or interest made prior to liquidation, such a refund will include only principal amounts and not any interest thereon. Interest on such principal amounts will be computed at the time of liquidation or reliquidation and shall accrue as follows:

(A) Interest shall only accrue on the amount refunded from the date the duties, taxes, fees or interest were deposited to the date of the refund if the amount refunded is determined upon liquidation or reliquidation of the applicable entry or reconciliation to constitute the true excess amount deposited with Customs. An example follows:

Example: Pre-liquidation refund and entry liquidates for net amount collected

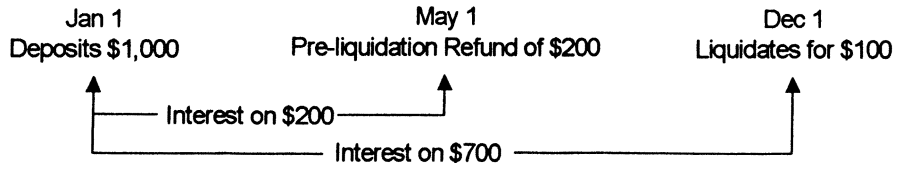


Importer is owed a refund of interest on $200 as follows:
The importer makes a $1,000 initial deposit (January 1) and receives a pre-liquidation refund of $200 (May 1) and the entry liquidates for $800 (December 1). Upon liquidation, the importer will be refunded interest on the $200 overpayment from the date of the initial deposit (January 1) to the date of the pre-liquidation refund (May 1).

(B) If the amount refunded is determined upon liquidation or reliquidation of the applicable entry or reconciliation to constitute less than the true excess amount deposited with Customs, in addition to any other interest accrued under this paragraph (a)(1), interest also shall accrue on the remaining excess deposit from the date the

duties, taxes, fees or interest were deposited to the date of liquidation or reliquidation. An example follows:

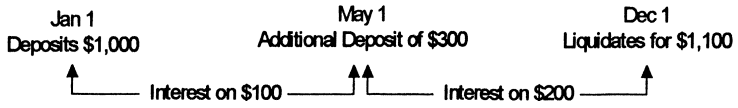
Example: Pre-liquidation refund and entry liquidates for an additional refund



Importer is owed a refund of $700 plus interest as follows:
The importer makes a $1,000 initial deposit (January 1) and receives a pre-liquidation refund of $200 (May 1) and the entry liquidates for $100 (December 1). Upon liquidation, the importer will be refunded $700 plus interest. The interest accrues in two segments: (1) On the pre-liquidation refund ($200), from the date of deposit (January 1) to the date of the pre-liquidation refund (May 1); and (2) on the remaining overpayment ($700), from the date of deposit (January 1) to the date of liquidation (December 1).

(C) If an entry or reconciliation is determined upon liquidation or reliquidation to involve both an initial underpayment and an additional excess deposit, interest in each case shall be computed separately and the resulting amounts shall be netted for purposes of determining the final amount of interest to be reflected in the refund. An example follows:

Example: Additional deposit made and entry liquidates for a refund



Importer is owed a refund of $200 plus or minus net interest as follows:
The importer makes a $1,000 initial deposit on the required date (January 1) and an additional pre-liquidation deposit of $300 (May 1) and the entry liquidates for $1,100 (December 1). Upon liquidation, the importer will be refunded $200 plus or minus net interest. The interest accrues in two segments: (1) Interest accrues in favor of the Government on the initial underpayment ($100) from the date deposit was required (January 1) to the date of the additional deposit (May 1); and (2) interest accrues in favor of the importer on the overpayment ($200) from the date of the additional deposit (May 1) to the date of liquidation (December 1).

(D) If the amount refunded or any portion thereof exceeds the amount properly refundable as determined upon liquidation or reliquidation of the applicable entry or reliquidation, the excess amount refunded shall be treated as an underpayment of duties, taxes, fees or interest on which interest shall accrue as provided in § 24.3a.

(2) A refund determined to be due upon liquidation or reliquidation, including a refund consisting only of interest that has accrued in accordance with paragraph (a)(1)(ii) of this section, shall be paid within 30 days of the date of liquidation or reliquidation of the applicable entry or reconciliation.

(3) If a refund, including any interest thereon, is not paid in full within the applicable 30-day period specified in paragraph (a)(2) of this section, the refund shall be considered delinquent thereafter and interest shall accrue on the unpaid balance by 30-day periods until the full balance is paid. However, no interest will accrue during the 30-day period in which the refund is paid.

(b) Refunds of excessive duties, taxes, fees or interest shall be certified for

payment to the importer of record unless a transferee of the right to withdraw merchandise from bonded warehouse is entitled to receive the refund under section 557(b), Tariff Act of 1930, as amended, or an owner's declaration has been filed in accordance with section 485(d), Tariff Act of 1930, or a surety submits evidence of payment to Customs, upon default of the principal, of amounts previously determined to be due on the same entry or transaction. The certification of a refund for payment to a nominal consignee may be made prior to the expiration of the 90-day period within which an owner's declaration may be filed as prescribed in section 485(d) of the Tariff Act, provided the nominal consignee waives in writing his right to file such declaration. If an owner's declaration has been duly filed, the refund shall be certified for payment to the actual owner who executed the declaration, except that, irrespective of whether an owner's declaration has been filed, refunds shall be certified for payment to a transferee provided for in section 557(b), Tariff Act of 1930, as amended, if the moneys with respect to which the refund was allowed were paid by such transferee. If a surety submits evidence of payment to Customs, upon default of the principal, for an amount previously determined to be due on an entry or transaction the refund shall be certified to that surety up to the amount paid by it or shall be applied to other obligations of the surety.

(c) If the nominal consignee has become bankrupt, refunds of duties, taxes, fees or interest on merchandise entered in the name of such nominal consignee for the account of the actual owner shall be withheld from payment pending the receipt of a claim therefor and the establishment of rights thereto, unless the declaration of the actual owner has been filed with the port director under section 485(d), Tariff Act of 1930.

(d) The authority of port directors to make refunds pursuant to paragraphs (a), (b), and (c) of this section of excessive deposits of alcohol or tobacco taxes, as defined in section 6423(e)(1), Internal Revenue Code of 1954 (26 U.S.C. 6423(e)(1)), is confined to cases of the types which are excepted from the application of section 6423, Internal Revenue Code of 1954 (26 U.S.C. 6423). The excepted types of cases and, therefore, the types in which the port director is authorized to make refunds of such taxes are those in which:

(1) The tax was paid or collected on an article imported for the personal or household use of the importer;

(2) The refund is made pursuant to provisions of laws and regulations for drawback;

(3) The tax was paid or collected on an imported article withdrawn from the market, returned to bond, or lost or destroyed, when any law expressly provides for refund in such case;

(4) The tax was paid or collected on an imported article which has been lost, where a suit or proceeding was instituted before June 15, 1957;

(5) The refund of tax is pursuant to a claim based solely on errors of computation of the quantity of the imported article, or on mathematical errors in computation of the tax due;

(6) The tax was paid or collected on an imported article seized and forfeited, or destroyed, as contraband;

(7) The tax was paid or collected on an imported article refused admission to Customs territory and exported or destroyed in accordance with section 558, Tariff Act of 1930, as amended;

(8) The refund of tax is pursuant to a reliquidation of an entry under section 520(c)(1), Tariff Act of 1930, as amended, and does not involve a rate of tax applicable to an imported article; or

(9) The tax was paid or collected on a greater quantity of imported articles than that actually imported and the fact of the deficiency is established to the port directors' satisfaction before liquidation of the entry becomes final.

(e) In any instance in which a refund of an alcohol or tobacco tax is not of a type covered by paragraph (d) of this section the following procedure shall apply:

(1) The port director shall issue a notice of refund for duty only and shall place the following statement on the notice of refund issued for duty: ''Claim or refund of any overpayment of internal revenue tax on this entry must be executed and filed with the assistant regional commissioner (alcohol, tobacco and firearms) of the internal

revenue region in which the claimant is located, in accordance with internal revenue regulations (Title 26 of the Code of Federal Regulations).'' On request of the claimant, the port director shall issue a certified statement on Customs letterhead identifying the entry, showing the amount of internal revenue tax deposited with respect to each entry for which a claim on internal revenue Form 843 is to be made, and showing the date of issuance of the notice of refund of duty.

(2) The claim shall be executed on internal revenue Form 843 (original only) which may be procured from offices of the Internal Revenue Service and shall be filed with the assistant regional commissioner (alcohol, tobacco and firearms) of the internal revenue region in which the claimant is located. The certified statement shall be attached to and filed in support of such claim which may include refunds under more than one entry but shall be limited to refunds under entries filed at the same port and the same internal revenue region. The data to be shown on the claim shall be as prescribed in internal revenue regulations, with the exception that any data on the certified statement also required to be shown in the claim need not be restated in the claim.

(3) The date of allowance of refund or credit in respect of such tax for the purposes of section 6407, Internal Revenue Code of 1954 (26 U.S.C. 6407) shall be that date on which a claim is perfected and the refund is authorized for scheduling under the applicable internal revenue regulations.

[28 FR 14808, Dec. 31, 1963, as amended by T.D. 67–33, 32 FR 494, Jan. 18, 1967; T.D. 71–289, 36 FR 23150, Dec. 4, 1971; T.D. 89–1, 53 FR 51254, Dec. 21, 1988; T.D. 99–27, 64 FR 13675, Mar. 22, 1999; T.D. 99–75, 64 FR 56439, Oct. 20, 1999]

§ 24.70 Claims; deceased or incompetent public creditors.

(a) Claims for amounts due individual deceased public creditors of the United States (except civilian officers and employees subject to the provisions of section 61f–61k, Title 5, United States Code), should be made on standard Form No. 1055—Revised. Such claims include claims for payments due deceased contractors for articles furnished or services performed, and claims for payments due deceased importers or owners of merchandise on account of refunds of excessive duties, or taxes, or for payment of drawback, etc. Claims for payment of Government checks drawn on the Treasurer of the United States or other authorized Government depositary to the order of such public creditors, which cannot be paid because of the death of the payee, should be stated on standard Form 1055—Revised. Information should be furnished regarding the disposition of these checks in case they are not in possession of the claimant, otherwise they should accompany the claim.

(b) No form is prescribed for use of a guardian or committee of an estate of an incompetent in making claim for sums due from the United States. Such guardian or committee may submit in letter form, over his address and signature, an application for amounts due an estate of an incompetent, setting forth the incompetent's connection with the United States Customs Service. This application should be supported by a short certificate of the court showing the appointment and qualification of the claimant as guardian or committee. In case the total amount due the estate of the incompetent is small, and no guardian or committee of the estate has been or will be appointed, the application may be submitted by the person or persons having care or custody of the incompetent, or by close relatives who will hold any amount found due for the use and benefit of the incompetent. Applications for recurring payments need not be accompanied by an additional certificate of the court, but should be supported by a statement that the appointment is still in full force and effect. All Government checks drawn on the Treasurer of the United States or other authorized Government depository to the order of individuals which cannot be paid because of incompetency of the payee should accompany the claim, otherwise an explanation should be given as to the disposition of the check.

(c) Claims for payments due deceased or incompetent contractors should be submitted to the Customs field officer

at whose order the articles were furnished or services performed. Claims for refunds of excessive duties, or taxes, or for payment of drawback and other similar claims due deceased or incompetent public creditors shall be submitted to the port director. The Customs field officer may grant necessary assistance to claimants to insure proper execution of standard Form 1055—Revised in the case of deceased public creditors, and in the case of incompetent public creditors to insure submission of the application in proper form. The port director shall settle the claim unless there is a doubtful question of fact or law, in which case the claim shall be forwarded to the Accounting Services Division, Accounts Receivable Group, Indianapolis, Indiana, with originals or certified copies of any necessary documents and with an appropriate report and recommendation.

[28 FR 14808, Dec. 31, 1963, as amended by T.D. 68–142, 33 FR 8225, June 1, 1968; T.D. 91–77, 56 FR 46114, Sept. 10, 1991]

§ 24.71 Claims for personal injury or damages to or loss of privately owned property.

Procedures for the settlement of claims arising from actions of Treasury Department employees are published in 31 CFR part 3.

§ 24.72 Claims; set-off.

When an importer of record or other party has a judgment or other claim allowed by legal authority against the United States, and he is indebted to the United States, either as principal or surety, for an amount which is legally fixed and undisputed, the port director shall set off so much of the judgment or other claim as will equal the amount of the debt due the Government.

[T.D. 56388, 30 FR 4671, Apr. 10, 1965]

§ 24.73 Miscellaneous claims.

Every claim of whatever nature arising under the Customs laws which is not otherwise provided for shall be forwarded directly to Headquarters, U.S. Customs Service, together with all supporting documents and information available.

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

METAL ARTICLES IMPORTED TO BE USED IN REMANUFACTURE BY MELTING, OR TO BE PROCESSED BY SHREDDING, SHEARING, COMPACTING, OR SIMILAR PROCESSING WHICH RENDERS THEM FIT ONLY FOR THE RECOVERY OF THE METAL CONTENT

Sec.
54.5 Scope of exemptions; nondeposit of estimated duty.
54.6 Proof of intent; bond; proof of use; liquidation.

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 23; Section XV, Note 5, Harmonized Tariff Schedule of the United States), 1623, 1624.

METAL ARTICLES IMPORTED TO BE USED IN REMANUFACTURE BY MELTING, OR TO BE PROCESSED BY SHREDDING, SHEARING, COMPACTING, OR SIMILAR PROCESSING WHICH RENDERS THEM FIT ONLY FOR THE RECOVERY OF THE METAL CONTENT

§ 54.5 Scope of exemptions; nondeposit of estimated duty.

(a) Except as otherwise provided in this section, articles predominating by weight of metal to be used in remanufacture by melting, or to be processed by shredding, shearing, compacting, or similar processing which renders them fit only for the recovery of the metal content, and actually so used, shall be entitled to free entry upon compliance with § 54.6, if entered, or withdrawn from warehouse for consumption, during the effective period of subheadings 9817.00.80 and 9817.00.90, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202). This provision does not apply to:

(1) Articles of lead, zinc, or tungsten;

(2) Metal-bearing materials provided for in section VI, Chapter 26 or subheading 8548.10, HTSUS; or

(3) Unwrought metal provided for in Section XV, HTSUS.''

(b) No deposit of estimated duty shall be required upon the entry, or withdrawal from warehouse for consumption, of the articles described in paragraph (a) of this section if the port director is satisfied at the time of entry, or withdrawal, by written declaration of the importer that the merchandise is being imported to be used in remanufacture by melting, or to be processed

by shredding, shearing, compacting, or similar processing which renders it fit only for the recovery of the metal content.

[T.D. 80–151, 45 FR 38041, June 6, 1980, as amended by T.D. 87–75, 52 FR 20067, May 29, 1987; T.D. 89–1, 53 FR 51254, Dec. 21, 1988; T.D. 98–4, 62 FR 68165, Dec. 31, 1997]

§ 54.6 Proof of intent; bond; proof of use; liquidation.

Articles predominating by weight of metal, described in § 54.5(a) shall be admitted free of duty upon compliance with the following conditions:

(a) There shall be filed in connection with the entry a statement of the importer consistent with the requirements of § 10.134 of this chapter.

(b) If the articles are entered for consumption or warehouse, a bond shall be filed on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. Withdrawals from warehouse shall be made on Customs Form 7501. The liquidation of the consumption or warehouse entry shall be suspended pending proof of use or other disposition of the articles within the time prescribed in paragraph (c) of this section.

(c) Within 3 years from the date of entry, or withdrawal from warehouse for consumption, the importer shall submit to the director of the port of entry, a statement from the superintendent or manager of the plant at which the articles were used in remanufacture by melting, or were processed by shredding, shearing, compacting, or similar processing which rendered them fit only for the recovery of the metal content, showing:

(1) The name and location of the plant;

(2) The entry number, date, and port of entry (if the person making the statement is not in possession of this information, a reference to invoices, purchase orders, or other documents which will identify the shipment with the entry may be substituted);

(3) The date or inclusive dates of the remanufacture or processing of the articles; and

(4) A description of the remanufacture or processing in sufficient detail to enable the port director to determine whether it constituted a use in remanufacture by melting, or processing by shredding, shearing, compacting, or similar processing which rendered the articles fit only for the recovery of the metal content. In appropriate cases, the remanufacture or processing of the articles covered by more than one entry may be included in one statement. The statement shall be based on adequate and carefully kept plant and import records which shall be available during normal business hours to any Customs officer. The importer and plant manager shall maintain the import and plant records for 5 years from the date of the related entry of the merchandise. The burden shall be on the importer or plant manager to keep these records so that the claim of actual use can be established readily.

(d) If satisfactory proof of use of the articles in remanufacture by melting, or in processing by shredding, shearing, compacting, or similar processing which rendered them fit only for the recovery of the metal content, is furnished within the prescribed time, the entry shall be liquidated without the assessment of duty on the covered articles. If proof is not filed within 3 years from the date of entry, or withdrawal from warehouse for consumption, or the use does not warrant the classification claimed, the entry shall be liquidated without any exemption from duty under subheading 9817.00.80 or 9817.00.90, HTSUS.

As used in this section, the phrase ''in connection with the entry'' means any time before liquidation of the entry or within the period during which a reliquidation may be completed (§ 113.43(c)). Therefore, a claim for free entry under subheading 9817.00.80 or 9817.00.90, HTSUS, supported by a statement of intent may be filed at any time before liquidation of the entry or within the period during which a valid reliquidation may be completed.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 80–151, 45 FR 38041, June 6, 1980, as amended by T.D. 84–213, 49 FR 41170, Oct. 19, 1984; T.D. 87–75, 52 FR 20067, May 29, 1987; T.D. 89–1, 53 FR 51255, Dec. 21, 1988; T.D. 95–81, 60 FR 52295, Oct. 6, 1995]

PART 101—GENERAL PROVISIONS

Sec.
101.0 Scope.
101.1 Definitions.
101.2 Authority of Customs officers.
101.3 Customs service ports and ports of entry.
101.4 Entry and clearance of vessels at Customs stations.
101.5 Customs preclearance offices in foreign countries.
101.6 Hours of business.
101.7 Customs seal.
101.8 Identification cards.
101.9 Test programs or procedures; alternate requirements.

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Section 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

Section 101.5 also issued under 19 U.S.C. 1629;

Section 101.9 also issued under 19 U.S.C. 1411–1414.

SOURCE: T.D. 77–241, 42 FR 54937, Oct. 12, 1977, unless otherwise noted.

§ 101.0 Scope.

This part sets forth general regulations governing the authority of Customs officers, and the location of Customs ports of entry, service ports and Customs stations. It further sets forth regulations concerning the entry and clearance of vessels at Customs stations and a listing of Customs preclearance offices in foreign countries. In addition, this part contains provisions concerning the hours of business of Customs offices, the Customs seal, and the identification cards issued to Customs officers and employees.

[T.D. 77–241, 42 FR 54937, Oct. 12, 1977, as amended by T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 101.1 Definitions.

As used in this chapter, the following terms shall have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular part or portion thereof:

Business day. A ''business day'' means a weekday (Monday through Friday), excluding national holidays as specified in § 101.6(a).

Customs station. A ''Customs station'' is any place, other than a port of entry, at which Customs officers or employees are stationed, under the authority contained in article IX of the President's Message of March 3, 1913 (T.D. 33249), to enter and clear vessels, accept entries of merchandise, collect duties, and enforce the various provisions of the Customs and navigation laws of the United States.

Customs territory of the United States. ''Customs territory of the United States'' includes only the States, the District of Columbia, and Puerto Rico.

Date of entry. The ''date of entry'' or ''time of entry'' of imported merchandise shall be the effective time of entry of such merchandise, as defined in § 141.68 of this chapter.

Date of exportation. ''Date of exportation'' or ''time of exportation'' shall be as defined in § 152.1(c) of this chapter.

Date of importation. ''Date of importation'' means, in the case of merchandise imported otherwise than by vessel, the date on which the merchandise arrives within the Customs territory of the United States. In the case of merchandise imported by vessel, ''date of importation'' means the date on which the vessel arrives within the limits of a port in the United States with intent then and there to unlade such merchandise.

Duties. ''Duties'' means Customs duties and any internal revenue taxes which attach upon importation.

Entry or withdrawal for consumption. ''Entry or withdrawal for consumption'' means entry for consumption or withdrawal from warehouse for consumption.

Exportation. ''Exportation'' means a severance of goods from the mass of things belonging to this country with the intention of uniting them to the mass of things belonging to some foreign country. The shipment of merchandise abroad with the intention of returning it to the United States with a design to circumvent provisions of restriction or limitation in the tariff laws or to secure a benefit accruing to imported merchandise is not an exportation. Merchandise of foreign origin returned from abroad under these circumstances is dutiable according to its

nature, weight, and value at the time of its original arrival in this country.

Importer. ''Importer'' means the person primarily liable for the payment of any duties on the merchandise, or an authorized agent acting on his behalf. The importer may be:

(1) The consignee, or

(2) The importer of record, or

(3) The actual owner of the merchandise, if an actual owner's declaration and superseding bond has been filed in accordance with § 141.20 of this chapter, or

(4) The transferee of the merchandise, if the right to withdraw merchandise in a bonded warehouse has been transferred in accordance with subpart C of part 144 of this chapter.

Port and *port of entry*. The terms ''port'' and ''port of entry'' refer to any place designated by Executive Order of the President, by order of the Secretary of the Treasury, or by Act of Congress, at which a Customs officer is authorized to accept entries of merchandise to collect duties, and to enforce the various provisions of the Customs and navigation laws. The terms ''port'' and ''port of entry'' incorporate the geographical area under the jurisdiction of a port director. (The Customs ports in the Virgin Islands, although under the jurisdiction of the Secretary of the Treasury, have their own Customs laws (48 U.S.C. 1406(i)). These ports, therefore, are outside the Customs territory of the United States and the ports thereof are not ''ports of entry'' within the meaning of these regulations).

Principal field officer. A ''principal field officer'' is an officer in the field service whose immediate supervisor is located at Customs Service Headquarters.

Service port. The term ''service port'' refers to a Customs location having a full range of cargo processing functions, including inspections, entry, collections, and verification.

Shipment. ''Shipment'' means the merchandise described on the bill of lading or other document used to file or support entry, or in the oral declaration when applicable.

[T.D. 77–241, 42 FR 54937, Oct. 12, 1977, as amended by T.D. 84–213, 49 FR 41170, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984; T.D. 94–51, 59 FR 30294, June 13, 1994; T.D. 95–77, 60 FR 50011, Sept. 27, 1995; T.D. 99–57, 64 FR 40987, July 28, 1999]

§ 101.2 Authority of Customs officers.

(a) *Supremacy of delegated authority*. Action taken by any person pursuant to authority delegated to him by the Secretary of the Treasury, whether directly or by subdelegation, shall be valid despite the existence of any statute or regulation, including any provision of this chapter, which provides that such action shall be taken by some other person. Any person acting under such delegated authority shall be deemed to have complied with any statute or regulation which provides or indicates that it shall be the duty of some other person to perform such action.

(b) *Consolidation of functions*. Any reorganization of the Customs Service or consolidation of the functions of two or more persons into one office which results in the failure of a designated Customs officer to perform an action required by statute or regulation, shall not invalidate the performance of that action by any other Customs officer.

(c) *Customs supervision*. Whenever anything is required by the regulations in this chapter or by any provision of the customs or navigation laws to be done or maintained under the supervision of Customs officers, such supervision shall be carried out as prescribed in the regulations of this chapter or by instructions from the Secretary of the Treasury or the Commissioner of Customs in particular cases. In the absence of a governing regulation or instruction, supervision shall be direct and continuous or by such occasional verification as the principal Customs field officer shall direct if such officer shall determine that less intensive supervision will ensure proper enforcement of the law and protection of the revenue. Nothing in this section shall be deemed to warrant any failure to direct and furnish required supervision or to excuse any failure of a party in

interest to comply with prescribed procedures for obtaining any required supervision.

[T.D. 77–241, 42 FR 54937, Oct. 12, 1977, as amended by T.D. 98–22, 63 FR 11825, Mar. 11, 1998]

§ 101.3 Customs service ports and ports of entry.

(a) *Designation of Customs field organization*. The Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement), pursuant to authority delegated by the Secretary of the Treasury, is authorized to establish, rearrange or consolidate, and to discontinue Customs ports of entry as the needs of the Customs Service may require.

(b) *List of Ports of Entry and Service Ports*. The following is a list of Customs Ports of Entry and Service Ports. Many of the ports listed were created by the President's message of March 3, 1913, concerning a reorganization of the Customs Service pursuant to the Act of August 24, 1912 (37 Stat. 434; 19 U.S.C. 1). Subsequent orders of the President or of the Secretary of the Treasury which affected these ports, or which created (or subsequently affected) additional ports, are cited following the name of the ports.

(1) *Customs ports of entry*. A list of Customs ports of entry by State and the limits of each port are set forth below:

Ports of entry	Limits of port
Alabama	
Birmingham	
Huntsville	T.D. 83–196.
Mobile	Including territory described in T.D. 76–259.
Alaska	
Alcan	T.D. 71–210.
Anchorage	T.D.s 55295 and 68–50.
Dalton Cache	T.D. 79–74.
Fairbanks	E.O. 8064, Mar. 9, 1939 (4 FR 1191).
Juneau	
Ketchikan	Including territory described in T.D. 74–100.
Kodiak	T.D. 98–65.
Sitka	Including territory described in T.D. 55609.
Skagway	
Valdez	Including territory described in T.D. 79–201.
Wrangell	Including territory described in T.D. 56420.
Arizona	
Douglas	Including territory described in E.O. 9382, Sept. 25, 1943 (8 FR 13083).
Lukeville	E.O. 10088, Dec. 3, 1949 (14 FR 7287).
Naco	
Nogales	Including territory described in T.D. 77–285.
Phoenix	T.D. 71–103.
San Luis	E.O. 5322, Apr. 9, 1930.
Sasabe	E.O. 5608, Apr. 22, 1931.
Tucson	Including territory described in T.D. 89–102.
Arkansas	
Little Rock-North Little Rock	T.D. 70–146. (Restated in T.D. 84–126).
California	
Andrade	E.O. 4780, Dec. 13, 1927.
Calexico	
Eureka	
Fresno	Including territory described in T.D. 74–18.
+ Los Angeles-Long Beach	Including territory described in T.D. 78–130.
Port Hueneme	T.D. 92–10.
Port San Luis	T.D. 35546.
San Diego	T.D. 85–163.
+ San Francisco-Oakland	Including Benicia, Martinez, Richard, Sacramento, San Jose, and Stockton, T.D. 82–9.
San Jose	95–80
Tecate	E.O. 4780, Dec. 13, 1927.

Ports of entry	Limits of port
Colorado	
Denver	T.D. 80–180.
Connecticut	
Bridgeport	Including territory described in T.D. 68–224.
Hartford	Including territory described in T.D. 68–224.
New Haven	Including territory described in T.D. 68–224.
New London	Including territory described in T.D. 68–224.
Delaware	
Wilmington	Included in the Consolidated Port of the Delaware River and Bay described in T.D. 96–4.
District of Columbia	
Washington	Including territory described in T.D. 68–67.
Florida	
Fernandina Beach	Including St. Mary's, GA; T.D. 53033.
Fort Myers	T.D. 99–9
Jacksonville	T.D. 69–45.
Key West	Including territory described in T.D. 53994.
Miami	Including territory described in T.D. 53514.
Orlando	T.D. 76–306.
Orlando-Sanford Airport	T.D. 97–64.
Panama City	E.O. 3919, Nov. 1, 1923.
Pensacola	
Port Canaveral	Including territory described in T.D. 66–212.
Port Everglades	E.O. 5770, Dec. 31, 1931; including territory described in T.D. 53514. Mail: Fort Lauderdale, FL.
Port Manatee	T.D. 88–14.
St. Petersburg	E.O. 7928, July 14, 1938 (3 FR 1749); including territory described in T.D. 53994.
Tampa	Including territory described in T.D. 68–91.
West Palm Beach	E.O. 4324, Oct. 15, 1925; including territory described in T.D. 53514.
Georgia	
Atlanta	Including territory described in T.D. 55548.
Brunswick	Including territory described in T.D. 86–162.
Fernandina Beach, FL	Including St. Mary's, GA; T.D. 53033.
Savannah	Including territory described in E.O. 8367, Mar. 5, 1940 (5 FR 985).
Hawaii	
Hilo	T.D. 95–11.
Honolulu	Including territory described in T.D. 90–59.
Kahului	T.D. 95–11.
Nawiliwili-Port Allen	E.O. 4385, Feb. 25, 1926; including territory described in T.D. 56424.
Idaho	
Boise	Pub.L. 98–573; T.D. 85–22.
Eastport	
Porthill	
Illinois	
+ Chicago	Including territory described in CBP Dec. 04–24.
Davenport, IA-Moline and Rock Island, IL	T.D.s 86–76 and 89–10.
Peoria	Including territory described in T.D.72–130.
Rockford	T.D. 95–62.
Indiana	
Cincinnati, OH-Lawrenceburg, IN	Consolidated port, T.D. 84–91.
Indianapolis	
Owensboro, KY-Evansville, IN	Consolidated port, T.D. 84–91.
Iowa	
Davenport,IA-Moline and Rock Island, IL	T.D.s 86–76 and 89–10.

Ports of entry	Limits of port
Des Moines	T.D. 75–104.
Kansas	
Wichita	T.D. 74–93.
Kentucky	
Louisville	Including territory described in T.D. 77–232.
Owensboro, KY-Evansville, IN	Consolidated port, T.D. 84–91.
Louisiana	
Baton Rouge	E.O. 5993, Jan. 13, 1933; including territory described in T.D.s 53514 and 54381. (Restated in T.D. 84–126).
Gramercy	T.D. 82–93.
Lake Charles	E.O. 5475, Nov. 3, 1930; including territory described in T.D. 54137.
Morgan City	T.D. 54682; including territory described in T.D.s 66–266 and 94–77. (Restated in T.D. 84–126).
New Orleans	E.O. 5130, May 29, 1929; including territory described in T.D. 74–206. (Restated in T.D. 84–126).
Shreveport-Bossier City	Including territory described in T.D. 86–145.
Maine	
Bangor	Including Brewer, ME, E.O. 9297, Feb. 1, 1943 (8 FR 1479).
Bar Harbor	Including Mount Desert Island, the city of Ellsworth, and the townships of Hancock, Sullivan, Sorrento, Gouldsboro, and Winter Harbor and Trenton, E.O. 4572, Jan. 27, 1927, and T.D. 78–130.
Bath	Including Booth Bay and Wiscasset, E.O. 4356, Dec. 15, 1925.
Belfast	Including Searsport, E.O. 6754, June 28, 1934.
Bridgewater	E.O. 8079, Apr. 4, 1939 (4 FR 1475).
Calais	Including townships of Calais, Robbinston, and Baring, E.O. 6284, Sept. 13, 1933.
Eastport	Including Lubec and Cutler, E.O. 4296, Aug. 26, 1925.
Fort Fairfield	
Fort Kent	
Houlton	E.O. 4156, Feb. 14, 1925.
Jackman	Including townships of Jackman, Sandy Bay, Bald Mountain, Holeb, Attean, Lowelltown, Dennistown, and Moose River, T.D. 54683.
Jonesport	Including towns (townships) of Beals, Jonesboro, Roque Bluffs, and Machiasport, E.O. 4296, Aug. 26, 1925; E.O. 8695, Feb. 25, 1941 (6 FR 1187).
Limestone	
Madawaska	
Portland	Including territory described in CBP Dec. 03–08.
Portsmouth, N.H	Including Kittery, ME.
Rockland	
Van Buren	
Vanceboro	
Maryland	
Annapolis	
Baltimore	Including territory described in T.D. 68–123.
Cambridge	E.O. 3888, Aug. 13, 1923; Crisfield.
Massachusetts	
Boston	Including territory and waters adjacent thereto described in T.D. 56493.
Fall River	Including territory described in T.D. 54476.
Gloucester	
Lawrence	E.O. 5444, Sept. 16, 1930; E.O. 10088, Dec. 3, 1949 (14 FR 7287); including territory described in T.D. 71–12.
New Bedford	
Plymouth	
Salem	Including Beverly, Marblehead, and Lynn; including Peabody, E.O. 9207, July 29, 1942 (7 FR 5931).
Springfield	T.D. 69–189.
Worcester	
Michigan	
Battle Creek	T.D. 72–233.
Detroit	Including territory described in E.O. 9073, Feb. 25, 1942 (7 FR 1588), and T.D. 53738.
Grand Rapids	T.D. 77–4.

Ports of entry	Limits of port
Marinette, WI	Including Menominee, MI.
Muskegon	E.O. 8315, Dec. 22, 1939 (4 FR 4941); including territory described in T.D. 56230.
Port Huron	Including territory described in T.D. 87–117.
Saginaw-Bay City-Flint	Consolidated port, T.D. 79–74; including territory described in T.D. 82–9.
Sault Ste. Marie	Including territory described in T.D. 79–74.
Minnesota	
Baudette	E.O. 4422, Apr. 19, 1926.
Duluth, MN and Superior, WI	Including territory described in T.D. 55904.
Grand Portage	T.D. 56073.
International Falls-Ranier	Including territory described in T.D. 66–246.
Minneapolis-St. Paul	Including territory described in T.D. 69–15.
Noyes	E.O. 5835, Apr. 13, 1932.
Pinecreek	E.O. 7632, June 15, 1937 (2 FR 1245).
Roseau	E.O. 7632, June 15, 1937 (2 FR 1245).
Warroad	
Mississippi	
Greenville	T.D. 73–325. (Restated in T.D. 84–126).
Gulfport	
Pascagoula	Including territory described in T.D. 86–68.
Vicksburg	T.D. 72–123; including territory described in T.D. 93–32. (Restated in T.D. 84–126).
Missouri	
Kansas City	Including Kansas City, KS and North Kansas City, MO, E.O. 8528, Aug. 27, 1940 (5 FR 3403); including territory described in T.D. 67–56.
Spirit of St. Louis Airport	Including territory described in T.D. 97–7.
Springfield	Including all territory within Greene and Christian Counties, T.D. 84–84.
St. Joseph	
St. Louis	Including territory described in T.D.s 67–57 and 69–224.
Montana	
Butte	T.D. 73–121.
Del Bonita	E.O. 7947, Aug. 9, 1938 (3 FR 1965); Mail: Cut Bank, MT.
Great Falls	
Morgan	E.O. 7632, June 15, 1937 (2 FR 1245); Mail: Loring, MT.
Opheim	E.O. 7632, June 15, 1937 (2 FR 1245).
Piegan	E.O. 7632, June 15, 1937 (2 FR 1245); Mail: Babb, MT.
Raymond	E.O. 7632, June 15, 1937 (2 FR 1245).
Roosville	E.O. 7632, June 15, 1937 (2 FR 1245); Mail: Eureka, MT.
Scobey	E.O. 7632, June 15, 1937 (2 FR 1245).
Sweetgrass	
Turner	E.O. 7632, June 15, 1937 (2 FR 1245).
Whitetail	E.O. 7632, June 15, 1937 (2 FR 1245).
Whitlash	E.O. 7632, June 15, 1937 (2 FR 1245).
Nebraska	
Omaha	Including territory described in T.D. 73–228.
Nevada	
Las Vegas	Including territory described in T.D. 79–74.
Reno	Including territory described in T.D. 73–56.
New Hampshire	
Portsmouth	Including Kittery, ME.
New Jersey	
Camden, Gloucester City, and Salem	Included in the Consolidated Port of the Delaware River and Bay described in T.D. 96–4.
Perth Amboy	
New Mexico	
Albuquerque	Including territory described in T.D. 74–304.
Columbus	
Santa Teresa	T.D. 94–34.

Ports of entry	Limits of port
New York	
Albany	
Alexandria Bay	Including territory described in E.O. 10042, Mar. 10, 1949 (14 FR 1155).
Buffalo-Niagara Falls	T.D. 56512.
Cape Vincent	
Champlain-Rouses Point	Including territory described in T.D. 67–68.
Clayton	
Massena	T.D. 54834.
+ New York	Including territory described in E.O. 4205, Apr. 15, 1925 (T.D. 40809).
Ogdensburg	
Oswego	
Rochester	
Sodus Point	
Syracuse	
Trout River	Consolidated port includes Chateaugay and Fort Covington, T.D. 83–253.
Utica	
North Carolina	
Beaufort-Morehead City	Including territory described in T.D. 87–76.
Charlotte	T.D. 56079.
Durham	E.O. 4876, May 3, 1928; including territory described in E.O. 9433, Apr. 4, 1944 (9 FR 3761), and T.D. 82–9.
Reidsville	E.O. 5159, July 18, 1929; including territory described in E.O. 9433, Apr. 6, 1944 (9 FR 3761).
Wilmington	Including townships of Northwest, Wilmington, and Cape Fear, E.O. 7761, Dec. 3, 1937 (2 FR 2679); including territory described in E.O. 10042, Mar. 10, 1949 (14 FR 1155).
Winston-Salem	Including territory described in T.D. 87–64.
North Dakota	
Ambrose	E.O. 5835, April 13, 1932.
Antler	
Carbury	E.O. 5137, June 17, 1929.
Dunseith	E.O. 7632, June 15, 1937 (2 FR 1245).
Fargo	CBP Dec. 03– .
Fortuna	E.O. 7632, June 15, 1937 (2 FR 1245).
Hannah	
Hansboro	
Maida	E.O. 7632, June 15, 1937 (2 FR 1245).
Neche	
Noonan	E.O. 7632, June 15, 1937 (2 FR 1245).
Northgate	T.D. 37386, T.D. 37439
Pembina	
Portal	
Sarles	
Sherwood	
St. John	E.O. 5835, Apr. 13, 1932.
Walhalla	
Westhope	E.O. 4236, June 1, 1925.
Ohio	
Ashtabula/Conneaut	Consolidated port, T.D. 77–232.
Cincinnati, OH-Lawrenceburg, IN	Consolidated port, T.D. 84–91.
Cleveland	Including territory described in T.D. 77–232; consolidated port, T.D. 87–123.
Columbus	Including territory described in T.D. 96–67.
Dayton	Including territory described in T.D. 76–77.
Toledo-Sandusky	Consolidated port, T.D. 84–89.
Oklahoma	
Oklahoma City	Including territory described in T.D. 66–132.
Tulsa	T.D. 69–142.
Oregon	
Astoria	Including territory described in T.D. 73–338.
Coos Bay	E.O. 4094, Oct. 28, 1924; E.O. 5193, Sept. 14, 1929; E.O. 5445, Sept. 16, 1930; E.O. 9533, Mar. 23, 1945 (10 FR 3173).
Newport	
Portland	

Ports of entry	Limits of port
Pennsylvania	
Chester	Included in the Consolidated Port of the Delaware River and Bay described in T.D. 96–4.
Erie	Including territory described in T.D. 77–5.
Harrisburg	T.D. 71–233.
Lehigh Valley	T.D. 93–75.
Philadelphia	Included in the Consolidated Port of the Delaware River and Bay described in T.D. 96–4.
Pittsburgh	Including territory described in T.D. 67–197.
Wilkes-Barre/Scranton	T.D. 75–64.
Puerto Rico	
Aguadilla	T.D. 22305.
Fajardo	
Guanica	
Humacao	Including territory described in T.D. 70–157.
Jobos	E.O. 9162, May 13, 1942 (7 FR 3569).
Mayaguez	T.D. 22305.
Ponce	Including territory described in T.D. 54017.
San Juan	Including territory described in T.D. 54017.
Rhode Island	
Newport	
Providence	Including territory described in T.D. 67–3.
South Carolina	
Charleston	Including territory described in T.D. 76–142.
Columbia	Including all territory in Richland and Lexington Counties, T.D. 82–239.
Georgetown	
Greenville-Spartanburg	T.D. 70–148.
South Dakota	
Sioux Falls	T.D. 96–3.
Tennessee	
Chattanooga	(Restated in T.D. 84–126).
Knoxville	T.D. 75–128. (Restated in T.D. 84–126).
Memphis	CBP Dec. 04–22.
Nashville	(Restated in T.D. 84–126).
Texas	
Amarillo	T.D. 75–129.
Austin	T.D. 81–170.
Beaumont, Orange, Port Arthur, Sabine	Consolidated port, T.D. 74–231; including territory described in T.D. 81–160.
Brownsville	Including territory described in T.D. 79–254.
Corpus Christi	E.O. 8288, Nov. 22, 1939 (4 FR 4691), and territory described in T.D. 78–130.
Dallas-Fort Worth	T.D. 73–297; T.D. 79–232; T.D. 81–170.
Del Rio	
Eagle Pass	Including territory described in T.D. 91–93.
El Paso	T.D. 54407, including territory described in T.D. 78–221.
Fabens	E.O. 4869, May 1, 1928.
Freeport	E.O. 7632, June 15, 1937 (2 FR 1245).
Hidalgo	T.D. 85–164.
+ Houston-Galveston	Consolidated port includes territory lying within corporate limits of both Houston and Galveston, and remaining territory in Harris and Galveston Counties, T.D.s 81–160 and 82–15.
Laredo	Including territory described in T.D. 90–69.
Lubbock	T.D. 76–79.
Port Lavaca-Point Comfort	T.D. 56115.
Presidio	E.O. 2702, Sept. 7, 1917.
Progreso	T.D. 85–164.
Rio Grande City	Including territory described in T.D. 92–43.
Roma	E.O. 4830, Mar. 14, 1928.
San Antonio	
Utah	
Salt Lake City	T.D. 69–76.

Ports of entry	Limits of port
Vermont	
Beecher Falls	
Burlington	Including town of South Burlington, T.D. 54677.
Derby Line	
Highgate Springs/Alburg	E.O. 7632, June 15, 1937 (2 FR 1245); includes territory described in T.D. 77–165.
Norton	T.D. 73–249.
Richford	
St. Albans	Including township of St. Albans, E.O. 3925, Nov. 13, 1923; E.O. 7632, June 15, 1937 (2 FR 1245); T.D. 77–165.
Virginia	
Alexandria, VA	T.D. 68–67.
Front Royal	T.D. 89–63.
Norfolk-Newport News	Consolidated port includes waters and shores of Hampton Roads.
Richmond-Petersburg	Consolidated port, T.D. 68–179.
Virgin Islands, U.S.	
Charlotte Amalie, St. Thomas	
Christiansted, St. Croix	
Coral Bay, St. John	
Cruz Bay, St. John	
Frederiksted, St. Croix	
Washington	
Aberdeen	Including territory described in T.D.s 56229, 79–169, and 84–90.
Blaine	E.O. 5835, Apr. 13, 1932.
Boundary	T.D. 67–65.
Danville	
Ferry	
Frontier	T.D. 67–65.
Laurier	
Longview	Including territory described in T.D. 73–338.
Lynden	E.O. 7632, June 15, 1937 (2 FR 1245).
Metaline Falls	E.O. 7632, June 15, 1937 (2 FR 1245).
Nighthawk	T.D. 39882
Oroville	E.O. 5206, Oct. 11, 1929.
Point Roberts	T.D. 78–272.
Puget Sound	Consolidated port includes Seattle, Anacortes, Bellingham, Everett, Friday Harbor, Neah Bay, Olympia, Port Angeles, Port Towsend, and Tacoma, T.D. 00–35.
Spokane	
Sumas	
West Virginia	
Charleston	T.D. 73–170 and including territory described in T.D. 73–212.
Wisconsin	
Ashland	
Duluth, MN and Superior, WI	Including territory described in T.D. 55904.
Green Bay	Including townships of Ashwaubenon, Allouez, Preble, and Howard, and city of De Pere, T.D. 54597.
Manitowoc	
Marinette	Including Menominee, MI.
Milwaukee	Including territory described in T.D. 72–105.
Racine	Including city of Kenosha and townships of Mount Pleasant and Somers, T.D. 54884.
Sheboygan	

+ Indicates Drawback unit/office.

(2) *Customs service ports*. A list of Customs service ports and the States in which they are located is set forth below:

State	Service ports
Alabama	Mobile.
Alaska	Anchorage.
Arizona	Nogales.
California	Los Angeles.
	LAX.
	San Diego.

State	Service ports
	San Francisco.
Colorado	Denver.
Florida	Miami.
	Tampa.
Georgia	Savannah.
Hawaii	Honolulu.
Illinois	Chicago.
Louisiana	New Orleans.
Maine	Portland.
Maryland	Baltimore.
Massachusetts	Boston.
Michigan	Detroit.
Minnesota	Duluth.
	Minneapolis.
Missouri	St. Louis.
Montana	Great Falls.
New Jersey	New York/Newark.
New York	Buffalo.
	Champlain.
	JFK.
	New York/Newark.
North Carolina	Charlotte.
North Dakota	Pembina.
Ohio	Cleveland.
Oregon	Portland.
Pennsylvania	Philadelphia.
Puerto Rico	San Juan.
Rhode Island	Providence.
South Carolina	Charleston.
Texas	Dallas.
	El Paso.
	Houston.
	Laredo.
Vermont	St. Albans.
Virginia	Dulles.
	Norfolk.
Virgin Islands	Charlotte Amalie.
Washington	Blaine.
	Seattle.
Wisconsin	Milwaukee.

[T.D. 95–77, 60 FR 50011, Sept. 27, 1995]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 101.3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 101.4 Entry and clearance of vessels at Customs stations.

(a) *Entry at Customs station*. A vessel shall not be entered or cleared at a Customs station, or any other place that is not a port of entry, unless entry or clearance is authorized by the director of the port under whose jurisdiction the station or place falls pursuant to the provisions of section 447, Tariff Act of 1930, as amended (19 U.S.C. 1447).

(b) *Authorization to enter*. Authorization to enter or be cleared at a Customs station shall be granted by the director of the port under whose jurisdiction the station or place falls provided the port director is notified in advance of the arrival of the vessel concerned and the following conditions are met:

(1) Such Customs supervision as may be necessary can be provided.

(2) All applicable Customs and navigation laws and regulations are complied with.

(3) The owner, master or agent of a vessel sought to be entered at a Customs station reimburses the Government for the salary and expenses of the Customs officer or employee stationed at or sent to such Customs station or other place which is not a port of entry for services rendered in connection with the entry or clearance of such vessel, and

(4) Except as otherwise provided by these regulations, the Government is reimbursed by the interested parties for the expenses, including any per diem allowed in lieu of subsistence, but not the salary of a Customs officer or employee for services rendered in connection with the entry or delivery of merchandise.

(c) *Customs stations designated*. The Customs stations and the ports of entry having supervision thereof are listed below:

Customs station	Supervisory port of entry
Alaska	
Barrow	Fairbanks.
Dutch Harbor	Anchorage.
Eagle	Alcan.
Fort Yukon	Fairbanks.
Haines	Dalton Cache.
Hyder	Ketchikan.
Kaktovik (Barter Island)	Fairbanks.
Kenai (Nikiski)	Anchorage.
Northway	Alcan.
Pelican	Juneau.
Petersburg	Wrangell.
California	
Campo	Tecate.
Otay Mesa	San Diego.
San Ysidro	San Diego.
Colorado	
Colorado Springs	Denver.
Delaware	
Lewes	Philadelphia, PA.
Florida	
Fort Pierce	West Palm Beach.
Green Cove Springs	Jacksonville.
Port St. Joe	Panama City.
Indiana	
Fort Wayne	Indianapolis.

Customs station	Supervisory port of entry
Maine	
Bucksport	Belfast.
Coburn Gore	Jackman.
Daaquam	Jackman.
Easton	Fort Fairfield.
Estcourt	Fort Kent.
Forest City	Houlton.
Hamlin	Van Buren.
Maryland	
Salisbury	Baltimore.
Massachusetts	
Provincetown	Plymouth.
Michigan	
Alpena	Saginaw-Bay City-Flint.
Detour	Sault Ste. Marie.
Escanaba	Sault Ste. Marie.
Grand Haven	Muskegon.
Houghton	Sault Ste. Marie.
Marquette	Sault Ste. Marie.
Rogers City	Saginaw-Bay City-Flint.
Minnesota	
Crane Lake	Duluth, MN-Superior, WI.
Ely	Duluth, MN-Superior, WI.
Lancaster	Noyes.
Oak Island	Warroad.
Mississippi	
Biloxi	Mobile, AL.
Montana	
Wild Horse	Great Falls.
Willow Creek	Great Falls.
New Jersey	
Atlantic City	Philadelphia-Chester, PA and Wilmington, DE.
Port Norris	Philadelphia-Chester, PA and Wilmington, DE.
Tuckerton	Philadelphia-Chester, PA and Wilmington, DE, PA.
New York	
Cannons Corners	Champlain-Rouses Point.
Churubusco	Trout River.
Jamieson's Line	Trout River.
New Hampshire	
Pittsburg	Beecher Falls, VT.
Monticello	Houlton, ME.
Orient	Houlton, ME.
Ste. Aurelie	Jackman, ME.
St. Pamphile	Jackman, ME.
New Mexico	
Antelope Wells (Mail: Hachita, NM).	Columbus, NM.
North Dakota	
Grand Forks	Pembina.
Minot	Pembina.
Ohio	
Akron	Cleveland.
Fairport Harbor	Ashtabula/Conneaut.
Lorain	Sandusky.
Marblehead-Lakeside	Sandusky.
Put-in-Bay	Sandusky.
Oklahoma	
Muskogee	Tulsa.
Texas	
Amistad Dam	Del Rio.
Falcon Dam	Roma.
Fort Hancock	Fabens.
Los Ebanos	Rio Grande City.
Marathon	El Paso.
Vermont	
Beebe Plaine	Derby Line.
Canaan	Beecher Falls.
East Richford	Richford.
Newport	Derby Line.
North Troy	Derby Line.
West Berkshire	Richford.

(d) *Temporary Customs stations.* Customs stations may be designated for a temporary time only, to provide Customs facilities where needed because of certain large-scale operations. Because these designations change from time to time they are not listed. However, current information as to the existence of such stations may be obtained from the local port director.

[T.D. 77–241, 42 FR 54937, Oct. 12, 1977]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 101.4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 101.5 Customs preclearance offices in foreign countries.

Listed below are the preclearance offices in foreign countries where U. S. Customs officers are located. A Director, Preclearance, located in the Office of Field Operations at Customs Headquarters, is the responsible Customs officer exercising supervisory control over all preclearance offices.

Country	Customs office
Aruba	Orangestad
The Bahamas	Freeport Nassau
Bermuda	Kindley Field
Canada	Calgary, Alberta

Country	Customs office
	Edmonton, Alberta Montreal, Quebec Ottawa, Ontario Toronto, Ontario Vancouver, British Columbia Winnipeg, Manitoba

[T.D. 01–81, 66 FR 56431, Nov. 8, 2001]

§ 101.6 Hours of business.

Except as specified in paragraphs (a) through (g) of this section, each Customs office shall be open for the transactions of general Customs business between the hours of 8:30 a.m. and 5 p.m. on all days of the year:

(a) *Saturdays, Sundays and national holidays.* In addition to Saturdays, Sundays, and any other calendar day designated as a holiday by Federal statute or Executive Order, Customs offices shall be closed on the following national holidays:

(1) The first day of January.
(2) The third Monday of February.
(3) The last Monday of May.
(4) The fourth day of July.
(5) The first Monday of September.
(6) The second Monday of October.
(7) The eleventh day of November.
(8) The fourth Thursday of November.
(9) The twenty-fifth day of December.

If a holiday falls on Saturday, the day immediately preceding such Saturday will be observed. If a holiday falls on Sunday, the day immediately following such Sunday will be observed. (5 U.S.C. 6103(b)(1)); (E.O. No. 11582, Jan. 1, 1971; 34 FR 2957; 3 CFR Ch. 11)

(b) *Local conditions requiring different hgurs.* If, because of local conditions, different but equivalent hours are required to maintain adequate service, such hours shall be observed provided the Commissioner of Customs approves them and provided further that a notice of business hours is prominently displayed at the principal entrance and in each public room of the Customs office.

(c) *Fixing of hours.* At each port or station where there is no full-time Customs employee, the port director shall fix the hours during which the Customs office will be open for the transaction of general Customs business. Notice of such hours shall be prominently displayed at the principal entrance of the office.

(d) *State and local holidays.* Each Customs office shall be open for the transaction of business on all State and local holidays occurring on days other than Saturdays, Sundays, and national holidays listed in paragraph (a) of this section. The appropriate principal field officer may excuse any employee(s) without charge to leave when a state or local holiday interferes with the performance of his work in a Customs office.

(e) *Services performed outside a Customs office.* Customs services required to be performed outside a Customs office shall be furnished between the hours of 8 a.m. and 5 p.m. (or between the corresponding hours at ports where different but equivalent hours are required for the maintenance of adequate service) on all days when the Customs office is open for the transaction of general Customs business.

(f) *Customs services not within prescribed hours.* Where there is a regularly recurring need for Customs services outside the hours prescribed in paragraphs (a) through (e) of this section and the volume and duration of the required services are uniformly such as to require, of themselves or in immediately consecutive combination with other essential Customs activities of the port, the full time of one or more Customs employees, the necessary number of regular tours of duty to furnish such services on all days of the year except Sundays and national holidays may be established with the approval of the Commissioner of Customs.

(g) *Customs services furnished private interests.* Other than as specified in this section. Customs services shall be furnished private interests only in accordance with the provisions of § 24.16 of this chapter.

[T.D. 77–241, 42 FR 54937, Oct. 12, 1977, as amended by T.D. 82–145, 47 FR 35478, Aug. 16, 1982; T.D. 95–77, 60 FR 50019, Sept. 27, 1995]

§ 101.7 Customs seal.

(a) *Design.* According to the design furnished by the Department of the Treasury, the Customs seal of the United States shall consist of the seal

of the Department of the Treasury surrounded by an outer circle in which appear the words ''Treasury'' at the top and ''U.S. Customs Service'' at the bottom.

(b) *Use of the Customs seal.* The Customs seal currently in official use, including the dies, rolls, plates, and like devices now in the possession of the Bureau of Engraving and Printing, shall continue to be equally effective as the official seal of the United States Customs Service and shall continue to be so used by each Customs officer and employee having possession of the seal until that particular device requires replacing and is replaced. Use of the United States Customs seal shall be restricted in the following manner:

(1) The Customs seal of the United States shall be impressed upon all official documents requiring the impress of a seal. It shall be impressed upon all marine documents and landing certificates, certificates of weight, gauge, or measure, and similar classes of documents for outside interests.

(2) The impress of the seal is not necessary on documents passing within the Customs Service nor shall the seal be used in the manner of a notary seal to indicate authority to administer oaths.

§ 101.8 Identification cards.

Each Customs employee shall be issued an appropriate identification card with that employee's photograph and signature, signed by the appropriate issuing officer.

§ 101.9 Test programs or procedures; alternate requirements.

(a) *General testing.* For purposes of conducting a test program or procedure designed to evaluate the effectiveness of new technology or operational procedures regarding the processing of passengers, vessels, or merchandise, the Commissioner of Customs may impose requirements different from those specified in the Customs Regulations, but only to the extent that such different requirements do not affect the collection of the revenue, public health, safety, or law enforcement. The imposition of any such different requirements shall be subject to the following conditions:

(1) *Defined purpose.* The test is limited in scope, time, and application to such relief as may be necessary to facilitate the conduct of a specified program or procedure;

(2) *Prior publication requirement.* Whenever a particular test allows for deviation from any regulatory requirements, notice shall be published in the FEDERAL REGISTER not less than thirty days prior to implementing such test, followed by publication in the Customs Bulletin. The notice shall invite public comments concerning the methodology of the test program or procedure, and inform interested members of the public of the eligibility criteria for voluntary participation in the test and the basis for selecting participants.

(b) *NCAP testing.* For purposes of conducting an approved test program or procedure designed to evaluate planned components of the National Customs Automation Program (NCAP), as described in section 411(a)(2) of the Tariff Act of 1930 (19 U.S.C. 411), the Commissioner of Customs may impose requirements different from those specified in the Customs Regulations, but only to the extent that such different requirements do not affect the collection of the revenue, public health, safety, or law enforcement. In addition to the requirement of paragraph (a)(1) of this section, the imposition of any such different requirements shall be subject to the following conditions:

(1) *Prior publication requirement.* For tests affecting the NCAP, notice shall be published in the FEDERAL REGISTER not less than thirty days prior to implementing such test, followed by publication in the Customs Bulletin. The notice shall invite public comments concerning any aspect of the test program or procedure, and inform interested members of the public of the eligibility criteria for voluntary participation in the test and the basis for selecting participants; and,

(2) *Post publication requirement.* Within a reasonable time period following the completion of the test, a complete description of the results shall be published in both the FEDERAL REGISTER and the Customs Bulletin.

[T.D. 95–21, 60 FR 14214, Mar. 16, 1995]

PART 102—RULES OF ORIGIN

Sec.
102.0 Scope.

Subpart A—General

102.1 Definitions.

Subpart B—Rules of Origin

102.11 General rules.
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102.17 Non-qualifying operations.
102.18 Rules of interpretation.
102.19 NAFTA preference override.
102.20 Specific rules by tariff classification.
102.21 Textile and apparel products.

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

SOURCE: T.D. 94–4, 59 FR 113, Jan. 3, 1994, unless otherwise noted.

§ 102.0 Scope.

Except in the case of goods covered by § 102.21, this part sets forth rules for determining the country of origin of imported goods for the purposes specified in paragraph 1 of Annex 311 of the North American Free Trade Agreement (''NAFTA''). These specific purposes are: country of origin marking; determining the rate of duty and staging category applicable to originating textile and apparel goods as set out in Section 2 (Tariff Elimination) of Annex 300–B (Textile and Apparel Goods); determining the rate of duty and staging category applicable to an originating good as set out in Annex 302.2 (Tariff Elimination). The rules for determining the country of origin of textile and apparel products set forth in § 102.21 apply for the foregoing purposes and for the other purposes stated in that section.

[T.D. 96–48, 61 FR 28955, June 6, 1996]

Subpart A—General

§ 102.1 Definitions.

(a) *Advanced in value.* ''Advanced in value'' means an increase in the value of a good as a result of production with respect to that good, other than by means of those ''minor processing'' operations described in paragraphs (m)(5), (m)(6), and (m)(7) of this section.

(b) *Commingled.* ''Commingled'' means physically combined or mixed.

(c) *Direct physical identification.* ''Direct physical identification'' means identification by visual or other organoleptic examination.

(d) *Domestic material.* ''Domestic material'' means a material whose country of origin as determined under these rules is the same country as the country in which the good is produced.

(e) *Foreign material.* ''Foreign material'' means a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced.

(f) *Fungible goods or fungible materials.* ''Fungible goods or fungible materials'' means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical.

(g) *A good wholly obtained or produced.* A good ''wholly obtained or produced'' in a country means:

(1) A mineral good extracted in that country;

(2) A vegetable or plant good harvested in that country;

(3) A live animal born and raised in that country;

(4) A good obtained from hunting, trapping or fishing in that country;

(5) A good (fish, shellfish and other marine life) taken from the sea by vessels registered or recorded with that country and flying its flag;

(6) A good produced on board factory ships from the goods referred to in paragraph (g)(5) of this section, provided such factory ships are registered or recorded with that country and fly its flag;

(7) A good taken by that country or a person of that country from the seabed or beneath the seabed outside territorial waters, provided that country has rights to exploit such seabed;

(8) A good taken from outer space, provided they are obtained by that country or a person of that country;

(9) Waste and scrap derived from:

(i) Production in a country, or

(ii) Used goods collected in that country provided such goods are fit only for the recovery of raw materials; and

(10) A good produced in that country exclusively from goods referred to in paragraphs (g)(1) through (10) of this section or from their derivatives, at any stage of production.

(h) *Harmonized System.* ''Harmonized System'' means the Harmonized Commodity Description and Coding System, including its general rules of Interpretation, Section Notes and Chapter Notes, as adopted and implemented by the United States.

(i) *Improved in condition.* ''Improved in condition'' means the enhancement of the physical condition of a good as a result of production with respect to that good, other than by means of those ''minor processing'' operations described in paragraphs (m)(5), (m)(6), and (m)(7) of this section.

(j) *Incorporated.* ''Incorporated'' means physically incorporated into a good as a result of production with respect to that good.

(k) *Indirect materials.* ''Indirect materials'' means a good used in the production, testing or inspection of another good but not physically incorporated into that other good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of that other good, including:

(1) Fuel and energy;

(2) Tools, dies and molds;

(3) Spare parts and materials used in the maintenance of equipment and buildings;

(4) Lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the goods;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production.

(l) *Material.* ''Material'' means a good that is incorporated into another good as a result of production with respect to that other good, and includes parts, ingredients, subassemblies, and components.

(m) *Minor processing.* ''Minor processing'' means the following:

(1) Mere dilution with water or another substance that does not materially alter the characteristics of the good;

(2) Cleaning, including removal of rust, grease, paint, or other coatings;

(3) Application of preservative or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint, or metallic coatings;

(4) Trimming, filing or cutting off small amounts of excess materials;

(5) Unloading, reloading or any other operation necessary to maintain the good in good condition;

(6) Putting up in measured doses, packing, repacking, packaging, repackaging;

(7) Testing, marking, sorting, or grading;

(8) Ornamental or finishing operations incidental to textile good production designed to enhance the marketing appeal or the ease of care of the product, such as dyeing and printing, embroidery and appliques, pleating, hemstitching, stone or acid washing, permanent pressing, or the attachment of accessories notions, findings and trimmings; or

(9) Repairs and alterations, washing, laundering, or sterilizing.

(n) *Production.* ''Production'' means growing, mining, harvesting, fishing, trapping, hunting, manufacturing, processing or assembling a good.

(o) *Simple assembly.* ''Simple assembly'' means the fitting together of five or fewer parts all of which are foreign (excluding fasteners such as screws, bolts, etc.) by bolting, gluing, soldering, sewing or by other means without more than minor processing.

(p) *Value.* ''Value'' means, with respect to § 102.13:

(1) In the case of a good, its customs value or transaction value within the meaning of the appendix to part 181 of this chapter; or

(2) In the case of a material, its customs value or value within the meaning of the appendix to part 181 of this chapter.

[T.D. 96–48, 61 FR 28955, June 6, 1996]

Subpart B—Rules of Origin

§ 102.11 General rules.

The following rules shall apply for purposes of determining the country of origin of imported goods other than textile and apparel products covered by § 102.21.

(a) The country of origin of a good is the country in which:

(1) The good is wholly obtained or produced;

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

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

(b) Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a) of this section:

(1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character to the good, or

(2) If the material that imparts the essential character to the good is fungible, has been commingled, and direct physical identification of the origin of the commingled material is not practical, the country or countries of origin may be determined on the basis of an inventory management method provided under the appendix to part 181 of this chapter.

(c) Where the country of origin cannot be determined under paragraph (a) or (b) of this section and the good is specifically described in the Harmonized System as a set or mixture, or classified as a set, mixture or composite good pursuant to General Rule of Interpretation 3, the country of origin of the good is the country or countries of origin of all materials that merit equal consideration for determining the essential character of the good.

(d) Where the country of origin of a good cannot be determined under paragraph (a), (b) or (c) of this section, the country of origin of the good shall be determined as follows:

(1) If the good was produced only as a result of minor processing, the country of origin of the good is the country or countries of origin of each material that merits equal consideration for determining the essential character of the good;

(2) If the good was produced by simple assembly and the assembled parts that merit equal consideration for determining the essential character of the good are from the same country, the country of origin of the good is the country of origin of those parts; or

(3) If the country of origin of the good cannot be determined under paragraph (d)(1) or (d)(2) of this section, the country of origin of the good is the last country in which the good underwent production.

[T.D. 96–48, 61 FR 28956, June 6, 1996]

§ 102.12 Fungible goods.

When fungible goods of different countries of origin are commingled the country of origin of the goods:

(a) Is the countries of origin of those commingled goods; or

(b) If the good is fungible, has been commingled, and direct physical identification of the origin of the commingled good is not practical, the country or countries of origin may be determined on the basis of an inventory management method provided under the appendix to part 181 of the Customs Regulations.

§ 102.13 De Minimis.

(a) Except as otherwise provided in paragraphs (b) and (c) of this section, foreign materials that do not undergo the applicable change in tariff classification set out in § 102.20 or satisfy the other applicable requirements of that section when incorporated into a good shall be disregarded in determining the country of origin of the good if the value of those materials is no more than 7 percent of the value of the good or 10 percent of the value of a good of Chapter 22, Harmonized System.

(b) Paragraph (a) of this section does not apply to a foreign material incorporated in a good provided for in Chapter 1, 2, 3, 4, 7, 8, 11, 12, 15, 17, or 20 of the Harmonized System.

(c) Foreign components or materials that do not undergo the applicable change in tariff classification set out in § 102.21 or satisfy the other applicable requirements of that section when incorporated into a textile or apparel product covered by that section shall be disregarded in determining the country of origin of the good if the total weight of those components or materials is not more than 7 percent of the total weight of the good.

[T.D. 96–48, 61 FR 28956, June 6, 1996]

§ 102.15 Disregarded materials.

(a) The following materials shall be disregarded when determining whether the good undergoes the applicable change in tariff classification set out in § 102.20 or § 102.21, or satisfies the other applicable requirements of those sections:

(1) Packaging materials and containers in which a good is packaged for retail sale that are classified with the good;

(2) Accessories, spare parts or tools delivered with the good that are classified with the good and shipped with the good;

(3) Packing materials and containers in which a good is packed for shipment; and

(4) Indirect materials.

(b) [Reserved]

[T.D. 96–48, 61 FR 28956, June 6, 1996]

§ 102.17 Non-qualifying operations.

A foreign material shall not be considered to have undergone an applicable change in tariff classification specified in § 102.20 or § 102.21 or to have met any other applicable requirements of those sections merely by reason of one or more of the following:

(a) A change in end-use;

(b) Dismantling or disassembly;

(c) Simple packing, repacking or retail packaging without more than minor processing;

(d) Mere dilution with water or another substance that does not materially alter the characteristics of the material; or

(e) Collecting parts that, as collected, are classifiable in the same tariff provision as an assembled good pursuant to General Rule of Interpretation 2(a), without any additional operation other than minor processing.

[T.D. 96–48, 61 FR 28956, June 6, 1996]

§ 102.18 Rules of interpretation.

(a) When General Rule of Interpretation (GRI) 2(a) is referred to in § 102.20 as an exception to an allowed change in tariff classification, this means that such change will not be acceptable for purposes of that section if the change results from the assembly of parts into an incomplete or unfinished good which is classifiable in the same manner as a complete or finished good pursuant to GRI 2(a).

(b) (1) For purposes of identifying the material that imparts the essential character to a good under § 102.11, the only materials that shall be taken into consideration are those domestic or foreign materials that are classified in a tariff provision from which a change in tariff classification is not allowed under the § 102.20 specific rule or other requirements applicable to the good. For purposes of this paragraph (b)(1):

(i) The materials to be considered must be classified in a tariff provision from which a change in tariff classification is not allowed under the specific rule or other requirements applicable to the good under consideration. For example, in the case of a good classified in HTSUS subheading 8607.11 (the rule for which specifies a change to subheading 8607.11 from any other subheading, except from subheading 8607.12, and except from subheading 8607.19 when that change is pursuant to GRI 2(a)), the only materials that may be considered for purposes of identifying the materials that impart the essential character to the good are those that are classified in subheadings 8607.11, 8607.12 and, if the tariff shift is pursuant to GRI 2(a), 8607.19;

(ii) Materials that may be considered include materials produced by the producer of the good and incorporated in the good. For example, if a producer of a good purchases raw materials and converts those raw materials into a component that is incorporated in the good, that component is a material that may be considered for purposes of identifying the materials that impart the essential character to the good,

provided that the component is classified in a tariff provision from which a change in tariff classification is not allowed under the specific rule or other requirements applicable to the good; and

(iii) If there is only one material that is classified in a tariff provision from which a change in tariff classification is not allowed under the § 102.20 specific rule or other requirements applicable to the good, then that material will represent the single material that imparts the essential character to the good under § 102.11.

(2) For purposes of determining which one of two or more materials described in paragraph (b)(1) of this section imparts the essential character to a good under § 102.11, various factors may be examined depending upon the type of good involved. These factors include, but are not limited to, the following:

(i) The nature of each material, such as its bulk, quantity, weight or value; and

(ii) The role of each material in relation to the use of the good.

[T.D. 96–48, 61 FR 28957, June 6, 1996]

§ 102.19 NAFTA preference override.

(a) Except in the case of goods covered by paragraph (b) of this section, if a good which is originating within the meaning of § 181.1(q) of this chapter is not determined under § 102.11(a) or (b) or § 102.21 to be a good of a single NAFTA country, the country of origin of such good is the last NAFTA country in which that good underwent production other than minor processing, provided that a Certificate of Origin (see § 181.11 of this chapter) has been completed and signed for the good.

(b) If, under any other provision of this part, the country of origin of a good which is originating within the meaning of § 181.1(q) of this chapter is determined to be the United States and that good has been exported from, and returned to, the United States after having been advanced in value or improved in condition in another NAFTA country, the country of origin of such good for Customs duty purposes is the last NAFTA country in which that good was advanced in value or improved in condition before its return to the United States.

[T.D. 96–48, 61 FR 28957, June 6, 1996]

§ 102.20 Specific rules by tariff classification.

The following rules are the rules specified in § 102.11(a)(3) and other sections of this part. Where a rule under this section permits a change to a subheading from another subheading of the same heading, the rule shall be satisfied only if the change is from a subheading of the same level specified in the rule.

HTSUS	Tariff shift and/or other requirements
	(a) Section I: Chapters 1 through 5
0101–0106	A change to heading 0101 through 0106 from any other chapter.
0201–0209	A change to heading 0201 through 0209 from any other chapter.
0210.11–0210.20	A change to subheading 0210.11 through 0210.20 from any other chapter.
0210.90	A change to subheading 0210.90 from any other chapter; or A change to edible meals and flours of subheading 0210.90 from any product other than edible meals and flours of Chapter 2.
0301–0303	A change to heading 0301 through 0303 from any other chapter.
0304	A change to heading 0304 from any other chapter; or A change to fillets of heading 0304 from any other heading.
0305.10	A change to subheading 0305.10 from any other subheading.
0305.20	A change to subheading 0305.20 from any other chapter.
0305.30	A change to subheading 0305.30 from any other subheading, except from fillets of heading 0304.
0305.41–0305.69	A change to subheading 0305.41 through 0305.69 from any other chapter.
0306	A change to heading 0306 from any other chapter.
0307	A change to heading 0307 from any other chapter; or A change to edible meals and flours from within Chapter 3.
0401	A change to heading 0401 from any other chapter.
0402.10–0402.29	A change to subheading 0402.10 through 0402.29 from any other chapter.
0402.91–0402.99	A change to subheading 0402.91 through 0402.99 from any other chapter.
0403.10	A change to subheading 0403.10 from any other subheading.
0403.90	A change to subheading 0403.90 from any other chapter; or A change to sour cream or kephir from any other product of Chapter 4.

HTSUS	Tariff shift and/or other requirements
0404	A change to heading 0404 from any other heading.
0405.10	A change to subheading 0405.10 from any other heading.
0405.20	A change to subheading 0405.20 from any other chapter, except from subheading 1901.90; or A change to subheading 0405.20 from any other subheading, provided that the good contains no more than 50 percent by weight of milk solids.
0405.90	A change to subheading 0405.90 from any other heading.
0406	A change to heading 0406 from any other heading.
0407–0410	A change to heading 0407 through 0410 from any other chapter.
0501–0511	A change to heading 0501 through 0511 from any other chapter.
(b)	**Section II: Chapters 6 through 14**

Note: Notwithstanding the specific rules of this section, an agricultural or horticultural good grown in the territory of a country shall be treated as a good of that country even if grown from seed or bulbs, root stock, cuttings, slips or other live parts of plants, or from whole plants, imported from a foreign country.

0601–0602	A change to heading 0601 through 0602 from any other heading, including another heading within that group.
0603–0604	A change to heading 0603 through 0604 from any other heading, including another heading within that group, except from heading 0602.
0701–0709	A change to heading 0701 through 0709 from any other chapter.
0710	A change to heading 0710 from any other chapter.
0711	A change to heading 0711 from any other chapter.
0712	A change to heading 0712 from any other chapter; or A change to powdered vegetables of heading 0712 from any other product of Chapter 7, if put up for retail sale.
0713–0714	A change to heading 0713 through 0714 from any other chapter.
0801–0810	A change to heading 0801 through 0810 from any other chapter.
0811	A change to heading 0811 from any other chapter.
0812	A change to heading 0812 from any other chapter.
0813	A change to heading 0813 from any other chapter.
0814	A change to heading 0814 from any other chapter.
0901.11–0901.12	A change to subheading 0901.11 through 0901.12 from any other chapter.
0901.21–0901.22	A change to subheading 0901.21 through 0901.22 from any subheading outside that group.
0901.90	A change to subheading 0901.90 from any other chapter.
0902–0903	A change to heading 0902 through 0903 from any other chapter.
0904–0910	A change to heading 0904 through 0910 from any other chapter; or A change to crushed, ground, or powdered products of heading 0904 through 0910 from within Chapter 9, if put up for retail sale; or A change to subheading 0910.91 from any other subheading, provided that a single spice ingredient of foreign origin constitutes no more than 60 percent by weight of the good.
1001–1008	A change to heading 1001 through 1008 from any other chapter.
1101–1106	A change to heading 1101 through 1106 from any other chapter.
1107	A change to heading 1107 from any other chapter.
1108–1109	A change to heading 1108 through 1109 from any other heading, including another heading within that group.
1201–1207	A change to heading 1201 through 1207 from any other chapter.
1208	A change to heading 1208 from any other heading.
1209–1214	A change to heading 1209 through 1214 from any other chapter.
1301–1302	A change to heading 1301 through 1302 from any other chapter, except from concentrates of poppy straw of subheading 2939.11.
1401–1404	A change to heading 1401 through 1404 from any other chapter.
(c)	**Section III: Chapter 15**
1501–1516	A change to heading 1501 through 1516 from any other chapter.
1517.10	A change to subheading 1517.10 from any other heading.
1517.90	A change to subheading 1517.90 from any other chapter, except from heading 3823; or A change to subheading 1517.90 from any other heading, provided that no single oil ingredient of foreign origin constitutes more than 60 percent by weight of the good.
1518	A change to heading 1518 from any other heading.
1520	A change to heading 1520 from any other heading, except from subheading 2905.45 and heading 3823.
1521–1522	A change to heading 1521 through 1522 from any other chapter, except from heading 3823.
(d)	**Section IV: Chapters 16 through 24**
1601–1605	A change to heading 1601 through 1605 from any other chapter.
1701–1702	A change to heading 1701 through 1702 from any other chapter.
1703	A change to heading 1703 from any other chapter.
1704	A change to heading 1704 from any other heading.

HTSUS	Tariff shift and/or other requirements
1801–1803	A change to heading 1801 through 1803 from any other chapter.
1804	A change to heading 1804 from any other heading, except from heading 1803.
1805	A change to heading 1805 from any other heading, except from subheading 1803.20.
1806.10	A change to subheading 1806.10 from any other heading, except from heading 1805 or from Chapter 17; or
	A change to subheading 1806.10 from Chapter 17, provided that the good contains less than 65 percent by dry weight of sugar.
1806.20	A change to subheading 1806.20 from any other heading, except from Chapter 17; or
	A change to subheading 1806.20 from Chapter 17, provided that the good contains less than 65 percent by dry weight of sugar.
1806.31	A change to subheading 1806.31 from any other subheading.
1806.32	A change to subheading 1806.32 from any other subheading.
1806.90	A change to subheading 1806.90 from any other subheading.
1901.10	A change to subheading 1901.10 from any other subheading.
1901.20	A change to subheading 1901.20 from any other subheading.
1901.90	A change to subheading 1901.90 from any other heading.
1902.11–1902.19	A change to subheading 1902.11 through 1902.19 from any other heading.
1902.20	A change to subheading 1902.20 from any other subheading.
1902.30–1902.40	A change to subheading 1902.30 through 1902.40 from any other heading.
1903	A change to heading 1903 from any other heading.
1904.10	A change to subheading 1904.10 from any other heading.
1904.20	A change to subheading 1904.20 from any other subheading.
1904.30	A change to subheading 1904.30 from any other heading.
1904.90	A change to subheading 1904.90 from any other heading.
1905	A change to heading 1905 from any other heading.

Chapter 20 Note: Notwithstanding the specific rules of this chapter, fruit, nut and vegetable preparations of Chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine or natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing, or roasting), shall be treated as a good of the country in which the fresh good was produced.

2001–2007	A change to heading 2001 through 2007 from any other chapter.
2008.11	A change to subheading 2008.11 from any other chapter, provided that the change is not the result of mere blanching of peanuts.
2008.19–2008.99	A change to subheading 2008.19 through 2008.99 from any other chapter, provided that the change is not the result of mere blanching of nuts.
2009.11–2009.39	A change to subheading 2009.11 through 2009.39 from any other chapter.
2009.41–2009.80	A change to subheading 2009.41 through 2009.80 from any other chapter.
2009.90	A change to subheading 2009.90 from any other chapter; or
	A change to subheading 2009.90 from any other subheading, provided that a single juice ingredient of foreign origin, or juice ingredients from a single foreign country, constitute in single strength form no more than 60 percent by volume of the good.
2101	A change to heading 2101 from any other heading.
2102	A change to heading 2102 from any other heading.
2103.10	A change to subheading 2103.10 from any other heading.
2103.20	A change to subheading 2103.20 from any other heading.
2103.30	A change to subheading 2103.30 from any other subheading; or
	A change to prepared mustard of subheading 2103.30 from mustard flour or meal.
2103.90	A change to subheading 2103.90 from any other subheading.
2104.10	A change to subheading 2104.10 from any other subheading.
2104.20	A change to subheading 2104.20 from any other subheading.
2105	A change to heading 2105 from any other heading.
2106.10	A change to subheading 2106.10 from any other subheading.
2106.90	A change to a good of subheading 2106.90, other than to compound alcoholic preparations, from any other subheading, except from Chapter 4, Chapter 17, heading 2009, subheading 1901.90 or subheading 2202.90; or
	A change to subheading 2106.90 from Chapter 4 or subheading 1901.90, provided that the good contains no more than 50 percent by weight of milk solids; or
	A change to subheading 2106.90 from Chapter 17, provided that the good contains less than 65 percent by dry weight of sugar; or
	A change to subheading 2106.90 from heading 2009 or subheading 2202.90, provided that a single juice ingredient of foreign origin, or juice ingredients from a single foreign country, constitute in single strength form no more than 60 percent by volume of the good; or
	A change to compound alcoholic preparations of subheading 2106.90 from any other subheading, except from subheading 2208.20 through 2208.50.
2201	A change to heading 2201 from any other chapter.
2202.10	A change to sweetened and/or flavored waters of subheading 2202.10 from any other chapter; or
	A change to other beverages of subheading 2202.10 from any other heading.
2202.90	A change to subheading 2202.90 from any other subheading, except from Chapter 4 or heading 1901, 2009, or 2106; or
	A change to subheading 2202.90 from Chapter 4 or heading 1901, provided that the good contains no more than 50 percent by weight of milk solids; or

HTSUS	Tariff shift and/or other requirements
	A change to subheading 2202.90 from heading 2009 or subheading 2106.90, provided that a single juice ingredient of foreign origin, or juice ingredients from a single foreign country, constitute in single strength form no more than 60 percent by volume of the good.
2203	A change to heading 2203 from any other heading.
2204.10–2204.29	A change to subheading 2204.10 through 2204.29 from any other subheading outside that group.
2204.30	A change to subheading 2204.30 from any other heading.
2205	A change to heading 2205 from any other heading, except from heading 2204; or
	A change to vermouth of heading 2205 from heading 2204.
2206	A change to heading 2206 from any other heading.
2207	A change to heading 2207 from any other heading, except from compound alcoholic preparations of subheading 2106.90 or heading 2208.
2208.20–2208.70	A change to subheading 2208.20 through 2208.70 from any other subheading outside that group, except from subheading 2106.90; or
	A change to liqueurs or cordials of subheading 2208.70 from any other product.
2208.90	A change to subheading 2208.90 from any other subheading, except from subheading 2106.90; or
	A change to kirschwasser or ratafia of subheading 2208.90 from any other product.
2209	A change to heading 2209 from any other heading.
2301–2308	A change to heading 2301 through 2308 from any other chapter.
2309.10	A change to subheading 2309.10 from any other heading.
2309.90	A change to subheading 2309.90 from any other heading, except from Chapter 4 or heading 1901; or
	A change to subheading 2309.90 from Chapter 4 or heading 1901, provided that the good contains no more than 50 percent by weight of milk solids.
2401	A change to heading 2401 from any other chapter.
2402–2403	A change to heading 2402 through 2403 from any other heading, including another heading within that group.
(e)	Section V: Chapters 25 through 27
2501–2516	A change to heading 2501 through 2516 from any other heading, including another heading within that group.
2517.10–2517.20	A change to subheading 2517.10 through 2517.20 from any other heading.
2517.30	A change to subheading 2517.30 from any other subheading.
2517.41–2517.49	A change to subheading 2517.41 through 2517.49 from any other heading.
2518–2530	A change to heading 2518 through 2530 from any other heading, including another heading within that group.
2601–2621	A change to heading 2601 through 2621 from any other heading, including another heading within that group.

Chapter 27 Note: For purposes of this chapter, a ''chemical reaction'' is defined as a process in which chemical bonds in molecules are broken and new chemical bonds are formed between the fragmented molecules and/or added elements so that one or more of the original bond/s no longer link the same chemical element/s or functional group/s.

2701–2706	A change to heading 2701 through 2706 from any other heading, including any heading within that group.
2707.10–2707.99	A change to subheading 2707.10 through 2707.99 from any other heading; or
	A change to subheading 2707.10 through 2707.99 from any other subheading, including any subheading within that group, provided that the good resulting from such change is the product of a chemical reaction.
2708–2709	A change to heading 2708 through 2709 from any other heading, including another heading within that group.
2710	A change to heading 2710 from any other heading; or
	A change to any good of heading 2710 from any other good of heading 2710, provided that the good resulting from such change is the product of a chemical reaction.
2711.11	A change to subheading 2711.11 from any other subheading, except from subheading 2711.21.
2711.12–2711.19	A change to subheading 2711.12 through 2711.19 from any other subheading, including another subheading within that group, except from subheading 2711.29.
2711.21	A change to subheading 2711.21 from any other subheading, except from subheading 2711.11.
2711.29	A change to subheading 2711.29 from any other subheading, except from subheading 2711.12 through 2711.21.
2712–2714	A change to heading 2712 through 2714 from any other heading, including another heading within that group.
2715	A change to heading 2715 from any other heading, except from heading 2714 or subheading 2713.20.
2716	A change to heading 2716 from any other heading.
(f)	**Section VI: Chapters 28 through 38**

HTSUS	Tariff shift and/or other requirements

Notes: 1. Chemical reaction origin rule—

Any good of Chapters 28, 29, 31, 32 or 38, except a good of heading 3823, that is the product of a chemical reaction shall be considered to be a good of the country in which the reaction occurred.

A chemical reaction is defined as a process in which chemical bonds in molecules are broken and new chemical bonds are formed between the fragmented molecules and/or added elements so that one or more of the original bonds no longer link the same chemical element/s or functional group/s.

Notwithstanding any of the line-by-line rules, the ''chemical reaction'' rule may be applied to any good classified in the above chapters.

2. Separation prohibition—

A foreign material/component will not be deemed to have satisfied all applicable requirements of these rules by reason of a change from one classification to another merely as the result of the separation of one or more individual materials or components from a man-made mixture unless the isolated material/component, itself, also underwent a chemical reaction.

2801.10–2801.30	A change to subheading 2801.10 through 2801.30 from any other subheading, including another subheading within that group.
2802	A change to heading 2802 from any other heading, except from heading 2503.
2803	A change to heading 2803 from any other heading.
2804.10–2804.50	A change to subheading 2804.10 through 2804.50 from any other subheading, including another subheading within that group.
2804.61–2804.69	A change to subheading 2804.61 through 2804.69 from any other subheading outside that group.
2804.70–2804.90	A change to subheading 2804.70 through 2804.90 from any other subheading, including another subheading within that group.
2805	A change to heading 2805 from any other heading.
2806.10–2806.20	A change to subheading 2806.10 through 2806.20 from any other subheading,
including another subheading within that group..	
2807–2808	A change to heading 2807 through 2808 from any other heading, including another heading within that group.
2809.10–2809.20	A change to subheading 2809.10 through 2809.20 from any other subheading, including another subheading within that group.
2810	A change to heading 2810 from any other heading.
2811.11	A change to subheading 2811.11 from any other subheading.
2811.19	A change to subheading 2811.19 from any other subheading, except from subheading 2811.22.
2811.21	A change to subheading 2811.21 from any other subheading.
2811.22	A change to subheading 2811.22 from any other subheading, except from subheading 2505.10, 2506.10, or 2811.19.
2811.23–2811.29	A change to subheading 2811.23 through 2811.29 from any other subheading, including another subheading within that group.
2812.10–2813.90	A change to subheading 2812.10 through 2813.90 from any other subheading, including another subheading within that group.
2814	A change to heading 2814 from any other heading.
2815.11–2815.12	A change to subheading 2815.11 through 2815.12 from any other subheading outside that group.
2815.20–2815.30	A change to subheading 2815.20 through 2815.30 from any other subheading, including another subheading within that group.
2816.10	A change to subheading 2816.10 from any other subheading.
2816.40	A change to subheading 2816.40 from any other subheading, except a change to oxides, hydroxides and peroxides of strontium of subheading 2816.40 from subheading 2530.90.
2817	A change to heading 2817 from any other heading, except from heading 2608.
2818.10–2818.30	A change to subheading 2818.10 through 2818.30 from any other subheading, including another subheading within that group, except from heading 2606 or subheading 2620.40.
2819.10–2819.90	A change to subheading 2819.10 through 2819.90 from any other subheading, including another subheading within that group.
2820.10–2820.90	A change to subheading 2820.10 through 2820.90 from any other subheading, including another subheading within that group, except from subheading 2530.90 or heading 2602.
2821.10	A change to subheading 2821.10 from any other subheading.
2821.20	A change to subheading 2821.20 from any other subheading, except from earth color mineral substances of 2530.90 or from subheading 2601.11 through 2601.20.
2822	A change to heading 2822 from any other heading, except from heading 2605.
2823	A change to heading 2823 from any other heading.
2824.10–2824.90	A change to subheading 2824.10 through 2824.90 from any other subheading, including another subheading within that group, except from heading 2607.
2825.10–2825.40	A change to subheading 2825.10 through 2825.40 from any other subheading, including another subheading within that group.
2825.50	A change to subheading 2825.50 from any other subheading, except from heading 2603.
2825.60	A change to subheading 2825.60 from any other subheading, except from subheading 2615.10.
2825.70	A change to subheading 2825.70 from any other subheading, except from subheading 2613.10.

HTSUS	Tariff shift and/or other requirements
2825.80	A change to subheading 2825.80 from any other subheading, except from subheading 2617.10.
2825.90	A change to subheading 2825.90 from any other subheading, provided that the good classified in subheading 2825.90 is the product of a ''chemical reaction'' as defined in Note 1.
2826.11–2833.19	A change to subheading 2826.11 through 2833.19 from any other subheading, including another subheading within that group.
2833.21	A change to subheading 2833.21 from any other subheading, except from subheading 2530.20.
2833.22–2833.26	A change to subheading 2833.22 through 2833.26 from any other subheading, including another subheading within that group.
2833.27	A change to subheading 2833.27 from any other subheading, except from subheading 2511.10.
2833.29	A change to subheading 2833.29 from any other subheading, except from heading 2520.
2833.30–2833.40	A change to subheading 2833.30 through 2833.40 from any other subheading, including another subheading within that group.
2834.10–2834.29	A change to subheading 2834.10 through 2834.29 from any other subheading, including another subheading within that group.
2835.10–2835.25	A change to subheading 2835.10 through 2835.25 from any other subheading, including another subheading within that group.
2835.26	A change to subheading 2835.26 from any other subheading, except from heading 2510.
2835.29–2835.39	A change to subheading 2835.29 through 2835.39 from any other subheading, including another subheading within that group.
2836.10	A change to subheading 2836.10 from any other subheading.
2836.20	A change to subheading 2836.20 from any other subheading, except from subheading 2530.90.
2836.30–2836.40	A change to subheading 2836.30 through 2836.40 from any other subheading, including another subheading within that group.
2836.50	A change to subheading 2836.50 from any other subheading, except from heading 2509, subheading 2517.41 or 2517.49, heading 2521, or subheading 2530.90.
2836.60	A change to subheading 2836.60 from any other subheading, except from subheading 2511.20.
2836.70	A change to subheading 2836.70 from any other subheading, except from heading 2607.
2836.91	A change to subheading 2836.91 from any other subheading.
2836.92	A change to subheading 2836.92 from any other subheading, except from subheading 2530.90.
2836.99	A change to bismuth carbonate of subheading 2836.99 from any other subheading, except from subheading 2617.90; or A change to subheading 2836.99 other than to bismuth carbonate from any other subheading, provided that the good classified in subheading 2836.99 is the product of a ''chemical reaction'' as defined in Note 1.
2837.11–2837.20	A change to subheading 2837.11 through 2837.20 from any other subheading, including another subheading within that group.
2838	A change to heading 2838 from any other heading.
2839.11–2839.19	A change to subheading 2839.11 through 2839.19 from any other subheading outside that group.
2839.20–2839.90	A change to subheading 2839.20 through 2839.90 from any other subheading, including another subheading within that group.
2840.11–2840.20	A change to subheading 2840.11 through 2840.20 from any other subheading outside that group, except from subheading 2528.10.
2840.30	A change to subheading 2840.30 from any other subheading.
2841.10–2841.30	A change to subheading 2841.10 through 2841.30 from any other subheading, including another subheading within that group.
2841.50	A change to subheading 2841.50 from any other subheading, except from heading 2610.
2841.61–2841.69	A change to subheading 2841.61 through 2841.69 from any other subheading outside that group.
2841.70	A change to subheading 2841.70 from any other subheading, except from subheading 2613.90.
2841.80	A change to subheading 2841.80 from any other subheading, except from heading 2611.
2841.90	A change to subheading 2841.90 from any other subheading, provided that the good classified in subheading 2841.90 is the product of a ''chemical reaction'' as defined in Note 1.
2842.10	A change to subheading 2842.10 from any other subheading.
2842.90	A change to subheading 2842.90 from any other subheading, provided that the good classified in subheading 2842.90 is the product of a ''chemical reaction'' as defined in Note 1.
2843.10	A change to subheading 2843.10 from any other subheading, except from heading 7106, 7108, 7110, or 7112.
2843.21–2843.29	A change to subheading 2843.21 through 2843.29 from any other subheading, including another subheading within that group.
2843.30–2843.90	A change to subheading 2843.30 through 2843.90 from any other subheading, including another subheading within that group, except from subheading 2616.90.
2844.10	A change to subheading 2844.10 from any other subheading, except from subheading 2612.10.

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2844.20	A change to subheading 2844.20 from any other subheading.
2844.30	A change to subheading 2844.30 from any other subheading, except from subheading 2844.20.
2844.40–2844.50	A change to subheading 2844.40 through 2844.50 from any other subheading, including another subheading within that group.
2845	A change to heading 2845 from any other heading.
2846	A change to heading 2846 from any other heading, except from subheading 2530.90.
2847	A change to heading 2847 from any other heading.
2848	A change to heading 2848 from any other heading.
2849.10–2849.90	A change to subheading 2849.10 through 2849.90 from any other subheading, including another subheading within that group.
2850–2851	A change to heading 2850 through 2851 from any other heading, including another heading within that group.
2901.10–2901.29	A change to subheading 2901.10 through 2901.29 from any other subheading, including another subheading within that group, except from acyclic petroleum oils of heading 2710 or from subheading 2711.13, 2711.14, 2711.19, or 2711.29.
2902.11	A change to subheading 2902.11 from any other subheading.
2902.19	A change to subheading 2902.19 from any other subheading, except from non-aromatic cyclic petroleum oils of subheading 2707.50, 2707.99, or heading 2710.
2902.20	A change to subheading 2902.20 from any other subheading, except from subheading 2707.10, 2707.50, or 2707.99.
2902.30	A change to subheading 2902.30 from any other subheading, except from subheading 2707.20, 2707.50, or 2707.99.
2902.41–2902.44	A change to subheading 2902.41 through 2902.44 from any other subheading, including another subheading within that group, except from subheading 2707.30, 2707.50 or 2707.99.
2902.50	A change to subheading 2902.50 from any other subheading.
2902.60	A change to subheading 2902.60 from any other subheading, except from subheading 2707.30, 2707.50, 2707.99, or heading 2710.
2902.70–2902.90	A change to subheading 2902.70 through 2902.90 from any other subheading, including another subheading within that group, except from subheading 2707.50, 2707.99, or heading 2710.
2903.11–2903.30	A change to subheading 2903.11 through 2903.30 from any other subheading, including another subheading within that group.
2903.41–2903.49	A change to subheading 2903.41 through 2903.49 from any other subheading outside that group.
2903.51–2904.90	A change to subheading 2903.51 through 2904.90 from any other subheading, including another subheading within that group.
2905.11–2905.19	A change to subheading 2905.11 through 2905.19 from any other subheading, including another subheading within that group.
2905.22–2905.29	A change to subheading 2905.22 through 2905.29 from any other subheading, including another subheading within that group, except from subheading 1301.90, 3301.90, or 3805.90.
2905.31–2905.44	A change to subheading 2905.31 through 2905.44 from any other subheading, including another subheading within that group.
2905.45	A change to subheading 2905.45 from any other subheading, except from heading 1520.
2905.49–2905.59	A change to subheading 2905.49 through 2905.59 from any other subheading, including another subheading within that group.
2906.11	A change to subheading 2906.11 from any other subheading, except from subheading 3301.24 or 3301.25.
2906.12–2906.13	A change to subheading 2906.12 through 2906.13 from any other subheading, including another subheading within that group.
2906.14	A change to subheading 2906.14 from any other subheading, except from heading 3805.
2906.19	A change to subheading 2906.19 from any other subheading, except from subheading 3301.90 or 3805.90.
2906.21	A change to subheading 2906.21 from any other subheading.
2906.29	A change to subheading 2906.29 from any other subheading, except from subheading 2707.60 or 3301.90.
2907.11	A change to subheading 2907.11 from any other subheading, except from subheading 2707.60.
2907.12–2907.22	A change to subheading 2907.12 through 2907.22 from any other subheading, including another subheading within that group, except from subheading 2707.99.
2907.23	A change to subheading 2907.23 from any other subheading.
2907.29	A change to subheading 2907.29 from any other subheading, including a change to phenol-alcohols of subheading 2907.29, from polyphenols of subheading 2907.29, or a change to polyphenols of subheading 2907.29 from phenol-alcohols of subheading 2907.29, except a change from subheading 2707.99.
2908	A change to heading 2908 from any other heading.
2909.11–2909.49	A change to subheading 2909.11 through 2909.49 from any other subheading, including another subheading within that group.
2909.50	A change to subheading 2909.50 from any other subheading, except from subheading 3301.90.
2909.60	A change to subheading 2909.60 from any other subheading.

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2910.10–2910.90	A change to subheading 2910.10 through 2910.90 from any other subheading, including another subheading within that group.
2911	A change to heading 2911 from any other heading.
2912.11–2912.13	A change to subheading 2912.11 through 2812.13 from any other subheading, including another subheading within that group.
2912.19–2912.49	A change to subheading 2912.19 through 2912.49 from any other subheading, including another subheading within that group, except from subheading 3301.90.
2912.50–2912.60	A change to subheading 2912.50 through 2912.60 from any other subheading, including another subheading within that group.
2913	A change to heading 2913 from any other heading.
2914.11–2914.19	A change to subheading 2914.11 through 2914.19 from any other subheading, including another subheading within that group, except from subheading 3301.90.
2914.21–2914.22	A change to subheading 2914.21 through 2914.22 from any other subheading, including another subheading within that group.
2914.23	A change to subheading 2914.23 from any other subheading, except from subheading 3301.90.
2914.29	A change to subheading 2914.29 from any other subheading, except from subheading 3301.90 or 3805.90.
2914.31–2914.39	A change to subheading 2914.31 through 2914.39 from any other subheading outside that group, except from subheading 3301.90.
2914.40–2914.70	A change to subheading 2914.40 through 2914.70 from any other subheading, including another subheading within that group, except from subheading 3301.90.
2915.11–2915.35	A change to subheading 2915.11 through 2915.35 from any other subheading, including another subheading within that group.
2915.39	A change to subheading 2915.39 from any other subheading, except from subheading 3301.90.
2915.40–2915.90	A change to subheading 2915.40 through 2915.90 from any other subheading, including another subheading within that group.
2916.11–2916.20	A change to subheading 2916.11 through 2916.20 from any other subheading, including another subheading within that group.
2916.31–2916.39	A change to subheading 2916.31 through 2916.39 from any other subheading, including another subheading within that group, except from subheading 3301.90.
2917.11–2917.39	A change to subheading 2917.11 through 2917.39 from any other subheading, including another subheading within that group.
2918.11–2918.22	A change to subheading 2918.11 through 2918.22 from any other subheading, including another subheading within that group.
2918.23	A change to subheading 2918.23 from any other subheading, except from subheading 3301.90.
2918.29–2918.30	A change to subheading 2918.29 through 2918.30 from any other subheading, including another subheading within that group.
2918.90	A change to subheading 2918.90 from any other subheading, except from heading 3301.90.
2919	A change to heading 2919 from any other heading.
2920.10–2926.90	A change to subheading 2920.10 through 2926.90 from any other subheading, including another subheading within that group.
2927–2928	A change to heading 2927 through 2928 from any other heading, including another heading within that group.
2929.10–2930.90	A change to subheading 2929.10 through 2930.90 from any other subheading, including another subheading within that group.
2931	A change to heading 2931 from any other heading.
2932.11–2932.99	A change to subheading 2932.11 through 2932.99 from any other subheading, including another subheading within that group, except from subheading 3301.90.
2933.11–2934.99	A change to subheading 2933.11 through 2934.99 from any other subheading, including another subheading within that group.
2935	A change to heading 2935 from any other heading.
2936.10–2936.29	A change to subheading 2936.10 through 2936.29 from any other subheading, including another subheading within that group.
2936.90	A change to subheading 2936.90 from any other subheading, except from subheading 2936.10 through 2936.29.
2937–2941	A change to heading 2937 through 2941 from any other heading, including another heading within that group, except a change to concentrates of poppy straw of subheading 2939.11 from poppy straw extract of subheading 1302.19.
2942	A change to heading 2942 from any other chapter.
3001.10	A change to subheading 3001.10 from any other subheading, except from subheading 0206.10 through 0208.90 or 0305.20, heading 0504 or 0510, or subheading 0511.99 if the change from these provisions is not to a powder classified in subheading 3001.10, and except a change from subheading 3006.80.
3001.10–3001.90	A change to subheading 3001.20 through 3001.90 from any other subheading, including another subheading within that group, except a change from subheading 3006.80.
3002.10–3002.90	A change to subheading 3002.10 through 3002.90 from any other subheading, including another subheading within that group, except a change from subheading 3006.80.
3003.10	A change to subheading 3003.10 from any other subheading, except from subheading 2941.10, 2941.20, 3003.20, or 3006.80.

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3003.20	A change to subheading 3003.20 from any other subheading, except from subheading 2941.30 through 2941.90, or 3006.80.
3003.31	A change to subheading 3003.31 from any other subheading, except from subheading 2937.12 or 3006.80.
3003.39	A change to subheading 3003.39 from any other subheading, except from hormones or their derivatives classified in Chapter 29, or except from subheading 3006.80.
3003.40	A change to subheading 3003.40 from any other subheading, except from heading 1211, subheading 1302.11, 1302.19, 1302.20, 1302.39, or 3006.80 or alkaloids or derivatives thereof classified in Chapter 29.
3003.90	A change to subheading 3003.90 from any other subheading, provided that the domestic content of the therapeutic or prophylactic component is no less than 40 percent by weight of the total therapeutic or prophylactic content, or except from subheading 3006.80.
3004.10	A change to subheading 3004.10 from any other subheading, except from subheading 2941.10, 2941.20, 3003.10, 3003.20, or 3006.80.
3004.20	A change to subheading 3004.20 from any other subheading, except from subheading 2941.30 through 2941.90, 3003.20, or 3006.80.
3004.31	A change to subheading 3004.31 from any other subheading, except from subheading 2937.12, 3003.31, 3003.39, or 3006.80.
3004.32	A change to subheading 3004.32 from any other subheading, except from subheading 3003.39 or 3006.80, or from adrenal corticosteroid hormones classified in Chapter 29.
3004.39	A change to subheading 3004.39 from any other subheading, except from subheading 3003.39 or 3006.80, or from hormones or derivatives thereof classified in Chapter 29.
3004.40	A change to subheading 3004.40 from any other subheading, except from heading 1211, subheading 1302.11, 1302.19, 1302.20, 1302.39, 3003.40 or 3006.80, or alkaloids or derivatives thereof classified in Chapter 29.
3004.50	A change to subheading 3004.50 from any other subheading, except from subheading 3003.90 or 3006.80, or vitamins classified in Chapter 29 or products classified in heading 2936.
3004.90	A change to subheading 3004.90 from any other subheading, except from subheading 3003.90 or 3006.80, and provided that the domestic content of the therapeutic or prophylactic component is no less than 40 percent by weight of the total therapeutic or prophylactic content.
3005.10	A change to subheading 3005.10 from any other subheading, except from subheading 3006.80 or 3825.30.
3006.10	A change to subheading 3006.10 from any other subheading, except from subheading 1212.20, 3006.80, 3825.30, or 4206.10.
3006.20–3006.60	A change to subheading 3006.20 through 3006.60 from any other subheading, including another subheading within that group, except from subheading 3006.80 or 3825.30.
3006.70	A change to subheading 3006.70 from any other subheading, except from subheading 3006.80 or 3825.30, and provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound.
3006.80	A change to subheading 3006.80 from any other chapter.
3101	A change to heading 3101 from any other heading, except from subheading 2301.20 or from powders and meals of subheading 0506.90, heading 0508, or subheading 0511.91 or 0511.99.
3102.10–3102.21	A change to subheading 3102.10 through 3102.21 from any other subheading, including another subheading within that group.
3102.29	A change to subheading 3102.29 from any other subheading, except from subheading 3102.21 or 3102.30.
3102.30	A change to subheading 3102.30 from any other subheading.
3102.40	A change to subheading 3102.40 from any other subheading, except from subheading 3102.30.
3102.50	A change to subheading 3102.50 from any other subheading.
3102.60	A change to subheading 3102.60 from any other subheading, except from subheading 2834.29 or 3102.30.
3102.70	A change to subheading 3102.70 from any other subheading.
3102.80	A change to subheading 3102.80 from any other subheading, except from subheading 3102.10 or 3102.30.
3102.90	A change to subheading 3102.90 from any other subheading, except from subheading 3102.10 through 3102.80.
3103.10–3103.20	A change to subheading 3103.10 through 3103.20 from any other subheading, including another subheading within that group.
3103.90	A change to subheading 3103.90 from any other subheading, except from subheading 3103.10 or 3103.20.
3104.10–3104.30	A change to subheading 3104.10 through 3104.30 from any other subheading, including another subheading within that group.
3104.90	A change to subheading 3104.90 from any other subheading, except from subheading 3104.10 through 3104.30.
3105.10	A change to subheading 3105.10 from any other subheading, except from Chapter 31.
3105.20	A change to subheading 3105.20 from any other heading, except from heading 3102 through 3104.
3105.30–3105.40	A change to subheading 3105.30 through 3105.40 from any other subheading, including another subheading within that group.

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3105.51–3105.59	A change to subheading 3105.51 through 3105.59 from any other subheading, including another subheading within that group, except from subheading 3102.10 through 3103.90 or 3105.30 through 3105.40.
3105.60	A change to subheading 3105.60 from any other subheading, except from heading 3103 through 3104.
3105.90	A change to subheading 3105.90 from any other chapter, except from subheading 2834.21.
3201.10–3202.90	A change to subheading 3201.10 through 3202.90 from any other subheading, including another subheading within that group.
3203	A change to heading 3203 from any other heading.
3204.11–3204.17	A change to subheading 3204.11 through 3204.17 from any other subheading, including another subheading within that group.
3204.19	A change to subheading 3204.19 from any other subheading, except from subheading 3204.11 through 3204.17.
3204.20–3204.90	A change to subheading 3204.20 through 3204.90 from any other subheading, including another subheading within that group.
3205	A change to heading 3205 from any other heading.
3206.11–3206.19	A change to subheading 3206.11 through 3206.19 from any other subheading outside that group.
3206.20–3209.90	A change to subheading 3206.20 through 3209.90 from any other subheading, including another subheading within that group.
3210	A change to heading 3210 from any other heading.
3211	A change to heading 3211 from any other heading, except from subheading 3806.20.
3212.10–3212.90	A change to subheading 3212.10 through 3212.90 from any other subheading, including another subheading within that group.
3213	A change to heading 3213 from any other heading.
3214.10–3214.90	A change to subheading 3214.10 through 3214.90 from any other subheading, including another subheading within that group, except from subheading 3824.50.
3215	A change to heading 3215 from any other heading.
3301.11–3301.90	A change to subheading 3301.11 through 3301.90 from any other subheading, including another subheading within that group.
3302	A change to heading 3302 from any other heading, except from subheading 2106.90 or heading 2207, 2208, or 3301.
3303	A change to heading 3303 from any other heading, except from subheading 3302.90.
3304.10–3306.10	A change to subheading 3304.10 through 3306.10 from any other subheading, including another subheading within that group.
3306.20	A change to subheading 3306.20 from any other subheading, except from Chapter 54.
3306.90–3307.90	A change to subheading 3306.90 through 3307.90 from any other subheading, including another subheading within that group.
3401	A change to heading 3401 from any other heading.
3402.11	A change to subheading 3402.11 from any other subheading, except from mixed alkylbenzenes of heading 3817.
3402.12–3402.20	A change to subheading 3402.12 through 3402.20 from any other subheading, including another subheading within that group.
3402.90	A change to subheading 3402.90 from any other heading.
3403.11–3403.19	A change to subheading 3403.11 through 3403.19 from any other subheading, including another subheading within that group, except from heading 2710 or 2712.
3403.91–3403.99	A change to subheading 3403.91 through 3403.99 from any other subheading, including another subheading within that group.
3404.10–3404.20	A change to subheading 3404.10 through 3404.20 from any other subheading, including another subheading within that group.
3404.90	A change to subheading 3404.90 from any other subheading, except from heading 1521 or subheading 2712.20 or 2712.90.
3405.10–3405.90	A change to subheading 3405.10 through 3405.90 from any other subheading, including another subheading within that group.
3406–3407	A change to heading 3406 through 3407 from any other heading, including another heading within that group.
3501.10–3501.90	A change to subheading 3501.10 through 3501.90 from any other subheading, including another subheading within that group.
3502.11–3502.19	A change to subheading 3502.11 through 3502.19 from any other subheading outside that group, except from heading 0407.
3502.20–3502.90	A change to subheading 3502.20 through 3502.90 from any other subheading, including another subheading within that group.
3503–3504	A change to heading 3503 through 3504 from any other heading, including another heading within that group.
3505.10	A change to subheading 3505.10 from any other subheading.
3505.20	A change to subheading 3505.20 from any other subheading, except from heading 1108.
3506.10	A change to subheading 3506.10 from any other subheading, except from heading 3503 or subheading 3501.90.
3506.91–3506.99	A change to subheading 3506.91 through 3506.99 from any other subheading, including another subheading within that group.
3507	A change to heading 3507 from any other heading.
3601–3606	A change to heading 3601 through 3606 from any other heading, including any other heading within that group.

HTSUS	Tariff shift and/or other requirements
3701–3703	A change to heading 3701 through 3703 from any other heading outside that group.
3704–3706	A change to heading 3704 through 3706 from any other heading, including another heading within that group.
3707.10–3707.90	A change to subheading 3707.10 through 3707.90 from any other subheading, including another subheading within that group.
3801.10	A change to subheading 3801.10 from any other subheading.
3801.20	A change to subheading 3801.20 from any other subheading, except from heading 2504 or subheading 3801.10.
3801.30	A change to subheading 3801.30 from any other subheading.
3801.90	A change to subheading 3801.90 from any other subheading, except from heading 2504.
3802–3805	A change to heading 3802 through 3805 from any other heading, including another heading within that group.
3806.10–3806.90	A change to subheading 3806.10 through 3806.90 from any other subheading, including another subheading within that group.
3807	A change to heading 3807 from any other heading.
3808.10	A change to subheading 3808.10 from any other subheading, except from subheading 1302.14 or from any insecticide classified in Chapter 28 or 29.
3808.20	A change to subheading 3808.20 from any other subheading, except from fungicides classified in Chapter 28 or 29.
3808.30	A change to subheading 3808.30 from any other subheading, except from herbicides, antisprouting products and plant-growth regulators classified in Chapter 28 or 29; or A change to a mixture of subheading 3808.30 from any other subheading, provided that the mixture is made from two or more active ingredients and a domestic active ingredient constitutes no less than 40 percent by weight of the total active ingredients.
3808.40	A change to subheading 3808.40 from any other subheading.
3808.90	A change to subheading 3808.90 from any other subheading, except from rodenticides and other pesticides classified in Chapter 28 or 29; or A change to a mixture of subheading 3808.90 from any other subheading, provided that the mixture is made from two or more active ingredients and a domestic active ingredient constitutes no less than 40 percent by weight of the total active ingredients.
3809.10	A change to subheading 3809.10 from any other subheading, except from subheading 3505.10.
3809.91–3809.93	A change to subheading 3809.91 through 3809.93 from any other subheading, including another subheading within that group.
3810–3816	A change to heading 3810 through 3816 from any other heading, including another heading within that group.
3817	A change to heading 3817 from any other heading, including changes from one product to another within that heading, except from subheading 2902.90.
3818	A change to heading 3818 from any other heading.
3819	A change to heading 3819 from any other heading, except from heading 2710.
3820	A change to heading 3820 from any other heading, except from subheading 2905.31.
3821	A change to heading 3821 from any other heading.
3822	A change to heading 3822 from any other heading, except from subheading 3002.10 or 3502.90 or heading 3504.
3823.11–3823.13	A change to subheading 3823.11 through 3823.13 from any other subheading, including another subheading within that group, except from heading 1520.
3823.19	A change to subheading 3823.19 from any other subheading.
3823.70	A change to subheading 3823.70 from any other subheading, except from heading 1520.
3824.10	A change to subheading 3824.10 from any other subheading, except from heading 3505, subheading 3806.10 or 3806.20, or heading 3903, 3905, 3906, 3909, 3911, or 3913.
3824.20	A change to subheading 3824.20 from any other subheading.
3824.30	A change to subheading 3824.30 from any other subheading, except from heading 2849.
3824.40	A change to subheading 3824.40 from any other subheading.
3824.50	A change to subheading 3824.50 from any other subheading, except from subheading 3214.90.
3824.60	A change to subheading 3824.60 from any other subheading.
3824.71–3824.90	A change to subheading 3824.71 through 3824.90 from any other subheading, including another subheading within that group, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound.
3825.10–3825.69	A change to subheading 3825.10 through 3825.69 from any other chapter, except from Chapter 28 through 38, 40 or 90.
3825.90	A change to subheading 3825.90 from any other subheading, except from subheading 3824.90, and provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound.
(g)	**Section VII: Chapters 39 through 40**

Chapter 39 Note: The country of origin of goods classified in subheadings 3921.12.15, 3921.13.15, and 3921.90.2550 shall be determined under the provisions of § 102.21.

3901–3915	A change to heading 3901 through 3915 from any other heading, including another heading within that group, provided that the domestic polymer content is no less than 40 percent by weight of the total polymer content.

HTSUS	Tariff shift and/or other requirements
3916.10–3918.90	A change to subheading 3916.10 through 3918.90 from any other subheading, including another subheading within that group.
3919.10–3919.90	A change to subheading 3919.10 through 3919.90 from any other subheading outside that group.
3920.10–3921.90	A change to subheading 3920.10 through 3921.90 from any other subheading, including another subheading within that group.
3922–3926	A change to heading 3922 through 3926 from any other heading, including another heading within that group.
4001.10–4001.22	A change to subheading 4001.10 through 4001.22 from any other subheading, including another subheading within that group.
4001.29	A change to subheading 4001.29 from any other subheading, except from subheading 4001.21 or 4001.22.
4001.30	A change to subheading 4001.30 from any other subheading.
4002.11–4002.70	A change to subheading 4002.11 through 4002.70 from any other subheading, including another subheading within that group.
4002.80–4002.99	A change to subheading 4002.80 through 4002.99 from any other subheading, including another subheading within that group, provided that the domestic rubber content is no less than 40 percent by weight of the total rubber content.
4003–4004	A change to heading 4003 through 4004 from any other heading, including another heading within that group.
4005	A change to heading 4005 from any other heading, except from heading 4001 or 4002.
4006–4010	A change to heading 4006 through 4010 from any other heading, including another heading within that group.
4011.10–4012.90	A change to subheading 4011.10 through 4012.90 from any other subheading, including another subheading within that group.
4013	A change to heading 4013 from any other heading.
4014.10–4014.90	A change to subheading 4014.10 through 4014.90 from any other subheading, including another subheading within that group.
4015	A change to heading 4015 from any other heading.
4016.10–4016.99	A change to subheading 4016.10 through 4016.99 from any other subheading, including another subheading within that group.
4017	A change to heading 4017 from any other heading.
(h)	**Section VIII: Chapters 41 through 43**
4101	A change to hides or skins of heading 4101 which have undergone a tanning (including a pre-tanning) process which is reversible from any other good of heading 4101 or from any other chapter; or A change to any other good of heading 4101 from any other chapter.
4102	A change to hides or skins of heading 4102 which have undergone a tanning (including a pre-tanning) process which is reversible from any other good of heading 4102 or from any other chapter; or A change to any other good of heading 4102 from any other chapter.
4103	A change to hides or skins of heading 4103 which have undergone a tanning (including a pre-tanning) process which is reversible from any other good of heading 4103 or from any other chapter; or A change to any other good of heading 4103 from any other chapter.
4104–4106	A change to heading 4104 through 4106 from any other heading, including another heading within that group, except from hides or skins of heading 4101 through 4103 which have undergone a tanning (including a pre-tanning) process which is reversible, or from heading 4107, 4112 or 4113.
4107	A change to heading 4107 from any other heading except from hides or skins of heading 4101 which have undergone a tanning (including a pre-tanning) process which is reversible, or from heading 4104.
4112	A change to heading 4112 from any other heading except from hides or skins of heading 4102 which have undergone a tanning (including a pre-tanning) process which is reversible, or from heading 4105.
4113	A change to heading 4113 from any other heading except from hides or skins of heading 4103 which have undergone a tanning (including a pre-tanning) process which is reversible, or from heading 4106.
4114.10–4115.20	A change to subheading 4114.10 through 4115.20 from any other subheading, including a subheading within that group.

Chapter 42 Note: The country of origin of goods classified in subheadings 4202.12.40 through 4202.12.80, 4202.22.40 through 4202.22.80, 4202.32.40 through 4202.32.95, 4202.92.05, 4202.92.15 through 4202.92.30, and 4202.92.60 through 4202.92.90 shall be determined under the provisions of § 102.21.

4201	A change to heading 4201 from any other heading.
4202.11	A change to subheading 4202.11 from any other heading.
4202.12–4202.22	A change to subheading 4202.12 through 4202.22 from any other heading, provided that the change does not result from the assembly of foreign cut components.
4202.29	A change to subheading 4202.29 from any other heading.
4202.31–4202.32	A change to subheading 4202.31 through 4202.32 from any other heading, provided that the change does not result from the assembly of foreign cut components.
4202.39	A change to subheading 4202.39 from any other heading.

HTSUS	Tariff shift and/or other requirements
4202.91–4202.99	A change to subheading 4202.91 through 4202.99 from any other heading, provided that the change does not result from the assembly of foreign cut components.
4203–4206	A change to heading 4203 through 4206 from any other heading, including another heading within that group.
4301	A change to heading 4301 from any other chapter.
4302.11–4302.20	A change to subheading 4302.11 through 4302.20 from any other heading.
4302.30	A change to subheading 4302.30 from any other subheading, provided that the change does not result from the assembly of foreign cut fur components.
4303–4304	A change to heading 4303 through 4304 from any other heading, including another heading within that group.
(i)	**Section IX: Chapters 44 through 46**
4401–4411	A change to heading 4401 through 4411 from any other heading, including another heading within that group; or A change to strips continuously shaped along the ends and also continuously shaped along the edges or faces of heading 4409 from strips continuously shaped only along the edges or faces of heading 4409.
4412	A change to heading 4412 from any other heading; or A change to surface-covered plywood of heading 4412 from any other plywood that is not surface-covered or is surface-covered only with a clear or transparent material which does not obscure the grain, texture, or markings of the face ply.
4413–4421	A change to heading 4413 through 4421 from any other heading, including another heading within that group.
4501	A change to heading 4501 from any other heading.
4502	A change to heading 4502 from any other heading, except from heading 4501.
4503–4504	A change to heading 4503 through 4504 from any other heading, including another heading within that group.
4601.20–4601.99	A change to subheading 4601.20 through 4601.99 from any other subheading, including another heading within that group.
4602	A change to heading 4602 from any other heading.
(j)	**Section X: Chapters 47 through 49**
4701–4702	A change to heading 4701 through 4702 from any other heading, including another heading within that group.
4703.11–4704.29	A change to subheading 4703.11 through 4704.29 from any other subheading, including another subheading within that group.
4705–4707	A change to heading 4705 through 4707 from any other heading, including another heading within that group.
4801–4807	A change to heading 4801 through 4807 from any other heading, including another heading within that group.
4808.10	A change to subheading 4808.10 from any other heading.
4808.20–4808.30	A change to subheading 4808.20 through 4808.30 from any other heading, except from heading 4804.
4808.90	A change to subheading 4808.90 from any other chapter.
4809	A change to heading 4809 from any other heading.
4810	A change to heading 4810 from any other heading.
4811	A change to paper or paperboard in strips or rolls of a width not exceeding 15 cm of heading 4811 from strips or rolls of a width exceeding 15 cm of heading 4811 or any other heading, except from heading 4817 through 4823; A change to paper or paperboard in rectangular (including square) sheets with the larger dimension not exceeding 36 cm or the other dimension not exceeding 15 cm in the unfolded state of heading 4811 from strips or rolls of a width exceeding 15 cm of heading 4811, paper or paperboard in rectangular (including square) sheets with the larger dimension exceeding 36 cm and the other dimension exceeding 15 cm in the unfolded state of heading 4811 or any other heading, except from heading 4817 through 4823; or A change to any other good of heading 4811 from any other chapter.
4812–4814	A change to heading 4812 through 4814 from any other heading, including another heading within that group.
4815	A change to heading 4815 from any other heading.
4816	A change to heading 4816 from any other heading, except from heading 4809.
4817–4822	A change to heading 4817 through 4822 from any other heading, including another heading within that group.
4823.12	A change to subheading 4823.12 from any other subheading.
4823.19	A change to subheading 4823.19 from any other subheading.
4823.20–4823.40	A change to subheading 4823.20 through 4823.40 from any other chapter.
4823.60–4823.70	A change to subheading 4823.60 through 4823.70 from any other subheading, including another subheading within that group.
4823.90	A change to a good of subheading 4823.90, other than to cards not punched and for punchcard machines, from any other subheading; or A change to cards not punched and for punchcard machines of subheading 4823.90 from any other chapter.

HTSUS	Tariff shift and/or other requirements
4901–4911	A change to heading 4901 through 4911 from any other heading, including another heading within that group.
(k)	**Section XII: Chapters 64 through 67**
Chapter 64 Note: For purposes of this chapter, the term ''formed uppers'' means uppers, with closed bottoms, which have been shaped by lasting, molding or otherwise but not by simply closing at the bottom. The country of origin of goods classified in subheadings 6405.20.60, 6406.10.77, 6406.10.90, and 6406.99.15 shall be determined under the provisions of § 102.21.	
6401–6405	A change to heading 6401 through 6405 from any other heading outside that group, except from formed uppers.
6406.10	A change to subheading 6406.10 from any other subheading.
6406.20–6406.99	A change to subheading 6406.20 through 6406.99 from any other chapter.
6505.10	A change to subheading 6505.10 from any other subheading.
6506	A change to heading 6506 from any other heading, except from heading 6501 through 6502; or A change to heading 6506 from heading 6501 by means of a blocking process; or A change to heading 6506 from heading 6502, provided that the change is the result of at least three processing steps (e.g. dyeing, blocking, trimming, or adding a sweatband).
6507	A change to heading 6507 from any other heading.
6602	A change to heading 6602 from any other heading.
6603.10	A change to subheading 6603.10 from any other heading.
6603.20	A change to subheading 6603.20 from any other heading; or A change to subheading 6603.20 from subheading 6603.90, except when that change is pursuant to General Rule of Interpretation 2(a).
6603.90	A change to subheading 6603.90 from any other heading.
6701	A change to heading 6701 from any other heading; or A change to articles of feather or down of heading 6701 from feathers or down.
6702–6704	A change to heading 6702 through 6704 from any other heading, including another heading within that group.
(l)	**Section XIII: Chapters 68 through 70**
6801–6808	A change to heading 6801 through 6808 from any other heading, including another heading within that group.
6809.11	A change to subheading 6809.11 from any other heading.
6809.19	A change to subheading 6809.19 from any other heading.
6809.90	A change to subheading 6809.90 from any other subheading.
6810.11–6810.19.	A change to subheading 6810.11 through 6810.19 from any other heading.
6810.91	A change to subheading 6810.91 from any other subheading.
6810.99	A change to subheading 6810.99 from any other heading.
6811.10	A change to subheading 6811.10 from any other heading.
6811.20	A change to subheading 6811.20 from any other heading.
6811.30	A change to subheading 6811.30 from any other heading.
6811.90	A change to subheading 6811.90 from any other heading.
6812.50	A change to subheading 6812.50 from any other subheading.
6812.60–6812.70.	A change to subheading 6812.60 through 6812.70 from any other subheading outside that group.
6812.90	A change to subheading 6812.90 from any other heading; or A change to yarn and thread of subheading 6812.90 from any other subheading including from any other good also classified in subheading 6812.90; or A change to cords and string, whether or not plaited of subheading 6812.90 from any other subheading or from any other good also classified in subheading 6812.90, except from yarn and thread of subheading 6812.90; or, A change to woven or knitted fabric of subheading 6812.90 from any other subheading including from any other good also classified in subheading 6812.90.
6813	A change to heading 6813 from any other heading.
6814.10	A change to subheading 6814.10 from any other heading.
6814.90	A change to subheading 6814.90 from any other heading.
6815.10–6815.99.	A change to subheading 6815.10 through 6815.99 from any other subheading, including another subheading within that group.
6901–6914	A change to heading 6901 through 6914 from any other chapter.
Chapter 70 Note: The country of origin of goods classified in subheadings 7019.19.15 and 7019.19.28 shall be determined under the provisions of § 102.21.	
7001	A change to heading 7001 from any other heading.
7002	A change to heading 7002 from any other heading.
7003–7006	A change to heading 7003 through 7006 from any other heading outside that group.
7007	A change to heading 7007 from any other heading.
7008	A change to heading 7008 from any other heading.
7009.10	A change to subheading 7009.10 from any other subheading.
7009.91–7009.92	A change to subheading 7009.91 through 7009.92 from any other heading.
7010	A change to heading 7010 from any other heading.
7011	A change to heading 7011 from any other heading, except from subheading 7003.30.

HTSUS	Tariff shift and/or other requirements
7012–7018	A change to heading 7012 through 7018 from any other heading, including another heading within that group; or A change from uncut and unpolished glassware blanks classified in heading 7013 to cut and polished glassware classified in heading 7013, provided that there has been a substantial amount of both cutting and polishing operations in a single country.
7019.11–7019.19	A change to subheading 7019.11 through 7019.19 from any other heading.
7019.31–7019.32	A change to subheading 7019.31 through 7019.32 from any other subheading outside that group.
7019.39	A change to subheading 7019.39 from any other subheading.
7019.40–7019.59	A change to subheading 7019.40 through 7019.59 from any other subheading outside that group.
7019.90	A change to subheading 7019.90 from any other heading.
7020.	A change to heading 7020 from any other heading, except from heading 7010 through 7018.
(m)	**Section XIV: Chapter 71**
7101	A change to heading 7101 from any other heading, except from heading 0307.
7102–7103	A change to heading 7102 through 7103 from any other chapter.
7104–7105	A change to heading 7104 through 7105 from any other heading, including another heading within that group.
7106	A change to heading 7106 from any other chapter.
7107	A change to heading 7107 from any other chapter, except from Chapter 72 through 76 or Chapter 78 through 83.
7108	A change to heading 7108 from any other chapter.
7109	A change to heading 7109 from any other chapter, except from Chapter 72 through 76 or Chapter 78 through 83.
7110	A change to heading 7110 from any other chapter.
7111	A change to heading 7111 from any other chapter, except from Chapter 72 through 76 or Chapter 78 through 83.
7112	A change to heading 7112 from any other heading.
7113.11–7115.90	A change to subheading 7113.11 through 7115.90 from any other subheading, including another subheading within that group.
7116	A change to heading 7116 from any other heading, except that pearls strung but without the addition of clasps or other ornamental features of precious metals or stones, shall have the origin of the pearls.
7117–7118	A change to heading 7117 through 7118 from any other heading, including another heading within that group.
(n)	**Section XV: Chapters 72 through 83**

Chapter 72 Note: Notwithstanding the specific rules of this chapter, hot-rolled flat-rolled steel which is cold-reduced (by cold rolling) shall be treated as a good of the country in which the cold-rolled steel is produced.

7201–7206	A change to heading 7201 through 7206 from any other heading, including another heading within that group.
7207	A change to heading 7207 from any other heading, except from heading 7206.
7208	A change to heading 7208 from any other heading.
7209	A change to heading 7209 from any other heading, except from heading 7208 or 7211.
7210	A change to heading 7210 from any other heading, except from heading 7208 through 7212.
7211	A change to heading 7211 from any other heading, except from heading 7208 through 7209.
7212	A change to heading 7212 from any other heading, except from heading 7208 through 7211.
7213	A change to heading 7213 from any other heading.
7214	A change to heading 7214 from any other heading, except from heading 7213.
7215	A change to heading 7215 from any other heading, except from heading 7213 through 7214.
7216	A change to heading 7216 from any other heading, except from heading 7208 through 7215.
7217	A change to heading 7217 from any other heading, except from heading 7213 through 7215.
7218	A change to heading 7218 from any other heading.
7219–7220	A change to heading 7219 through 7220 from any other heading outside that group.
7221–7222	A change to heading 7221 through 7222 from any other heading outside that group.
7223	A change to heading 7223 from any other heading, except from heading 7221 through 7222.
7224	A change to heading 7224 from any other heading.
7225–7226	A change to heading 7225 through 7226 from any other heading outside that group.
7227–7228	A change to heading 7227 through 7228 from any other heading outside that group.
7229	A change to heading 7229 from any other heading, except from heading 7227 through 7228.
7301–7307	A change to heading 7301 through 7307 from any other heading, including another heading within that group.

HTSUS	Tariff shift and/or other requirements
7308	A change to heading 7308 from any other heading, except for changes resulting from the following processes performed on angles, shapes, or sections classified in heading 7216: (a) drilling, punching, notching, cutting, cambering, or sweeping, whether performed individually or in combination; (b) adding attachments or weldments for composite construction; (c) adding attachments for handling purposes; (d) adding weldments, connectors or attachments to H-sections or I-sections; provided that the maximum dimension of the weldments, connectors, or attachments is not greater than the dimension between the inner surfaces of the flanges of the H-sections or I-sections; (e) painting, galvanizing, or otherwise coating; or (f) adding a simple base plate without stiffening elements, individually or in combination with drilling, punching, notching, or cutting, to create an article suitable as a column.
7309–7314	A change to heading 7309 through 7314 from any other heading, including another heading within that group.
7315.11–7315.12	A change to subheading 7315.11 through 7315.12 from any other heading; or A change to subheading 7315.11 through 7315.12 from subheading 7315.19 or 7315.90, except when that change is pursuant to General Rule of Interpretation 2(a).
7315.19	A change to subheading 7315.19 from any other subheading.
7315.20–7315.89	A change to subheading 7315.20 through 7315.89 from any other heading; or A change to subheading 7315.20 through 7315.89 from subheading 7315.90, except when that change is pursuant to General Rule of Interpretation 2(a).
7315.90	A change to subheading 7315.90 from any other subheading.
7316	A change to heading 7316 from any other heading, except from heading 7312 or 7315.
7317–7318	A change to heading 7317 through 7318 from any other heading, including another heading within that group.
7319	A change to heading 7319 from any other heading.
7320	A change to heading 7320 from any other heading.
7321.11–7321.83	A change to subheading 7321.11 through 7321.83 from any other heading; or A change to subheading 7321.11 through 7321.83 from heading 7321.90, except when that change is pursuant to General Rule of Interpretation 2(a).
7321.90	A change to subheading 7321.90 from any other heading.
7322–7323	A change to heading 7322 through 7323 from any other heading, including another heading within that group.
7324.10–7324.29	A change to subheading 7324.10 through 7324.29 from any other subheading, including another subheading within that group.
7324.90	A change to subheading 7324.90 from any other subheading.
7325–7326	A change to heading 7325 through 7326 from any other heading, including another heading within that group.
7401–7407	A change to heading 7401 through 7407 from any other heading, including another heading within that group.
7408	A change to heading 7408 from any other heading, except from heading 7407.
7409	A change to heading 7409 from any other heading.
7410	A change to heading 7410 from any other heading, except from plate, sheet, or strip classified in heading 7409 of a thickness less than 5mm.
7411–7418	A change to heading 7411 through 7418 from any other heading, including another heading within that group.
7419.10–7419.99	A change to subheading 7419.10 through 7419.99 from any other subheading, including another subheading within that group.
7501	A change to heading 7501 from any other heading.
7502	A change to heading 7502 from any other heading.
7503	A change to heading 7503 from any other heading.
7504	A change to heading 7504 from any other heading.
7505	A change to heading 7505 from any other heading.
7506	A change to heading 7506 from any other heading; or A change to foil, not exceeding 0.15 mm in thickness, from any other good of heading 7506, provided that there has been a reduction in thickness of no less than 50 percent.
7507.11–7508.90	A change to subheading 7507.11 through 7508.90 from any other subheading, including another subheading within that group.
7601–7604	A change to heading 7601 through 7604 from any other heading, including another heading within that group.
7605	A change to heading 7605 from any other heading, except from heading 7604.
7606–7615	A change to heading 7606 through 7615 from any other heading, including another heading within that group.
7616.10–7616.99	A change to subheading 7616.10 through 7616.99 from any other subheading, including another subheading within that group.
7801–7803	A change to heading 7801 through 7803 from any other heading, including another heading within that group.
7804.11–7804.20	A change to subheading 7804.11 through 7804.20 from any other subheading, including another subheading within that group; or

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	A change to any of the following goods classified in subheading 7804.11 through 7804.20, including from materials also classified in subheading 7804.11 through 7804.20: powder except from flakes; flakes except from powder; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate.
7805–7806	A change to heading 7805 through 7806 from any other heading, including another heading within that group; or
	A change to any of the following goods classified in heading 7805 through 7806, including from materials also classified in heading 7805 through 7806: tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes; cables/stranded wire/plaited bands.
7901–7906	A change to heading 7901 through 7906 from any other heading, including another heading within that group; or
	A change to any of the following goods classified in heading 7901 through 7906, including from materials also classified in heading 7901 through 7906: Matte; unwrought; powder except from flakes; flakes except from powder; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; wire except from rod; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip; tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes.
7907	A change to heading 7907 from any other heading.
8001	A change to heading 8001 from any other heading.
8002–8004	A change to heading 8002 through 8004 from any other heading, including another heading within that group; or
	A change to any of the following goods classified in heading 8002 through 8004, including from materials also classified in heading 8002 through 8004: Bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; wire except from rod; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate.
8005	A change to heading 8005 from any other heading; or
	A change to foil of heading 8005 from powder or flakes of that heading; or
	A change to powder of heading 8005 from foil of that heading; or
	A change to flakes of heading 8005 from foil of that heading.
8006–8007	A change to heading 8006 through 8007 from any other heading, including another heading within that group; or
	A change to any of the following goods classified in heading 8006 through 8007, including from materials also classified in heading 8006 through 8007: Tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes; cables/stranded wire/plaited bands.

Chapter 81 Note: Waste and scrap are products of the country in which they are collected.

8101.10–8101.95	A change to subheading 8101.10 through 8101.95 from any other subheading, including another subheading within that group; or
	A change to any of the following goods classified in subheading 8101.10 through 8101.95, including from materials also classified in subheading 8101.10 through 8101.95: Matte; unwrought; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip.
8101.96	A change to subheading 8101.96 from any other subheading, except from subheading 8101.95.
8101.99	A change to subheading 8101.99 from any other subheading; or
	A change to any of the following goods classified in subheading 8101.99, including from materials also classified in subheading 8101.99: Tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes; cables/stranded wire/plaited bands.
8102.10–8102.95	A change to subheading 8102.10 through 8102.95 from any other subheading, including another subheading within that group; or
	A change to any of the following goods classified in subheading 8102.10 through 8102.95, including from materials also classified in subheading 8102.10 through 8102.95: Matte; unwrought; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip.
8102.96	A change to subheading 8102.96 from any other subheading, except from subheading 8102.95.
8102.99	A change to subheading 8102.99 from any other subheading.
8103.20–8113.00	A change to subheading 8103.20 through 8113.00 from any other subheading, including another subheading within that group; or

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	A change to any of the following goods classified in subheading 8103.20 through 8113.00, including from materials also classified in subheading 8103.20 through 8113.00: Matte; unwrought; powder except from flakes; flakes except from powder; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; wire except from rod; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip; tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes; cables/stranded wire/plaited bands.
8201.10–8202.40	A change to subheading 8201.10 through 8202.40 from any other subheading, including another subheading within that group.
8202.91	A change to subheading 8202.91 from any other subheading, except from subheading 8202.99.
8202.99	A change to subheading 8202.99 from any other heading.
8203.10–8207.90	A change to subheading 8203.10 through 8207.90 from any other subheading, including another subheading within that group.
8208–8215	A change to heading 8208 through 8215 from any other heading, including another heading within that group.
8301.10–8301.50	A change to subheading 8301.10 through 8301.50 from any other subheading, including another subheading within that group, except from subheading 8301.60 when that change is pursuant to General Rule of Interpretation 2(a).
8301.60–8301.70	A change to subheading 8301.60 through 8301.70 from any other chapter.
8302.10–8302.60	A change to subheading 8302.10 through 8302.60 from any other subheading, including another subheading within that group.
8303–8304	A change to heading 8303 through 8304 from any other heading, including another heading within that group.
8305.10–8305.90	A change to subheading 8305.10 through 8305.90 from any other subheading, including another subheading within that group.
8306–8307	A change to heading 8306 through 8307 from any other heading, including another heading within that group.
8308.10–8308.90	A change to subheading 8308.10 through 8308.90 from any other subheading, including another subheading within that group.
8309–8310	A change to heading 8309 through 8310 from any other heading, including another heading within that group.
8311.10–8311.90	A change to subheading 8311.10 through 8311.90 from any other subheading, including another subheading within that group.
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8401.10	A change to subheading 8401.10 from any other subheading.
8401.20	A change to subheading 8401.20 from any other subheading; or A change to completed machinery and apparatus classified in subheading 8401.20 from parts classified in subheading 8401.20.
8401.30	A change to subheading 8401.30 from any other subheading.
8401.40	A change to subheading 8401.40 from any other heading.
8402.11–8402.12	A change to subheading 8402.11 through 8402.12 from any other subheading outside that group.
8402.19–8402.20	A change to subheading 8402.19 through 8402.20 from any other subheading, including another subheading within that group.
8402.90	A change to subheading 8402.90 from any other heading, except from heading 7303, 7304, 7305, or 7306 unless the change from these headings involves bending to shape.
8403.10	A change to subheading 8403.10 from any other subheading.
8403.90	A change to subheading 8403.90 from any other heading.
8404.10–8404.20	A change to subheading 8404.10 through 8404.20 from any other subheading, including another subheading within that group.
8404.90	A change to subheading 8404.90 from any other heading.
8405.10	A change to subheading 8405.10 from any other subheading.
8405.90	A change to subheading 8405.90 from any other heading.
8406.10	A change to subheading 8406.10 from any other subheading.
8406.81–8406.82	A change to subheading 8406.81 through 8406.82 from any other subheading outside that group.
8406.90	A change to subheading 8406.90 from any other heading.
8407	A change to heading 8407 from any other heading.
8408	A change to heading 8408 from any other heading.
8409.10	A change to subheading 8409.10 from any other heading.
8409.91–8409.99	A change to subheading 8409.91 through 8409.99 from any other heading, except a change resulting from a simple assembly.
8410.11–8410.13	A change to subheading 8410.11 through 8410.13 from any other subheading outside that group.
8410.90	A change to subheading 8410.90 from any other heading.
8411.11–8411.82	A change to subheading 8411.11 through 8411.82 from any other subheading outside that group.
8411.91–8411.99	A change to subheading 8411.91 through 8411.99 from any other heading.

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8412.10–8412.80	A change to subheading 8412.10 through 8412.80 from any other subheading, including another subheading within that group.
8412.90	A change to subheading 8412.90 from any other heading.
8413.11–8413.82	A change to subheading 8413.11 through 8413.82 from any other subheading, including another subheading within that group.
8413.91	A change to subheading 8413.91 from any other heading.
8413.92	A change to subheading 8413.92 from any other heading.
8414.10–8414.80	A change to subheading 8414.10 through 8414.80 from any other subheading, including another subheading within that group.
8414.90	A change to subheading 8414.90 from any other heading.
8415.10–8415.83	A change to subheading 8415.10 through 8415.83 from any subheading, including another subheading within that group, except a change within that group resulting from a simple assembly.
8415.90	A change to subheading 8415.90 from any other subheading, except from heading 7411, 7608, 8414, 8501, or 8535 through 8537 when resulting from a simple assembly.
8416.10–8416.30	A change to subheading 8416.10 through 8416.30 from any other subheading, including another subheading within that group.
8416.90	A change to subheading 8416.90 from any other heading.
8417.10–8417.80	A change to subheading 8417.10 through 8417.80 from any other subheading, including another subheading within that group.
8417.90	A change to subheading 8417.90 from any other heading.
8418.10–8418.91	A change to subheading 8418.10 through 8418.91 from any other subheading, including another subheading within that group.
8418.99	A change to subheading 8418.99 from any other heading, except from heading 7303, 7304, 7305, or 7306 unless the change from these headings involves bending to shape.
8419.11–8419.89	A change to subheading 8419.11 through 8419.89 from any other subheading, including another subheading within that group.
8419.90	A change to subheading 8419.90 from any other heading, except from heading 7303, 7304, 7305, or 7306 unless the change from these headings involves bending to shape, and except from heading 8501 when resulting from a simple assembly.
8420.10	A change to subheading 8420.10 from any other subheading.
8420.91	A change to subheading 8420.91 from any other heading.
8420.99	A change to subheading 8420.99 from any other heading, except from heading 8501 when resulting from a simple assembly.
8421.11–8421.39	A change to subheading 8421.11 through 8421.39 from any other subheading, including another subheading within that group.
8421.91	A change to subheading 8421.91 from any other heading.
8421.99	A change to subheading 8421.99 from any other heading.
8422.11–8422.40	A change to subheading 8422.11 through 8422.40 from any other subheading, including another subheading within that group.
8422.90	A change to subheading 8422.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8423.10–8423.89	A change to subheading 8423.10 through 8423.89 from any other subheading, including another subheading within that group.
8423.90	A change to subheading 8423.90 from any other heading.
8424.10–8424.89	A change to subheading 8424.10 through 8424.89 from any other subheading, including another subheading within that group.
8424.90	A change to subheading 8424.90 from any other heading, except from subheading 8414.40 or 8414.80.
8425.11–8430.69	A change to subheading 8425.11 through 8430.69 from any other subheading, including another subheading within that group.
8431	A change to heading 8431 from any other heading, except from heading 8501 when resulting from a simple assembly.
8432.10–8432.80	A change to subheading 8432.10 through 8432.80 from any other subheading, including another subheading within that group.
8432.90	A change to subheading 8432.90 from any other heading.
8433.11–8433.60	A change to subheading 8433.11 through 8433.60 from any other subheading, including another subheading within that group.
8433.90	A change to subheading 8433.90 from any other heading, except from heading 8407 or 8408 when resulting from a simple assembly.
8434.10–8434.20	A change to subheading 8434.10 through 8434.20 from any other subheading, including another subheading within that group.
8434.90	A change to subheading 8434.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8435.10	A change to subheading 8435.10 from any other subheading.
8435.90	A change to subheading 8435.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8436.10–8436.80	A change to subheading 8436.10 through 8436.80 from any other subheading, including another subheading within that group.
8436.91	A change to subheading 8436.91 from any other heading.
8436.99	A change to subheading 8436.99 from any other heading, except from heading 8407, 8408, or 8501 when resulting from a simple assembly.

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8437.10–8437.80	A change to subheading 8437.10 through 8437.80 from any other subheading, including another subheading within that group.
8437.90	A change to subheading 8437.90 from any other heading, except from heading 8407, 8408, or 8501 when resulting from a simple assembly.
8438.10–8438.80	A change to subheading 8438.10 through 8438.80 from any other subheading, including another subheading within that group.
8438.90	A change to subheading 8438.90 from any other heading, except from heading 8407, 8408, or 8501 when resulting from a simple assembly.
8439.10–8439.30	A change to subheading 8439.10 through 8439.30 from any other subheading, including another subheading within that group.
8439.91	A change to subheading 8439.91 from any other heading, except from heading 8407, 8408, or 8501 when resulting from a simple assembly.
8439.99	A change to subheading 8439.99 from any other heading, except from heading 8407, 8408, or 8501 when resulting from a simple assembly.
8440.10	A change to subheading 8440.10 from any other subheading.
8440.90	A change to subheading 8440.90 from any other heading, except from heading 8407, 8408, or 8501 when resulting from a simple assembly.
8441.10–8441.80	A change to subheading 8441.10 through 8441.80 from any other subheading, including another subheading within that group.
8441.90	A change to subheading 8441.90 from any other heading, except from heading 8407, 8408, or 8501 when resulting from a simple assembly.
8442.10–8442.30	A change to subheading 8442.10 through 8442.30 from any other subheading outside that group.
8442.40	A change to subheading 8442.40 from any other heading, except from heading 8501 when resulting from a simple assembly.
8442.50	A change to subheading 8442.50 from any other heading.
8443.11–8443.60	A change to subheading 8443.11 through 8443.60 from any other subheading outside that group.
8443.90	A change to subheading 8443.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8444	A change to heading 8444 from any other heading.
8445.11–8447.90	A change to subheading 8445.11 through 8447.90 from any other subheading outside that group.
8448.11–8448.19	A change to subheading 8448.11 through 8448.19 from any other subheading, including another subheading within that group.
8448.20–8448.59	A change to subheading 8448.20 through 8448.59 from any other heading, except from heading 8501 when resulting from a simple assembly.
8449	A change to heading 8449 from any other heading.
8450.11–8450.20	A change to subheading 8450.11 through 8450.20 from any other subheading, including another subheading within that group.
8450.90	A change to subheading 8450.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8451.10–8451.80	A change to subheading 8451.10 through 8451.80 from any other subheading, including another subheading within that group.
8451.90	A change to subheading 8451.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8452.10–8452.29	A change to subheading 8452.10 through 8452.29 from any other subheading outside that group.
8452.30–8452.40	A change to subheading 8452.30 through 8452.40 from any other subheading, including another subheading within that group.
8452.90	A change to subheading 8452.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8453.10–8453.80	A change to subheading 8453.10 through 8453.80 from any other subheading, including another subheading within that group.
8453.90	A change to subheading 8453.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8454.10–8454.30	A change to subheading 8454.10 through 8454.30 from any other subheading, including another subheading within that group.
8454.90	A change to subheading 8454.90 from any other heading.
8455.10–8455.22	A change to subheading 8455.10 through 8455.22 from any other subheading, including another subheading within that group.
8455.30	A change to subheading 8455.30 from any other heading.
8455.90	A change to subheading 8455.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8456.10–8456.99	A change to subheading 8456.10 through 8456.99 from any other heading.
8457.10	A change to subheading 8457.10 from any other heading, except from heading 8458 through 8465 when resulting from a simple assembly.
8457.20–8465.99	A change to subheading 8457.20 through 8465.99 from any other heading, including another heading within that group.
8466.10–8466.94	A change to subheading 8466.10 through 8466.94 from any other heading outside that group, except from heading 8501 when resulting from a simple assembly.
8467.11–8467.89	A change to subheading 8467.11 through 8467.89 from any other subheading, including another subheading within that group.

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8467.91–8467.99	A change to subheading 8467.91 through 8467.99 from any other heading, except from heading 8407, or except from heading 8501 when resulting from a simple assembly.
8468.10–8468.80	A change to subheading 8468.10 through 8468.80 from any other subheading, including another subheading within that group.
8468.90	A change to subheading 8468.90 from any other heading.
8469.11–8469.12	A change to subheading 8469.11 through 8469.12 from any other subheading outside that group.
8469.20–8469.30	A change to subheading 8469.20 through 8469.30 from any other subheading outside that group.
8470.10–8471.50	A change to subheading 8470.10 through 8471.50 from any other subheading outside that group, except from heading 8473; or A change to subheading 8470.10 through 8471.50 from any other subheading within that group or from heading 8473, provided that the change is not the result of a simple assembly.
8471.60–8472.90	A change to printing machines of subheading 8472.90 from any other subheading, except from subheading 8443.11 through 8443.60; A change to subheading 8471.60 through 8472.90 from any other subheading outside that group, except from subheading 8504.40 or heading 8473; or A change to subheading 8471.60 through 8472.90 from any other subheading within that group or from subheading 8504.90 or from heading 8473, provided that the change is not the result of simple assembly.
8473	A change to heading 8473 from any other heading, except from heading 8414, 8501, 8504, 8534, 8541, or 8542 when resulting from a simple assembly.
8474.10–8474.80	A change to subheading 8474.10 through 8474.80 from any other subheading outside that group, except from heading 8501; or A change to subheading 8474.10 through 8474.80 from any other subheading within that group or from heading 8501, provided that the change is not the result of a simple assembly.
8474.90	A change to subheading 8474.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8475.10	A change to subheading 8475.10 from any other subheading.
8475.21–8475.29	A change to subheading 8475.21 through 8475.29 from any other subheading outside that group.
8475.90	A change to subheading 8475.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8476.21–8476.89	A change to subheading 8476.21 through 8476.89 from any other subheading outside that group.
8476.90	A change to subheading 8476.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8477.10–8477.80	A change to subheading 8477.10 through 8477.80 from any other subheading, including another subheading within that group.
8477.90	A change to subheading 8477.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8478.10	A change to subheading 8478.10 from any other subheading.
8478.90	A change to subheading 8478.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8479.10–8479.89	A change to printing machines of subheading 8479.89 from any other subheading, except from subheading 8443.11 through 8443.60; or A change to subheading 8479.10 through 8479.89 from any other subheading, including another subheading within that group.
8479.90	A change to subheading 8479.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8480	A change to heading 8480 from any other heading.
8481.10–8481.80	A change to subheading 8481.10 through 8481.80 from any other heading, or from subheading 8481.90 except when resulting from a simple assembly.
8481.90	A change to subheading 8481.90 from any other heading.
8482.10–8482.80	A change to subheading 8482.10 through 8482.80 from any other heading; or A change to subheading 8482.10 through 8482.80 from any other subheading, including another subheading within that group, except from inner or outer races or rings classified in subheading 8482.99.05, 8482.99.15, or 8482.99.25.
8482.91–8482.99	A change to subheading 8482.91 through 8482.99 from any other heading.
8483.10	A change to subheading 8483.10 from any other subheading.
8483.20	A change to subheading 8483.20 from any other subheading, except from subheading 8482.10 through 8482.80.
8483.30–8483.60	A change to subheading 8483.30 through 8483.60 from any other subheading, including another subheading within that group.
8483.90	A change to subheading 8483.90 from any other heading.
8484.10–8484.90	A change to subheading 8484.10 through 8484.90 from any other subheading, including another subheading within that group.
8485	A change to subheading 8485 from any other heading.
8501	A change to heading 8501 from any other heading.
8502	A change to heading 8502 from any other heading.
8503	A change to heading 8503 from any other heading.

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8504.10–8504.50	A change to subheading 8504.10 through 8504.50 from any other subheading outside that group.
8504.90	A change to subheading 8504.90 from any other heading.
8505.11–8505.30	A change to subheading 8505.11 through 8505.30 from any other subheading, including another subheading within that group.
8505.90	A change to subheading 8505.90 from any other heading.
8506.10	A change to subheading 8506.10 from any other subheading; or A change to a primary cell or battery of maganese dioxide of an external volume not exceeding 300 cm^3 of subheading 8506.10 from any other good of subheading 8506.10; or A change to a primary cell or battery of maganese dioxide of an external volume exceeding 300 cm^3 of subheading 8506.10 from any other good of subheading 8506.10.
8506.30	A change to subheading 8506.30 from any other subheading; or A change to a primary cell or battery of mercuric oxide of an external volume not exceeding 300 cm^3 of subheading 8506.30 from any other good of subheading 8506.30; or A change to a primary cell or battery of mercuric oxide of an external volume exceeding 300 cm^3 of subheading 8506.30 from any other good of subheading 8506.30.
8506.40	A change to subheading 8506.40 from any other subheading; or A change to a primary cell or battery of silver oxide of an external volume not exceeding 300 cm^3 of subheading 8506.40 from any other good of subheading 8506.40; or A change to a primary cell or battery of silver oxide of an external volume exceeding 300 cm^3 of subheading 8506.40 from any other good of subheading 8506.40.
8506.50–8506.80	A change to subheading 8506.50 through 8506.80 from any other subheading outside that group; or A change to a primary cell or battery of an external volume not exceeding 300 cm^3 of subheading 8506.50 through 8506.80 from any other good of subheading 8506.50 through 8506.80; or A change to a primary cell or battery of an external volume exceeding 300 cm^3 of subheading 8506.50 through 8506.80 from any other good of subheading 8506.50 through 8506.80.
8506.90	A change to subheading 8506.90 from any other heading.
8507.10–8507.80	A change to subheading 8507.10 through 8507.80 from any other subheading, including another subheading within that group.
8507.90	A change to subheading 8507.90 from any other heading.
8509.10–8509.80	A change to subheading 8509.10 through 8509.80 from any other subheading, including another subheading within that group.
8509.90	A change to subheading 8509.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8510.10–8510.30	A change to subheading 8510.10 through 8510.30 from any other subheading, including another subheading within that group.
8510.90	A change to subheading 8510.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8511.10–8511.80	A change to subheading 8511.10 through 8511.80 from any other subheading, including another subheading within that group.
8511.90	A change to subheading 8511.90 from any other heading.
8512.10–8512.30	A change to subheading 8512.10 through 8512.30 from any other subheading outside that group.
8512.40	A change to subheading 8512.40 from any other subheading, except from subheading 8512.90 or heading 8501 when resulting from a simple assembly.
8512.90	A change to subheading 8512.90 from any other heading.
8513.10	A change to subheading 8513.10 from any other subheading.
8513.90	A change to subheading 8513.90 from any other heading.
8514.10–8514.40	A change to subheading 8514.10 through 8514.40 from any other subheading, including another subheading within that group.
8514.90	A change to subheading 8514.90 from any other heading.
8515.11–8515.80	A change to subheading 8515.11 through 8515.80 from any other subheading outside that group.
8515.90	A change to subheading 8515.90 from any other heading.
8516.10–8516.79	A change to subheading 8516.10 through 8516.79 from any other subheading, including another subheading within that group.
8516.80	A change to subheading 8516.80 from any other heading.
8516.90	A change to subheading 8516.90 from any other heading.
8517.11–8517.80	A change to subheading 8517.11 through 8517.80 from any other subheading outside that group, except from subheading 8517.90; or A change to subheading 8517.11 through 8517.80 from subheading 8517.90, provided that the change is not the result of a simple assembly.
8517.90	A change to subheading 8517.90 from any other heading.
8518.10–8518.50	A change to subheading 8518.10 through 8518.50 from any other heading.
8518.90	A change to subheading 8518.90 from any other heading.
8519.10–8519.40	A change to subheading 8519.10 through 8519.40 from any other subheading, including another subheading within that group.
8519.92–8519.93	A change to subheading 8519.92 through 8519.93 from any other subheading outside that group.

HTSUS	Tariff shift and/or other requirements
8519.99	A change to subheading 8519.99 from any other subheading.
8520.10–8520.20	A change to subheading 8520.10 through 8520.20 from any other subheading, including another subheading within that group.
8520.32–8520.33	A change to subheading 8520.32 through 8520.33 from any other subheading outside that group.
8520.39–8520.90	A change to subheading 8520.39 through 8520.90 from any other subheading, including another subheading within that group.
8521.10–8521.90	A change to subheading 8521.10 through 8521.90 from any other subheading, including another subheading within that group.
8522	A change to heading 8522 from any other heading.
8523	A change to heading 8523 from any other heading.
8524	A change to heading 8524 from any other heading.
8525.10–8525.20	A change to subheading 8525.10 through 8525.20 from any other subheading outside that group.
8525.30–8525.40	A change to subheading 8525.30 through 8525.40 from any other subheading, including another subheading within that group, except a change to video camera recorders of subheading 8525.40 from television cameras of subheading 8525.30.
8526.10–8526.92	A change to subheading 8526.10 through 8526.92 from any other subheading, including another subheading within that group.
8527.12–8527.13	A change to subheading 8527.12 through 8527.13 from any other subheading outside that group.
8527.19–8527.90	A change to subheading 8527.19 through 8527.90 from any other subheading, including another subheading within that group.
8528.12–8528.30	A change to subheading 8528.12 through 8528.30 from any other subheading, including another subheading within that group, except from subheading 8540.11 through 8540.12.
8529	A change to heading 8529 from any other heading.
8530.10–8530.80	A change to subheading 8530.10 through 8530.80 from any other subheading, including another subheading within that group.
8530.90	A change to subheading 8530.90 from any other heading.
8531.10–8531.80	A change to subheading 8531.10 through 8531.80 from any other subheading, including another subheading within that group, except from subheading 8531.90 when resulting from a simple assembly.
8531.90	A change to subheading 8531.90 from any other heading.
8532.10–8532.30	A change to subheading 8532.10 through 8532.30 from any other subheading, including another subheading within that group.
8532.90	A change to subheading 8532.90 from any other heading.
8533.10–8533.40	A change to subheading 8533.10 through 8533.40 from any other subheading, including another subheading within that group.
8533.90	A change to subheading 8533.90 from any other heading.
8534	A change to heading 8534 from any other heading.
8535.10–8535.90	A change to subheading 8535.10 through 8535.90 from any other subheading, including another subheading within that group.
8536.10–8536.90	A change to subheading 8536.10 through 8536.90 from any other subheading, including another subheading within that group.
8537	A change to heading 8537 from any other heading.
8538	A change to heading 8538 from any other heading.
8539.10–8539.31	A change to subheading 8539.10 through 8539.31 from any other subheading, including another subheading within that group.
8539.32–8539.39	A change to subheading 8539.32 through 8539.39 from any other subheading outside that group.
8539.41–8539.49	A change to subheading 8539.41 through 8539.49 from any other subheading outside that group.
8539.90	A change to subheading 8539.90 from any other heading.
8540.11–8540.20	A change to subheading 8540.11 through 8540.20 from any other subheading, including another subheading within that group.
8540.40–8540.60	A change to subheading 8540.40 through 8540.60 from any other subheading outside that group.
8540.71–8540.89	A change to subheading 8540.71 through 8540.89 from any other subheading, including another subheading within that group.
8540.91–8540.99	A change to subheading 8540.91 through 8540.99 from any other subheading, including another subheading within that group, except when resulting from a simple assembly.
8541–8542	A change to heading 8541 through 8542 from any other subheading, including another subheading within that group; or A change to a mounted chip, die or wafer classified in heading 8541 or 8542 from an unmounted chip, die or wafer classified in heading 8541 or 8542; or A change to a programmed ''read only memory'' (ROM) chip from an unprogrammed ''programmable read only memory'' (PROM) chip.
8543.11–8543.19	A change to subheading 8543.11 through 8543.19 from any other subheading outside that group.
8543.20–8543.30	A change to subheading 8543.20 through 8543.30 from any other subheading, including another subheading within that group.
8543.40–8543.89	A change to subheading 8543.40 through 8543.89 from any other subheading outside that group.

HTSUS	Tariff shift and/or other requirements
8543.90	A change to subheading 8543.90 from any other heading.
8544.11–8544.70	A change to subheading 8544.11 through 8544.70 from any other subheading, including another subheading within that group, except when resulting from a simple assembly.
8545.11–8547.90	A change to subheading 8545.11 through 8547.90 from any other subheading, including another subheading within that group.
8548	A change to heading 8548 from any other heading.
(p)	**Section XVII: Chapters 86 through 89**
8601	A change to heading 8601 from any other heading.
8602	A change to heading 8602 from any other heading.
8603–8606	A change to heading 8603 through 8606 from any other heading, including another heading within that group, except from heading 8607 when that change is pursuant to General Rule of Interpretation 2(a).
8607.11	A change to subheading 8607.11 from any other subheading, except from subheading 8607.12, and except from subheading 8607.19 when that change is pursuant to General Rule of Interpretation 2(a).
8607.12	A change to subheading 8607.12 from any other subheading, except from subheading 8607.11, and except from subheading 8607.19 when that change is pursuant to General Rule of Interpretation 2(a).
8607.19	A change to subheading 8607.19 from any other subheading.
8607.21–8607.99	A change to subheading 8607.21 through 8607.99 from any other heading, except to mounted brake linings and pads of subheading 8607.21 through 8607.99 from subheading 6813.10.
8608	A change to heading 8608 from any other heading.
8609	A change to heading 8609 from any other heading, except from heading 7309 through 7311.
8701–8705	A change to heading 8701 through 8705 from any other heading, including another heading within that group, except from heading 8706.
8706	A change to heading 8706 from any other heading.
8707	A change to heading 8707 from any other heading, except from subheading 8708.29 when that change is pursuant to General Rule of Interpretation 2(a).
Note: Any change to heading 8708 from subheading 8709.90, 8716.90, 8431.20, or 8431.49 shall not be considered to satisfy a required change in tariff classification.	
8708.10	A change to subheading 8708.10 from any other subheading.
8708.29	A change to subheading 8708.29 from any other subheading.
8708.31	A change to subheading 8708.31 from any other heading, except to mounted brake linings and pads of subheading 8708.31 from subheading 6813.10.
8708.39	A change to subheading 8708.39 from any other heading.
8708.40	A change to subheading 8708.40 from any other subheading, except from subheading 8708.99 when that change is pursuant to General Rule of Interpretation 2(a).
8708.50	A change to subheading 8708.50 from any other subheading, except from subheading 8708.99 when that change is pursuant to General Rule of Interpretation 2(a).
8708.60	A change to subheading 8708.60 from any other subheading.
8708.70	A change to subheading 8708.70 from any other subheading.
8708.80	A change to subheading 8708.80 from any other subheading, except from subheading 8708.99 when that change is pursuant to General Rule of Interpretation 2(a).
8708.91	A change to subheading 8708.91 from any other subheading, except from subheading 8708.99 when that change is pursuant to General Rule of Interpretation 2(a).
8708.92	A change to subheading 8708.92 from any other subheading.
8708.93	A change to subheading 8708.93 from any other subheading.
8708.94	A change to subheading 8708.94 from any other subheading, except from subheading 8708.99 when that change is pursuant to General Rule of Interpretation 2(a).
8708.99	A change to subheading 8708.99 from any other subheading.
8709.11–8709.19	A change to subheading 8709.11 through 8709.19 from any other subheading outside that group, except from subheading 8709.90 when that change is pursuant to General Rule of Interpretation 2(a).
8709.90	A change to subheading 8709.90 from any other heading, except from subheading 8431.20 or heading 8708.
8710	A change to heading 8710 from any other heading.
8711–8713	A change to heading 8711 through 8713 from any other heading, including another heading within that group, except from heading 8714 when that change is pursuant to General Rule of Interpretation 2(a).
8714	A change to heading 8714 from any other heading, except from subheading 6813.10 to mounted brake linings or pads classified in heading 8714.
8715	A change to heading 8715 from any other heading.
8716.10–8716.80	A change to subheading 8716.10 through 8716.80 from any other heading, or from subheading 8716.90 except when that change is pursuant to General Rule of Interpretation 2(a).
8716.90	A change to subheading 8716.90 from any other heading, except from subheading 8709.90 or 8431.49.
8801–8802	A change to heading 8801 through 8802 from any other heading outside that group, except from heading 8803 when that change is pursuant to General Rule of Interpretation 2(a).

HTSUS	Tariff shift and/or other requirements
8803.10–8803.90	A change to subheading 8803.10 through 8803.90 from any other subheading, including another subheading within that group.
8805	A change to heading 8805 from any other heading.
8901–8903	A change to heading 8901 through 8903 from any other heading outside that group.
8904	A change to heading 8904 from any other heading.
8905	A change to heading 8905 from any other chapter.
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8906–8907	A change to heading 8906 through 8907 from any other heading, including another heading within that group, except from heading 8903 or 8905.
8908	A change to heading 8908 from any other chapter.
(q)	**Section XVIII: Chapters 90 through 92**
9001.10	A change to subheading 9001.10 from any other subheading, except from subheading 8544.70.
9001.20–9001.30	A change to subheading 9001.20 through 9001.30 from any other subheading, including another subheading within that group.
9001.40–9001.90	A change to subheading 9001.40 through 9001.90 from any other subheading, including another subheading within that group, except from lens blanks of heading 7014 or subheading 7015.10.
9002.11–9002.90	A change to subheading 9002.11 through 9002.90 from any other subheading, including another subheading within that group, except from subheading 9001.90 or from lens blanks of heading 7014.
9003.11–9003.19	A change to subheading 9003.11 through 9003.19 from any other heading; or A change to subheading 9003.11 through 9003.19 from any other subheading, including another subheading within that group, except from subheading 9003.90 if the temples or fronts are not domestic materials.
9003.90	A change to subheading 9003.90 from any other heading.
9004	A change to heading 9004 from any other heading, except from subheading 9001.40 or 9001.50.
9005.10–9005.80	A change to subheading 9005.10 through 9005.80 from any other subheading, including another subheading within that group.
9005.90	A change to subheading 9005.90 from any other heading, except from heading 9001 or 9002.
9006.10–9006.69	A change to subheading 9006.10 through 9006.69 from any other subheading, including another subheading within that group.
9006.91–9006.99	A change to subheading 9006.91 through 9006.99 from any other heading.
9007.11–9007.19	A change to subheading 9007.11 through 9007.19 from any other subheading, including another subheading within that group.
9007.20	A change to subheading 9007.20 from any other subheading; or A change to a projector for film of less than 16mm width of subheading 9007.20 from any other projector of subheading 9007.20; or A change from a projector for film of less than 16mm width of subheading 9007.20 to any other projector of subheading 9007.20.
9007.91–9007.92	A change to subheading 9007.91 through 9007.92 from any other heading, except from lenses of heading 9002 when resulting from a simple assembly.
9008.10–9008.40	A change to subheading 9008.10 through 9008.40 from any other subheading, including another subheading within that group.
9008.90	A change to subheading 9008.90 from any other heading, except from lenses of heading 9002 when resulting from a simple assembly.
9009.11–9009.30	A change to subheading 9009.11 through 9009.30 from any other subheading, including another subheading within that group.
9009.91–9009.99	A change to subheading 9009.91 through 9009.99 from any other heading.
9010.10	A change to subheading 9010.10 from any other subheading.
9010.41–9010.50	A change to subheading 9010.41 through 9010.50 from any other subheading outside that group.
9010.60	A change to subheading 9010.60 from any other subheading.
9010.90	A change to subheading 9010.90 from any other heading.
9011.10–9011.80	A change to subheading 9011.10 through 9011.80 from any other subheading, including another subheading within that group.
9011.90	A change to subheading 9011.90 from any other heading.
9012.10	A change to subheading 9012.10 from any other subheading, including another subheading within that group.
9012.90	A change to subheading 9012.90 from any other heading.
9013.10	A change to subheading 9013.10 from any other subheading, except from optical telescopes of subheading 9005.80.
9013.20–9013.80	A change to subheading 9013.20 through 9013.80 from any other subheading, including another subheading within that group.
9013.90	A change to subheading 9013.90 from any other subheading, except from subheading 9002.19 when resulting from a simple assembly.
9014.10–9014.80	A change to subheading 9014.10 through 9014.80 from any other subheading, including another subheading within that group.
9014.90	A change to subheading 9014.90 from any other heading.

HTSUS	Tariff shift and/or other requirements
9015.10–9015.80	A change to subheading 9015.10 through 9015.80 from any other subheading, including another subheading within that group.
9015.90	A change to subheading 9015.90 from any other heading.
9016	A change to heading 9016 from any other heading.
9017.10–9017.80	A change to subheading 9017.10 through 9017.80 from any other subheading, including another subheading within that group.
9017.90	A change to subheading 9017.90 from any other heading.
9018.11	A change to subheading 9018.11 from any other subheading, except to electro-cardiographs from printed circuit assemblies when resulting from a simple assembly.
9018.12–9018.14	A change to subheading 9018.12 through 9018.14 from any other subheading outside that group, except from subheading 9018.19.
9018.19	A change to subheading 9018.19 from any other subheading, except to patient monitoring systems from printed circuit assemblies when resulting from a simple assembly.
9018.20–9018.32	A change to subheading 9018.20 through 9018.32 from any other subheading, including another subheading within that group.
9018.39	A change to subheading 9018.39 from any other subheading, except from surgical tubing of subheading 4009.10 when resulting from a simple assembly.
9018.41–9018.50	A change to subheading 9018.41 through 9018.50 from any other subheading, including another subheading within that group.
9018.90	A change to subheading 9018.90 from any other subheading, except from subheading 9001.90 or synthetic rubber classified in heading 4002 when resulting from a simple assembly; or A change to defibrillators from printed circuit assemblies, except when resulting from a simple assembly.
9019.10–9019.20	A change to subheading 9019.10 through 9019.20 from any other subheading, including another subheading within that group.
9020	A change to heading 9020 from any other heading.
9021.10	A change to subheading 9021.10 from any other subheading, except from nails classified in heading 7317 or screws classified in heading 7318 when resulting from a simple assembly.
9021.21–9021.90	A change to subheading 9021.21 through 9021.90 from any other subheading, including another subheading within that group.
9022.12–9022.14	A change to subheading 9022.12 through 9022.14 from any other subheading outside that group.
9022.19–9022.90	A change to subheading 9022.19 through 9022.90 from any other subheading, including another subheading within that group.
9023	A change to heading 9023 from any other heading.
9024.10–9024.80	A change to subheading 9024.10 through 9024.80 from any other subheading, including another subheading within that group.
9024.90	A change to subheading 9024.90 from any other heading.
9025.11–9025.80	A change to subheading 9025.11 through 9025.80 from any other subheading, including another subheading within that group.
9025.90	A change to subheading 9025.90 from any other heading.
9026.10–9026.80	A change to subheading 9026.10 through 9026.80 from any other subheading, including another subheading within that group.
9026.90	A change to subheading 9026.90 from any other heading.
9027.10–9027.90	A change to subheading 9027.10 through 9027.90 from any other subheading, including another subheading within that group.
9028.10–9028.30	A change to subheading 9028.10 through 9028.30 from any other subheading, including another subheading within that group.
9028.90	A change to subheading 9028.90 from any other heading.
9029.10–9029.20	A change to subheading 9029.10 through 9029.20 from any other subheading, including another subheading within that group.
9029.90	A change to subheading 9029.90 from any other heading.
9030.10–9030.40	A change to subheading 9030.10 through 9030.40 from any other subheading, including another subheading within that group.
9030.82–9030.83	A change to subheading 9030.82 through 9030.83 from any other subheading outside that group.
9030.89–9030.90	A change to subheading 9030.89 through 9030.90 from any other subheading outside that group.
9031.10–9031.30	A change to subheading 9031.10 through 9031.30 from any other subheading, including another subheading within that group.
9031.41–9031.49	A change to subheading 9031.41 through 9031.49 from any other subheading outside that group.
9031.80	A change to subheading 9031.80 from any other subheading.
9031.90	A change to subheading 9031.90 from any other heading.
9032.10–9032.89	A change to subheading 9032.10 through 9032.89 from any other subheading, including another subheading within that group.
9032.90	A change to subheading 9032.90 from any other subheading, except from heading 8537 when resulting from a simple assembly.
9033	A change to heading 9033 from any other heading.

Chapter 91 Note: The country of origin of goods classified in subheading 9113.90.40 shall be determined under the provisions of § 102.21.

HTSUS	Tariff shift and/or other requirements
9101–9107	A change to heading 9101 through 9107 from any other heading outside that group, except from heading 9108 through 9110; or A change to heading 9101 through 9107 from complete movements, unassembled, classified in subheading 9110.11 or 9110.90, or from rough movements classified in subheading 9110.19 or 9110.90.
9108–9109	A change to heading 9108 through 9109 from any other heading outside that group, except from heading 9110; or A change to heading 9108 through 9109 from complete movements, unassembled, classified in subheading 9110.11 or 9110.90, or from rough movements classified in subheading 9110.19 or 9110.90.
9110	A change to heading 9110 from any other heading, except from subheading 9114.90.
9111.10–9111.80	A change to subheading 9111.10 through 9111.80 from any other subheading outside that group, except from subheading 9111.90 when that change is pursuant to General Rule of Interpretation 2(a).
9111.90	A change to subheading 9111.90 from any other heading.
9112.20	A change to subheading 9112.20 from any other subheading, except from subheading 9112.90 when that change is pursuant to General Rule of Interpretation 2(a).
9112.90	A change to subheading 9112.90 from any other heading.
9113	A change to heading 9113 from any other heading.
9114	A change to heading 9114 from any other heading.
9201–9208	A change to heading 9201 through 9208 from any other heading, including another heading within that group, except from heading 9209 when that change is pursuant to General Rule of Interpretation 2(a).
9209	A change to heading 9209 from any other heading.
(r)	**Section XIX: Chapter 93**
9301–9304	A change to heading 9301 through 9304 from any other heading, including another heading within that group, except from heading 9305 when that change is pursuant to General Rule of Interpretation 2(a).
9305	A change to heading 9305 from any other heading.
9306	A change to heading 9306 from any other heading.
9307	A change to heading 9307 from any other heading.
(s)	**Section XX: Chapters 94 through 96**

Chapter 94 Note: For a good classifiable in subheadings 9404.30 through 9404.90 which does not meet the appropriate tariff shift rule specified for those subheadings, the country of origin is the country where all cutting and sewing operations required to form the outer shell were performed. If all cutting and sewing operations required to form the outer shell were not performed in a single country, the country of origin will be the single country where the component of the outer shell which determines the classification of that good was produced. If a single country did not produce a component of the outer shell which determines the classification of that good, then the country of origin will be the country in which the good last underwent a substantial assembly process. Notwithstanding the foregoing provisions of this Note, the country of origin of goods classified in subheadings 9404.90.10 and 9404.90.80 through 9404.90.95 shall be determined under the provisions of § 102.21.

9401.10–9401.80	A change to subheading 9401.10 through 9401.80 from any other subheading outside that group, except from subheading 9403.10 through 9403.80, and except from subheading 9401.90 or 9403.90 when that change is pursuant to General Rule of Interpretation 2(a).
9401.90	A change to subheading 9401.90 from any other heading, except from subheading 9403.90.
9402	A change to heading 9402 from any other heading, except from subheading 9401.10 through 9401.80 or subheading 9403.10 through 9403.80, and except from subheading 9401.90 or 9403.90 when that change is pursuant to General Rule of Interpretation 2(a).
9403.10–9403.80	A change to subheading 9403.10 through 9403.80 from any other subheading outside that group, except from subheading 9401.10 through 9401.80, and except from subheading 9401.90 or 9403.90 when that change is pursuant to General Rule of Interpretation 2(a).
9403.90	A change to subheading 9403.90 from any other heading, except from subheading 9401.90.
9404.10–9404.29	A change to subheading 9404.10 through 9404.29 from any other heading.
9404.30–9404.90	A change to down- and/or feather-filled goods classified in subheading 9404.30 through 9404.90 from any other heading; or For all other goods classified in subheading 9404.30 through 9404.90, a change from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5901, 5903 through 5904, 5906 through 5907, or 6001 through 6006, or subheading 6307.90.
9405.10–9405.60	A change to subheading 9405.10 through 9405.60 from any other subheading outside that group, except from subheading 9405.91 through 9405.99 when that change is pursuant to General Rule of Interpretation 2(a).
9405.91–9405.99	A change to subheading 9405.91 through 9405.99 from any other heading.
9406	A change to heading 9406 from any other heading.

HTSUS	Tariff shift and/or other requirements
9501	A change to heading 9501 from any other chapter, except from heading 8714 when that change is pursuant to General Rule of Interpretation 2(a).
9502.10	A change to subheading 9502.10 from any other subheading, except from skins for stuffed dolls classified in subheading 9502.99.
9502.99	A change to subheading 9502.99 from any other heading, except from subheading 9503.41 through 9503.49.
9503.10–9503.30	A change to subheading 9503.10 through 9503.30 from any other subheading, including another subheading within that group.
9503.41–9503.49	A change to toys classified in subheading 9503.41 through 9503.49 from any other heading; or A change to toys classified in subheading 9503.41 through 9503.49 from parts and accessories classified in subheading 9503.41 through 9503.49; or A change to parts and accessories classified in subheading 9503.41 through 9503.49 from any other heading, except from heading 9502, 6111, or 6209.
9503.50–9503.60	A change to subheading 9503.50 through 9503.60 from any other subheading, including another subheading within that group.
9503.70–9503.90	A change to subheading 9503.70 through 9503.90 from any other chapter.
9504.10–9506.29	A change to subheading 9504.10 through 9506.29 from any other subheading, including another subheading within that group.
9506.31	A change to subheading 9506.31 from any other subheading, except from subheading 9506.39.
9506.32–9506.99	A change to subheading 9506.32 through 9506.99 from any other subheading, including another subheading within that group.
9507.10–9507.30	A change to subheading 9507.10 through 9507.30 from any other chapter.
9507.90	A change to subheading 9507.90 from any other subheading, except from heading 5004 through 5006, subheading 5402.10 through 5402.49, subheading 5406.10 through 5406.20, or heading 5603 or 5404.
9508	A change to heading 9508 from any other heading.
Chapter 96 Note: The country of origin of goods classified in subheading 9612.10.9010 shall be determined under the provisions of § 102.21.	
9601	A change to heading 9601 from any other heading.
9602	A change to heading 9602 from any other heading.
9603	A change to heading 9603 from any other heading.
9604–9605	A change to heading 9604 through 9605 from any other heading, including another heading within that group.
9606.10	A change to subheading 9606.10 from any other heading.
9606.21–9606.29	A change to subheading 9606.21 through 9606.29 from any other heading.
9606.30	A change to subheading 9606.30 from any other heading.
9607.11–9607.19	A change to subheading 9607.11 through 9607.19 from any other subheading, except from subheading 9607.20 when that change is pursuant to General Rule of Interpretation 2(a).
9607.20	A change to subheading 9607.20 from any other subheading.
9608.10–9608.40	A change to subheading 9608.10 through 9608.40 from any other subheading, including another subheading within that group, except from subheading 9608.60.
9608.50	A change to subheading 9608.50 from any other heading.
9608.60–9608.99	A change to subheading 9608.60 through 9608.99 from any other subheading, including another subheading within that group.
9609.10	A change to subheading 9609.10 from any other subheading.
9609.20	A change to subheading 9609.20 from any other chapter.
9609.90	A change to subheading 9609.90 from any other chapter.
9610–9612	A change to heading 9610 through 9612 from any other heading, including another heading within that group.
9613.10–9613.20	A change to subheading 9613.10 through 9613.20 from any other subheading outside that group.
9613.30–9613.80	A change to subheading 9613.30 through 9613.80 from any other subheading, including another subheading within that group.
9613.90	A change to subheading 9613.90 from any other heading.
9614.20	A change to subheading 9614.20 from any other subheading, except to roughly shaped blocks of wood or root of subheading 9614.20 from heading 4407.
9614.90	A change to subheading 9614.90 from any other heading.
9615.11–9615.90	A change to subheading 9615.11 through 9615.90 from any other subheading, including another subheading within that group.
9616–9618	A change to heading 9616 through 9618 from any other heading, including another heading within that group.
(t)	**Section XXI: Chapter 97**
9701.10–9701.90	A change to subheading 9701.10 through 9701.90 from any other subheading, including another subheading within that group.
9702–9706	A change to heading 9702 through 9706 from any other heading, including another heading within that group.

[T.D. 96–48, 61 FR 28957, June 6, 1996; 61 FR 33846, July 1, 1996; 61 FR 41737, Aug. 12, 1996; T.D. 99–64, 64 FR 43266, Aug. 10, 1999; CBP Dec. 03–11, 68 FR 43631, July 24, 2003]

§ 102.21 Textile and apparel products.

(a) *Applicability*. Except for purposes of determining whether goods originate in Israel or are the growth, product, or manufacture of Israel, and except as otherwise provided for by statute, the provisions of this section shall control the determination of the country of origin of imported textile and apparel products for purposes of the Customs laws and the administration of quantitative restrictions. The provisions of this section shall apply to goods entered, or withdrawn from warehouse, for consumption on or after July 1, 1996.

(b) *Definitions*. The following terms shall have the meanings indicated when used in this section:

(1) *Country of origin*. The term country of origin means the country, territory, or insular possession in which a good originates or of which a good is the growth, product, or manufacture.

(2) *Fabric-making process*. A *fabric-making process* is any manufacturing operation that begins with polymers, fibers, filaments (including strips), yarns, twine, cordage, rope, or fabric strips and results in a textile fabric.

(3) *Knit to shape*. The term *knit to shape* applies to any good of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the good, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether a good is ''knit to shape.''

(4) *Major parts*. The term *major parts* means integral components of a good but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts.

(5) *Textile or apparel product*. A *textile or apparel product* is any good classifiable in Chapters 50 through 63, Harmonized Tariff Schedule of the United States (HTSUS), and any good classifiable under one of the following HTSUS headings or subheadings:

3005.90	6502
3921.12.15	6503
3921.13.15	6504
3921.90.2550	6505.90
4202.12.40–80	6601.10–99
4202.22.40–80	7019.19.15
4202.32.40–95	7019.19.28
4202.92.05	7019.40–59
4202.92.15–30	8708.21
4202.92.60–90	8804
6405.20.60	9113.90.40
6406.10.77	9404.90
6406.10.90	9502.91
6406.99.15	9612.10.9010
6501	

(6) *Wholly assembled*. The term ''wholly assembled'' when used with reference to a good means that all components, of which there must be at least two, preexisted in essentially the same condition as found in the finished good and were combined to form the finished good in a single country, territory, or insular possession. Minor attachments and minor embellishments (for example, appliques, beads, spangles, embroidery, buttons) not appreciably affecting the identity of the good, and minor subassemblies (for example, collars, cuffs, plackets, pockets), will not affect the status of a good as ''wholly assembled'' in a single country, territory, or insular possession.

(c) *General rules*. Subject to paragraph (d) of this section, the country of origin of a textile or apparel product shall be determined by sequential application of paragraphs (c) (1) through (5) of this section and, in each case where appropriate to the specific context, by application of the additional requirements or conditions of §§ 102.12 through 102.19 of this part.

(1) The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.

(2) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each foreign material incorporated in that good underwent an applicable change

in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section.

(3) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1) or (2) of this section:

(i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit; or

(ii) Except for goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

(4) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2) or (3) of this section, the country of origin of the good is the single country, territory, or insular possession in which the most important assembly or manufacturing process occurred.

(5) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2), (3) or (4) of this section, the country of origin of the good is the last country, territory, or insular possession in which an important assembly or manufacturing process occurred.

(d) *Treatment of sets*. Where a good classifiable in the HTSUS as a set includes one or more components that are textile or apparel products and a single country of origin for all of the components of the set cannot be determined under paragraph (c) of this section, the country of origin of each component of the set that is a textile or apparel product shall be determined separately under paragraph (c) of this section.

(e) *Specific rules by tariff classification*. (1) The following rules will apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section:

HTSUS	Tariff shift and/or other requirements
3005.90	If the good contains pharmaceutical substances, a change to subheading 3005.90 from any other heading; or If the good does not contain pharmaceutical substances, a change to subheading 3005.90 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5601 through 5603, 5801 through 5804, 5806, 5809, 5903, 5906 through 5907, and 6001 through 6006.
3921.12.15	A change to subheading 3921.12.15 from any other heading.
3921.13.15	A change to subheading 3921.13.15 from any other heading.
3921.90.2550	A change to subheading 3921.90.2550 from any other heading.
4202.12.40–4202.12.80	A change to subheading 4202.12.40 through 4202.12.80 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
4202.22.40–4202.22.80	A change to subheading 4202.22.40 through 4202.22.80 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
4202.32.40–4202.32.95	A change to subheading 4202.32.40 through 4202.32.95 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
4202.92.05	A change to subheading 4202.92.05 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory or insular possession.
4202.92.15–4202.92.30	A change to subheading 4202.92.15 through 4202.92.30 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
4202.92.60–4202.92.90	A change to subheading 4202.92.60 through 4202.92.90 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5001–5002	A change to heading 5001 through 5002 from any other chapter.
5003	A change to heading 5003 from any other heading, provided that the change is the result of garnetting. If the change to heading 5003 is not the result of garnetting, the country of origin of the good is the country of origin of the good prior to its becoming waste.
5004–5006	(1) If the good is of staple fibers, a change to heading 5004 through 5006 from any heading outside that group, provided that the change is the result of a spinning process. (2) If the good is of filaments, a change to heading 5004 through 5006 from any heading outside that group, provided that the change is the result of an extrusion process.
5007	(1) A change from greige fabric of heading 5007 to finished fabric of heading 5007 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or,

HTSUS	Tariff shift and/or other requirements
	(2) If the country of origin cannot be determined under (1) above, a change to heading 5007 from any other heading, provided that the change is the result of a fabric-making process.
5101–5103	A change to heading 5101 through 5103 from any other chapter.
5104	A change to heading 5104 from any other heading.
5105	A change to heading 5105 from any other chapter.
5106–5110	A change to heading 5106 through 5110 from any heading outside that group, provided that the change is the result of a spinning process.
5111–5113	A change to heading 5111 through 5113 from any heading outside that group, provided that the change is the result of a fabric-making process.
5201	A change to heading 5201 from any other chapter.
5202	A change to heading 5202 from any other heading, provided that the change is the result of garnetting. If the change to heading 5202 is not the result of garnetting, the country of origin of the good is the country of origin of the good prior to its becoming waste.
5203	A change to heading 5203 from any other chapter.
5204–5207	A change to heading 5204 through 5207 from any heading outside that group, provided that the change is the result of a spinning process.
5208–5212	(1) A change from greige fabric of heading 5208 through 5212 to finished fabric of heading 5208 through 5212 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2) If the country of origin cannot be determined under (1) above, a change to heading 5208 through 5212 from any heading outside that group, provided that the change is the result of a fabric-making process.
5301–5305	(1) Except for waste, a change to heading 5301 through 5305 from any other chapter. (2) For waste, a change to heading 5301 through 5305 from any heading outside that group, provided that the change is the result of garnetting. If the change is not the result of garnetting, the country of origin of the good is the country of origin of the good prior to its becoming waste.
5306–5307	A change to heading 5306 through 5307 from any heading outside that group, provided that the change is the result of a spinning process.
5308	(1) Except for paper yarns, a change to heading 5308 from any other heading, provided that the change is the result of a spinning process. (2) For paper yarns, a change to heading 5308 from any other heading, except from heading 4707, 4801 through 4806, 4811, and 4818.
5309–5311	(1) A change from greige fabric of heading 5309 through 5311 to finished fabric of heading 5309 through 5311 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2)If the country of origin cannot be determined under (1) above, a change to heading 5309 through 5311 from any heading outside that group, provided that the change is the result of a fabric-making process.
5401–5406	A change to heading 5401 through 5406 from any other heading, provided that the change is the result of an extrusion process.
5407–5408	(1) A change from greige fabric of heading 5407 through 5408 to finished fabric of heading 5407 through 5408 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2) If the country of origin cannot be determined under (1) above, a change to heading 5407 through 5408 from any heading outside that group, provided that the change is the result of a fabric-making process.
5501–5502	A change to heading 5501 through 5502 from any other chapter, provided that the change is the result of an extrusion process.
5503–5504	A change to heading 5503 through 5504 from any other chapter, except from Chapter 54.
5505	A change to heading 5505 from any other heading, provided that the change is the result of garnetting. If the change is not the result of garnetting, the country of origin of the good is the country of origin of the good prior to its becoming waste.
5506–5507	A change to heading 5506 through 5507 from any other chapter, except from Chapter 54.
5508–5511	A change to heading 5508 through 5511 from any heading outside that group, provided that the change is the result of a spinning process.
5512–5516	(1) A change from greige fabric of heading 5512 through 5516 to finished fabric of heading 5512 through 5516 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2) If the country of origin cannot be determined under (1) above, a change to heading 5512 through 5516 from any heading outside that group, provided that the change is the result of a fabric-making process.
5601	(1) A change to wadding of heading 5601 from any other heading, except from heading 5105, 5203, and 5501 through 5507. (2) A change to flock, textile dust, mill neps, or articles of wadding, of heading 5601 from any other heading or from wadding of heading 5601.
5602–5603	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of heading 5602 through 5603 to finished fabric of heading 5602 through 5603 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or

HTSUS	Tariff shift and/or other requirements
	(2) If the country of origin cannot be determined under (1) above, a change to heading 5602 through 5603 from any heading outside that group, provided that the change is the result of a fabric-making process.
5604	(1) If the textile component is of continuous filaments, including strips, a change of those filaments, including strips, to heading 5604 from any other heading, except from heading 5001 through 5007, 5401 through 5408, and 5501 through 5502, and provided that the change is the result of an extrusion process.
	(2) If the textile component is of staple fibers, a change of those fibers to heading 5604 from any other heading, except from heading 5004 through 5006, 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process.
5605–5606	If the good is of continuous filaments, including strips, a change of those filaments, including strips, to heading 5605 through 5606 from any other heading, except from heading 5001 through 5007, 5401 through 5408, and 5501 through 5502, and provided that the change is the result of an extrusion process; or
	If the good is of staple fibers, a change of those fibers to heading 5605 through 5606 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process.
5607	If the good is of continuous filaments, including strips, a change of those filaments, including strips, to heading 5607 from any other heading, except from heading 5001 through 5007, 5401 through 5406, and 5501 through 5511, and provided that the change is the result of an extrusion process; or
	If the good is of staple fibers, a change of those fibers to heading 5607 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process.
5608	(1)(a) Except for netting of wool or of fine animal hair, a change from greige netting of heading 5608 to finished netting of heading 5608 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or
	(1)(b) If the country of origin cannot be determined under (1)(a) above, a change to netting of heading 5608 from any other heading, except from heading 5804, and provided that the change is the result of a fabric-making process.
	(2) A change to fishing nets or other made up nets of heading 5608:
	(a) If the good does not contain nontextile attachments, from any other heading, except from heading 5804 and 6002 through 6006, and provided that the change is the result of a fabric-making process; or
	(b) If the good contains nontextile attachments, from any heading, including a change from another good of heading 5608, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5609	(1) If of continuous filaments, including strips, the country of origin of a good classifiable under heading 5609 is the country, territory, or insular possession in which those filaments, including strips, were extruded.
	(2) If of staple fibers, the country of origin of a good classifiable under heading 5609 is the country, territory, or insular possession in which those fibers were spun into yarns.
5701–5705	A change to heading 5701 through 5705 from any other chapter.
5801–5803	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of heading 5801 through 5803 to finished fabric of heading 5801 through 5803 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or
	(2) If the country of origin cannot be determined under (1) above, a change to heading 5801 through 5803 from any other heading, including a heading within that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, and 6002 through 6006, and provided that the change is the result of a fabric-making process.
5804.10	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of subheading 5804.10 to finished fabric of subheading 5804.10 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or
	(2) If the country of origin cannot be determined under (1) above, a change to subheading 5804.10 from any other heading, except from heading 5608, and provided that the change is the result of a fabric-making process.
5804.21–5804.30	(1) Except for lace of wool or of fine animal hair, a change from greige lace of subheading 5804.21 through 5804.30 to finished lace of subheading 5804.21 through 5804.30 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or
	(2) If the country of origin cannot be determined under (1) above, a change to subheading 5804.21 through 5804.30 from any other heading, provided that the change is the result of a fabric-making process.
5805	A change to heading 5805 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, and 5512 through 5516, and provided that the change is the result of a fabric-making process.

HTSUS	Tariff shift and/or other requirements
5806	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of heading 5806 to finished fabric of heading 5806 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2) If the country of origin cannot be determined under (1) above, a change to heading 5806 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, and 5801 through 5803, and provided that the change is the result of a fabric-making process.
5807	The country of origin of a good classifiable under heading 5807 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
5808.10	(1) If the good is of continuous filaments, including strips, a change of those filaments, including strips, to subheading 5808.10 from any other heading, except from heading 5001 through 5007, 5401 through 5406, 5501 through 5502, and 5604 through 5607, and provided that the change is the result of an extrusion process. (2) If the good is of staple fibers, a change of those fibers to heading 5808.10 from any other heading, except from heading 5106 through 5113, 5204 through 5212, 5306 through 5311, 5401 through 5408, 5508 through 5516, and 5604 through 5607, and provided that the change is the result of a spinning process.
5808.90	(1) For ornamental fabric trimmings: (a) A change from a greige good of subheading 5808.90 to a finished good of subheading 5808.90 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (b) If the country of origin cannot be determined under (a) above, a change to subheading 5808.90 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, and 5512 through 5516, and provided that the change is the result of a fabric-making process. (2) For nonfabric ornamental trimmings: (a) If the trimming is of continuous filaments, including strips, a change to subheading 5808.90 from any other heading, except from heading 5001 through 5007, 5401 through 5408, 5501 through 5502, and 5604 through 5607, and provided that the change is the result of an extrusion process; or (b) If the trimming is of staple fibers, a change to subheading 5808.90 from any other heading, except from heading 5106 through 5113, 5204 through 5212, 5306 through 5311, 5401 through 5408, 5508 through 5516, and 5604 through 5607, and provided that the change is the result of a spinning process. (3) For tassels, pompons and similar articles: (a) If the good has been wholly assembled in a single country, territory, or insular possession, a change to subheading 5808.90 from any other heading; (b) If the good has not been wholly assembled in a single country, territory, or insular possession and the good is of staple fibers, a change to subheading 5808.90 from any other heading, except from heading 5004 through 5006, 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and 5604 through 5607, and provided that the change is the result of a spinning process; or (c) If the good has not been wholly assembled in a single country, territory, or insular possession and the good is of filaments, including strips, a change to subheading 5808.90 from any other heading, except from heading 5001 through 5007, 5401 through 5406, and 5501 through 5502, and provided that the change is the result of an extrusion process.
5809	A change to heading 5809 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5801 through 5802, 5804, and 5806, and provided that the change is the result of a fabric-making process.
5810.10	The country of origin of goods of subheading 5810.10 is the single country, territory, or insular possession in which the embroidery was performed.
5810.91–5810.99	(1) For embroidered fabric, the country of origin is the country, territory, or insular possession in which the fabric was produced by a fabric-making process. (2) For embroidered badges, emblems, insignia, and the like, comprised of multiple components, the country of origin is the place of assembly, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (3) For embroidered badges, emblems, insignia, and the like, not comprised of multiple components, a change to subheading 5810.91 through 5810.99 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5903, 5907, 6001 through 6006, and provided that the change is the result of a fabric-making process.
5811	The country of origin of a good classifiable under heading 5811 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
5901–5903	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of heading 5901 through 5903 to finished fabric of heading 5901 through 5903 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (2) If the country of origin cannot be determined under (1) above, a change to heading 5901 through 5903 from any other heading, including a heading within that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, and 6002 through 6006, and provided that the change is the result of a fabric-making process.
5904	(1) For goods that have been wholly assembled by means of a lamination process, a change to heading 5904 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

HTSUS	Tariff shift and/or other requirements
	(2) For all other goods, the country of origin of the good will be determined by application of § 102.21(c)(4) or, if the country of origin cannot be determined under that section, by application of § 102.21(c)(5).
5905	(1) Except for wall coverings consisting of textile fabric of wool or of fine animal hair treated on the back or affixed by any means to a backing of any material, a change from wall coverings of greige fabric of heading 5905 to wall coverings of finished fabric of heading 5905 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or,
	(2) If the country of origin cannot be determined under (1) above, a change to heading 5905 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5803, 5806, 5808, and 6002 through 6006, and provided that the change is the result of a fabric-making process.
5906–5907	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of heading 5906 through 5907 to finished fabric of heading 5906 through 5907 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or,
	(2) If the country of origin cannot be determined under (1) above, a change to heading 5906 through 5907 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, and 6002 through 6006, and provided that the change is the result of a fabric-making process.
5908	(1) Except for yarns, twine, cord, and braid, a change to heading 5908 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5801 through 5802, 5806, 5808, and 6001 through 6006.
	(2) For yarns, twine, cord, and braid:
	(a) If the good is of continuous filaments, including strips, a change to heading 5908 from any other heading, except from heading 5001 through 5007, 5401 through 5406, and 5501 through 5502, and provided that the change is the result of an extrusion process; or
	(b) If the good is of staple fibers, a change to heading 5908 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and 5605 through 5607, and provided that the change is the result of a spinning process.
5909	A change to heading 5909 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5801 through 5804, 5806, 5808, and 6001 through 6006, and provided that the good does not contain armor or accessories of nontextile material and provided that the change is the result of a fabric-making process; or
	A change to textile hosepiping with armor or accessories of nontextile material, of heading 5909, from any heading, including a change from another good of heading 5909, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5910	(1) For belts and belting of braid, rope, or cord:
	(a) If the good is of continuous filaments, including strips, a change of those filaments, including strips, to heading 5910 from any other heading, except from heading 5001 through 5006, 5401 through 5406, and 5501 through 5502, and provided that the change is the result of an extrusion process; or
	(b) If the good is of staple fibers, a change of those fibers to heading 5910 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process.
	(2) For fabric belting and belts, not braids and not combined with nontextile components, whether or not reinforced with metal or other material, a change to heading 5910 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5808 through 5809, and 6001 through 6006, and provided the change is the result of a fabric-making process.
	(3) For fabric belts, including belts of braided materials, combined with nontextile components, whether or not reinforced with metal or other material, a change to heading 5910 from any heading, including a change from another good of heading 5910, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5911.10–5911.20	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of subheading 5911.10 through 5911.20 to finished fabric of subheading 5911.10 through 5911.20 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or,
	(2) If the country of origin cannot be determined under (1) above, a change to subheading 5911.10 through 5911.20 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, and 6001 through 6006, and provided that the change is the result of a fabric-making process.
5911.31–5911.32	(1)(a) Except for fabric of wool or of fine animal hair, a change from greige fabric of subheading 5911.31 through 5911.32 to finished fabric of subheading 5911.31 through 5911.32 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or,

HTSUS	Tariff shift and/or other requirements
	(1)(b) If the country of origin cannot be determined under (1)(a) above, for goods not combined with nontextile components, a change to subheading 5911.31 through 5911.32 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, and 6001 through 6006, and provided that the change is the result of a fabric-making process.
	(2) For goods combined with nontextile components, a change to subheading 5911.31 through 5911.32 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5911.40	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of subheading 5911.40 to finished fabric of subheading 5911.40 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or,
	(2) If the country of origin cannot be determined under (1) above, a change to subheading 5911.40 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, and 6001 through 6006, and provided that the change is the result of a fabric-making process.
5911.90	(1) For goods of yarn, rope, cord, or braid:
	(a)If the good is of continuous filaments, including strips, a change of those filaments, including strips, to subheading 5911.90 from any other heading, except from heading 5001 through 5006, 5401 through 5406, and 5501 through 5502, and provided that the change is the result of an extrusion process; or
	(b) If the good is of staple fibers, a change of those fibers to subheading 5911.90 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process.
	(2)(a) If the good is a fabric, except for fabric of wool or of fine animal hair, a change from greige fabric of subheading 5911.90 to finished fabric of subheading 5911.90 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or,
	(2)(b) If the country of origin cannot be determined under (2)(a) above, if the good is a fabric, a change to subheading 5911.90 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809, and 6001 through 6006, and provided that the change is the result of a fabric-making process.
	(3) If the good is a made up article other than a good of yarn, rope, cord, or braid, a change to subheading 5911.90 from any heading, including a change from another good of heading 5911, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
6001–6006	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of heading 6001 through 6006 to finished fabric of heading 6001 through 6006 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or,
	(2) If the country of origin cannot be determined under paragraph (1) of this entry, a change to heading 6001 through 6006 from any heading outside that group, provided that the change is the result of a fabric-making process.
6101–6117	(1) If the good is not knit to shape and consists of two or more component parts, except for goods of subheading 6117.10 provided for in paragraph (e)(2) of this section, a change to an assembled good of heading 6101 through 6117 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
	(2) If the good is not knit to shape and does not consist of two or more component parts, except for goods of subheading 6117.10 provided for in paragraph (e)(2) of this section, a change to heading 6101 through 6117 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5806, 5809 through 5811, 5903, 5906 through 5907, and 6001 through 6006, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
	(3) If the good is knit to shape, except for goods of subheading 6117.10 provided for in paragraph (e)(2) of this section, a change to 6101 through 6117 from any heading outside that group, provided that the knit to shape components are knit in a single country, territory, or insular possession.
6201–6208	(1) If the good consists of two or more component parts, a change to an assembled good of heading 6201 through 6208 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
	(2) If the good does not consist of two or more component parts, a change to heading 6201 through 6208 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6209.10.0000–6209.20.5035.	(1) If the good consists of two or more component parts, a change to an assembled good of subheading 6209.10.0000 through 6209.20.5035 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

HTSUS	Tariff shift and/or other requirements
	(2) If the good does not consist of two or more component parts, a change to subheading 6209.10.0000 through 6209.20.5035 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6209.20.5040	The country of origin of a good classifiable in subheading 6209.20.5040 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
6209.20.5045–6209.90.9000.	(1) If the good consists of two or more component parts, a change to an assembled good of subheading 6209.20.5045 through 6209.90.9000 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
	(2) If the good does not consist of two or more component parts, a change to subheading 6209.20.5045 through 6209.90.9000 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6210–6212	(1) If the good consists of two or more component parts, a change to an assembled good of heading 6210 through 6212 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
	(2) If the good does not consist of two or more component parts, a change to heading 6210 through 6212 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6006, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6213–6214	Except for goods of heading 6213 through 6214 provided for in paragraph (e)(2) of this section, the country of origin of a good classifiable under heading 6213 through 6214 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
6215–6217	(1) If the good consists of two or more component parts, a change to an assembled good of heading 6215 through 6217 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
	(2) If the good does not consist of two or more component parts, a change to heading 6215 through 6217 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6301–6306	Except for goods of heading 6302 through 6304 provided for in paragraph (e)(2) of this section, the country of origin of a good classifiable under heading 6301 through 6306 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
6307.10	The country of origin of a good classifiable under subheading 6307.10 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
6307.20	A change to subheading 6307.20 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
6307.90	The country of origin of a good classifiable under subheading 6307.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
6308	The country of origin of a good classifiable under heading 6308 is the country, territory, or insular possession in which the woven fabric component of the good was formed by a fabric-making process.
6309–6310	The country of origin of a good classifiable under heading 6309 through 6310 is the country, territory, or insular possession in which the good was last collected and packaged for shipment.
6405.20.60	A change to subheading 6405.20.60 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
6406.10.77	(1) If the good consists of two or more components, a change to subheading 6406.10.77 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
	(2) If the good does not consist of two or more components, a change to subheading 6406.10.77 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6006, and provided that the change is the result of a fabric-making process.
6406.10.90	(1) If the good consists of two or more components, a change to subheading 6406.10.90 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
	(2) If the good does not consist of two or more components, a change to subheading 6406.10.90 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6006, and provided that the change is the result of a fabric-making process.
6406.99.15	(1) If the good consists of two or more components, a change to subheading 6406.99.15 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

HTSUS	Tariff shift and/or other requirements
	(2) If the good does not consist of two or more components, a change to subheading 6406.99.15 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6006, and provided that the change is the result of a fabric-making process.
6501	(1) If the good consists of two or more components, a change to heading 6501 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
	(2) If the good does not consist of two or more components, a change to heading 6501 from any other heading, except from heading 5602, and provided that the change is the result of a fabric-making process.
6502	(1) If the good consists of two or more components, a change to heading 6502 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
	(2) If the good does not consist of two or more components, a change to heading 6502 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6006, and provided that the change is the result of a fabric-making process.
6503	(1) If the good consists of two or more components, a change to heading 6503 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
	(2) If the good does not consist of two or more components, a change to heading 6503 from any other heading, except from heading 5602, and provided that the change is the result of a fabric-making process.
6504	(1) If the good consists of two or more components, a change to heading 6504 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
	(2) If the good does not consist of two or more components, a change to heading 6504 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6006, and provided that the change is the result of a fabric-making process.
6505.90	(1) If the good consists of two or more components, a change to subheading 6505.90 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
	(2) If the good does not consist of two or more components, a change to subheading 6505.90 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5811, 5903, 5906 through 5907, and 6001 through 6006, and provided that the change is the result of a fabric-making process.
6601.10–6601.91	A change to subheading 6601.10 through 6601.91 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
7019.19.15	(1) If the good is of filaments, a change to subheading 7019.19.15 from any other heading, provided that the change is the result of an extrusion process.
	(2) If the good is of staple fibers, a change to subheading 7019.19.15 from any other subheading, except from subheading 7019.19.30 through 7019.19.90, 7019.31.00 through 7019.39.50, and 7019.90, and provided that the change is the result of a spinning process.
7019.19.28	(1) If the good is of filaments, a change to subheading 7019.19.28 from any other heading, provided that the change is the result of an extrusion process.
	(2) If the good is of staple fibers, a change to subheading 7019.19.28 from any other subheading, except from subheading 7019.19.30 through 7019.19.90, 7019.31.00 through 7019.39.50, and 7019.90, and provided that the change is the result of a spinning process.
7019.40–7019.59	A change to subheading 7019.40 through 7019.59 from any other subheading, provided that the change is the result of a fabric-making process.
8708.21	(1) For seat belts not combined with nontextile components, a change to subheading 8708.21 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, and 5512 through 5516, and provided that the change is the result of a fabric-making process.
	(2) For seat belts combined with nontextile components, a change to an assembled good of subheading 8708.21 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
8804	(1) If the good consists of two or more component parts, a change to an assembled good of heading 8804 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
	(2) If the good does not consist of two or more component parts, a change to heading 8804 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5801 through 5804, 5806, 5809 through 5811, 5903, 5906 through 5907, and 6001 through 6006, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
9113.90.40	(1) If the good consists of two or more component parts, a change to an assembled good of subheading 9113.90.40 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

HTSUS	Tariff shift and/or other requirements
	(2) If the good does not consist of two or more component parts, a change to subheading 9113.90.40 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5801 through 5802, 5806, 5809, 5903, 5906 through 5907, and 6001 through 6006, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
9404.90	Except for goods of subheading 9404.90 provided for in paragraph (e)(2) of this section, the country of origin of a good classifiable under subheading 9404.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
9502.91	A change to an assembled good of subheading 9502.91 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
9612.10.9010	A change to subheading 9612.10.9010 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5806, 5903, 5906 through 5907, and 6002 through 6006, and provided that the change is the result of a fabric-making process.

(2) For goods of HTSUS headings 6213 and 6214 and HTSUS subheadings 6117.10, 6302.22, 6302.29, 6302.52, 6302.53, 6302.59, 6302.92, 6302.93, 6302.99, 6303.92, 6303.99, 6304.19, 6304.93, 6304.99, 9404.90.85 and 9404.90.95, except for goods classified under those headings or subheadings as of cotton or of wool or consisting of fiber blends containing 16 percent or more by weight of cotton:

(i) The country of origin of the good is the country, territory, or insular possession in which the fabric comprising the good was both dyed and printed when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing;

(ii) If the country of origin cannot be determined under paragraph (e)(2)(i) of this section, except for goods of HTSUS subheading 6117.10 that are knit to shape or consist of two or more component parts, the country of origin is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process; or

(iii) For goods of HTSUS subheading 6117.10 that are knit to shape or consist of two or more component parts, if the country of origin cannot be determined under paragraph (e)(2)(i) of this section:

(A) If the good is knit to shape, the country of origin of the good is the country, territory, or insular possession in which a change to HTSUS subheading 6117.10 from yarn occurs, provided that the knit to shape components are knit in a single country, territory, or insular possession; or

(B) If the good is not knit to shape and consists of two or more component parts, the country of origin of the good is the country, territory, or insular possession in which a change to an assembled good of HTSUS subheading 6117.10 from unassembled components occurs, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

[T.D. 95–69, 60 FR 46197, Sept. 5, 1995, as amended by T.D. 96–56, 61 FR 37818, July 22, 1996; T.D. 99–64, 64 FR 43266, Aug. 10, 1999; T.D. 01–36, 66 FR 21661, May 1, 2001; 66 FR 23981, May 10, 2001; T.D. 02–47, 67 FR 51752, Aug. 9, 2002; T.D. 03–08, 68 FR 8713, Feb. 25, 2003]

PART 103—AVAILABILITY OF INFORMATION

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103.0 Scope.

Subpart A—Production of Documents/Disclosure of Information Under the FOIA

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AUTHORITY: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

Section 103.31 also issued under 19 U.S.C. 1431;

Section 103.31a also issued under 19 U.S.C. 2071 note;

Section 103.33 also issued under 19 U.S.C. 1628;

Section 103.34 also issued under 18 U.S.C. 1905.

Section 103.35 also issued under E.O. 12600 of June 23, 1987.

SOURCE: T.D. 81–168, 46 FR 32565, June 24, 1981, unless otherwise noted.

§ 103.0 Scope.

This part governs the production/disclosure of agency-maintained documents/information requested pursuant to various disclosure laws and/or legal processes. Thus, the extent of disclosure of requested information may be dependent on whether the request is pursuant to the provisions of the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552), the Privacy Act of 1974, as amended (5 U.S.C. 552a), and/or under other statutory or regulatory authorities, as required by administrative and/or legal processes. The regulations for this part contain a discussion of applicable fees for the search, duplication, review, and other tasks associated with processing information requests pursuant to the FOIA, and also provide for the appeal of agency decisions and sanctions for the improper withholding and/or the untimely release of requested information. As information obtained by Customs is derived from a myriad of sources, persons seeking information should consult with the appropriate field officer before invoking the formal procedures set forth in this part. These regulations supplement the regulations of the Department of the Treasury regarding public access to records, which are found at 31 CFR part 1, and, in the event of any inconsistency between these regulations and those of the Department of the Treasury, the latter shall prevail. For purposes of this part, the Office of the Chief Counsel is considered a part of the United States Customs Service.

[T.D. 96–36, 61 FR 19838, May 3, 1996, as amended by T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

Subpart A—Production of Documents/Disclosure of Information Under the FOIA

§ 103.1 Public reading rooms.

Each office listed below will maintain a public reading room or public reading area where the material required to be made available under 5 U.S.C. 552(a)(2) and this part may be inspected and copied:

United States Customs Service (Headquarters), 1300 Pennsylvania Avenue, NW., Washington, DC 20229

Boston, 10 Causeway Street, Boston, Massachusetts 02222

New York, 6 World Trade Center, New York, New York 10048

Chicago, Room 1501, 55 East Monroe Street, Chicago, Illinois 60603

Miami, 99 S.E. 5th Street, Miami, Florida 33131

New Orleans, Canal-LaSalle Building, Rm. 302, 423 Canal St., New Orleans, Louisiana 70130

Houston, 5850 San Felipe, Houston, Texas 77057

Los Angeles, New Federal Building, 300 N. Los Angeles Street, Los Angeles, California 90012.

The reading rooms are open to the public during regular business hours unless other hours are posted, Monday through Friday of each week, exclusive of national holidays. A fee for copies of requested material is charged in accordance with § 103.10.

[T.D. 81–168, 46 FR 32565, June 24, 1981, as amended by T.D. 83–209, 48 FR 45544, Oct. 6, 1983; T.D. 95–77, 60 FR 50019, Sept. 27, 1995; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 103.2 Information available to the public.

(a) *General.* The Freedom of Information Act, as amended (5 U.S.C. 552), provides for access to information and records developed or maintained by Fedral agencies. Subject only to the exemptions set forth in § 103.12, the public generally or any individual member is entitled to information or records which are described in paragraph (b) of this section and which are in the possession of the United States Customs Service. Access to that information is governed by the regulations in this part.

(b) *Three categories of information available.* Generally, 5 U.S.C. 552 divides agency information into three major categories and provides methods by which each category is available to the public. The three major categories, for which the disclosure requirements of the United States Customs Service are set forth in this part, are as follows:

(1) Information required to be published in the FEDERAL REGISTER (see § 103.3).

(2) Information required to be made available for public inspection and copying or, in the alternative, to be published and offered for sale (see § 103.4).

(3) Information required to be made available to any member of the public upon specific request (see § 103.5).

§ 103.3 Publication of information in the Federal Register.

(a) *Requirements.* Subject to the application of the exemptions described in § 103.12 and subject to the limitations provided in paragraph (b) of this section, the United States Customs Service is required, by 5 U.S.C. 552(a)(1), to separately state, publish and keep current in the FEDERAL REGISTER for the guidance of the public the following information:

(1) Descriptions of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions.

(2) A statement of the general course and method by which its function are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(3) Rules of procedure, descriptions of forms available and the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by it.

(5) Each amendment, revision, or repeal of matters referred to in paragraphs (a) (1) through (4) of this section.

(b) *Limitations*—(1) *Incorporation by reference* in the FEDERAL REGISTER. Matter reasonably available to an affected class of persons, whether published by a private organization or an agency of the United States, is published in the FEDERAL REGISTER for purposes of paragraph (a) of this section when it is incorporated by reference in the FEDERAL REGISTER with the approval of the Director of the Federal Register. Any matter which is incorporated by reference must be set forth in the privately- or publicly-printed document substantially in its entirety and not merely summarized or printed as a synopsis. There can be no incorporation by reference in the FEDERAL REGISTER of any matter where only a few persons having a special working knowledge of the activities of

the United States Customs Service are familiar with its location and scope. The provisions of 5 U.S.C. 552(a)(1) and 1 CFR part 20 control any incorporation of matter by reference.

(2) *Effect of failure to publish.* Except to the extent that a person has actual and timely notice of the terms of any matter referred to in paragraph (a) of this section which is required to be published in the FEDERAL REGISTER, that person is not required in any manner to resort to, or be adversely affected by, that matter if it is not published or incorporated by reference. That is, any matter which imposes an obligation and which is not published or incorporated by reference can not adversely change or affect a person's rights.

§ 103.4 Public inspection and copying.

(a) *In general.* Subject to the application of the exemption described in § 103.12 the United States Customs Service is required, by 5 U.S.C. 552(a)(2) and §§ 174.32 and 177.10 of this chapter, to make available for public inspection and copying or, in the alternative, promptly publish and offer for sale, the following information:

(1) Final opinions and orders, including concurring or dissenting opinions, made in the adjudication of cases;

(2) Within 120 days of issuance, any precedential decision (including any ruling letter, internal advice memorandum, or protest review decision) issued under the Tariff Act of 1930, as amended, with respect to any Customs transaction;

(3) Those statements of policy and interpretations which have been adopted by the United States Customs Service but are not published in the FEDERAL REGISTER; and

(4) Administrative staff manuals and instructions to staff that affect a member of the public.

(b) *Indexes.* The United States Customs Service is required by 5 U.S.C. 552(a)(2) to maintain and make available for public inspection and copying those current indexes which identify any item described in paragraphs (a) (1) through (3) of this section that is issued, adopted, or promulgated after July 4, 1967, and that is required to be made available for public inspection or published. Unless the Commissioner determines by an order published in the FEDERAL REGISTER that publication is unnecessary and impracticable, these indexes are published on a quarterly or more frequent basis and are available for purchase at each of the public reading rooms listed in § 103.1, at a cost not to exceed the direct cost of duplication.

(c) *Effect of failure to publish or make available.* No matter, described in paragraphs (a) (1) through (3) of this section which is required by this section to be made available for public inspection or published, may be relied upon, used, or cited as precedent by the United States Customs Service against a party, other than an agency, unless that party has actual and timely notice of such matter or unless the matter has been indexed and either made available for inspection or published, as provided by this section. This paragraph applies only to matters which have precedential significance and does not apply to matters which have been made available pursuant to § 103.3.

(d) *Deletion of identifying details.* To prevent an unwarranted invasion of personal privacy, in accordance with 5 U.S.C. 552(a)(2), identifying details contained in any matter described in paragraphs (a) (1) through (3) of this section are deleted before making that matter available for inspection or publication. However, in every case where identifying details are deleted, the basis for the deletion is explained in writing, giving specific reasons for the deletion and citing the applicable provision of 5 U.S.C. 552 and § 103.12, in an attachment to the document from which the identifying details have been deleted.

(e) *Public reading rooms.* The United States Customs Service has available for inspection and copying, in a reading room or otherwise, the matters described in paragraphs (a) (1) through (3) of this section which are required by paragraph (a) to be made available for public inspection or published in the current indexes. Facilities are provided whereby a person may inspect and obtain copies of the material. There is no fee for access to materials, but a fee is charged in accordance with § 103.10 for a copy of any material provided.

§ 103.5 Specific requests for records.

(a) *In general.* Except with respect to the records made available under §§ 103.3 and 103.4, but subject to the application of the exemptions described in § 103.12, the United States Customs Service is required, by 5 U.S.C. 552(a)(3), upon a request for reasonably-described records that conforms in every respect to the rules and procedures of this part, to make the requested records promptly available to the requester. A request or an appeal from the initial denial of a request which does not comply with the requirements set forth in this part is not subject to the time limits of §§ 103.6, 103.7, and 103.8 until amended so as to comply. Nevertheless, every reasonable effort will be made to answer each request within the applicable time limits or, if necessary, to promptly advise the requester in what respect the request or appeal is deficient so that it may be resubmitted or amended for consideration in accordance with this part. This section applies only to existing records which are in the possession or control of the United States Customs Service. There is no requirement that records be created or data be processed in other than the existing format in order to answer a request for records.

(b) *Requests for records not in control of the United States Customs Service*—(1) *Referral of request.* Where the request is for a record in the possession of, under the control of, or created by a constituent unit of the Department of the Treasury other than the United States Customs Service, the appropriate Customs officer shall transfer the request to the appropriate constituent unit and notify the requester of that transfer. Forwarding a request to another constituent unit is not a denial of access within the meaning of these regulations. If the United States Customs Service receives a request forwarded from another constituent unit of the Department of the Treasury, the time limits for response set forth in §§ 103.6(b) and 103.8(a) commence upon receipt of the request by the Disclosure Law Officer, U.S. Customs Service. If the United States Customs Service receives a request for a record that is not in the possession or control of any constituent unit of the Department of the Treasury, the appropriate Customs officer shall return the request to the sender with an explanation of that fact.

(2) *Request for advice.* If the Customs Service has a copy of a requested unclassified record that was created by a Department or agency other than a constituent unit of the Department of the Treasury, the appropriate Customs officer shall ask that Department or agency for its advice on the release of the record. The appropriate Customs officer shall advise the other Department or agency that, in the absence of timely guidance from it, the United States Customs Service will proceed to make its own determination in accordance with this part. If it becomes necessary to respond to a requester because of the time limits set forth in §§ 103.6(b) and 103.8(a) without the advice of the other Department or agency, the appropriate Customs officer shall make the determination in accordance with this part and advise the requester accordingly. If the appropriate Customs officer denies access to the record under one of the exemptions set forth in § 103.12, that officer shall advise the requester of the right to appeal the denial and of the possibility of sending a request for the record directly to the originating Department or agency. If a requester appeals from a denial to the United States Customs Service, the appropriate Customs officer shall ask the originating Department or agency for timely advice on whether to release the records. Nevertheless, the ultimate decision on the appeal from a denial of access to a record rests with the FOIA Appeals Officer, as set forth in § 103.7.

(3) *Classified records.* If the Customs Service has a copy of a requested record created by a Department or agency other than a constituent unit of the Department of the Treasury, and that record is classified or contains both classified and unclassified material, the request shall be referred to the originating Department or agency for a direct response. The requester shall be notified immediately of the referral. Such referral shall not constitute a denial of the request and no appeal rights accrue to the requester.

(c) *Form of request.* Although no standard form is prescribed for a request, in order to be subject to the provisions of this section and §§103.6 through 103.9, a request for records must:

(1) Be made in writing and signed by the person making that request;

(2) State that it is made pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552), or these regulations, and have conspicuously printed on the face of the envelope the words ''Freedom of Information Act Request'' or ''FOIA Request'';

(3) Be addressed to the appropriate office or officer of the United States Customs Service, as set forth in paragraph (d) of this section;

(4) Reasonably describe the records in accordance with paragraph (e) of this section.

(5) Set forth the address where the person making the request desires to be notified of the determination as to whether the request will be granted;

(6) State whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them; and

(7) State the firm agreement of the requester to pay the fees for search and duplication ultimately determined in accordance with §103.10, or request that such fees be reduced or waived and state the justification for such request (see §103.10(d)).

Where the initial request, rather than stating a firm agreement to pay the fee ultimately determined in accordance with §103.10, places an upper limit on the amount the requester agrees to pay and that upper limit is likely to be lower than the estimated fee, or where the requester asks for an estimate of the fees to be charged, or if the fees are expected to exceed $50, the appropriate Customs officer shall promptly advise the requester of the estimated fee due and ask the requester to agree to pay that amount. Where the initial request includes a request for reduction or waiver of fees, the appropriate Customs officer shall determine whether to grant the request for reduction or waiver in accordance with §103.10(d) and notify the requester of the decision. If the officer decides to charge the requester for all or part of the fees normally due, the officer shall ask the requester to agree to pay the amount so determined. The requirements of this paragraph are not met until the requester agrees, in writing, to pay the fees applicable to the request for records, if any, or has made payment in advance of the fees estimated to be due.

(d) *To whom requests for records should be addressed*—(1) *Headquarters.* Requests made by mail for records maintained at the Headquarters of the United States Customs Service should be addressed to ''Freedom of Information Act Request,'' U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Requests may be delivered personally to the Disclosure Law Officer, U.S. Customs Service, Headquarters, Washington, DC.

(2) *Field offices.* A person shall request records or information maintained in a field office of the United States Customs Service by either mailing or personally delivering the request to the director of the service port, or if the records concern the Office of Investigations, the special agent in charge, where the field office is located.

(e) *Reasonable description of records.* A request for records must describe the records in reasonably sufficient detail to enable a Customs officer who is familiar with the subject area of the request to locate the records without placing an unreasonably burden upon the United States Customs Service. While no specific formula for a reasonable description of a record can be established, the requirement is usually satisfied if the requester gives the name, subject matter, and, if known, the date and location of the requested record. However, a requester should furnish any additional information which will more clearly identify the requested records. If a request does not reasonably describe the records being sought, the appropriate Customs officer shall ask the requester to refine the request. If necessary a requester may be granted a conference with knowledgeable Customs personnel. The requirement for a reasonably description is not a device for improperly withholding records from the public.

(f) *Date of receipt of request.* A request for records is considered to have been

received for purposes of this part on the later of the dates on which:

(1) The requirements of paragraph (c) of this section have been satisfied; and, where applicable,

(2) The requester has agreed in writing, by executing a separate contract or otherwise, to pay the fees for search and duplication determined to be due in accordance with § 103.10; or

(3) The fees have been waived in accordance with § 103.10(d); or

(4) Payment in advance has been received from the requester.

A Customs officer or employee who receives a request for records and a separate agreement to pay, or a letter transmitting prepayment, or who issues a final notification of waiver of fees, shall stamp the date of receipt or dispatch by the responsible office on the materal. The latest of those dates is the date of receipt of the request. As soon as the date of receipt has been established, the appropriate Customs officer shall acknowledge receipt and inform the requester of the title of the Customs officer who is responsible for acting on the request.

(g) *Search for record requested.* Upon the receipt of a request, the appropriate Customs officer shall attempt to identify and locate the requested records. With respect to records maintained in computerized form, a search for a record includes services functionally analogous to searches for records which are maintained in a conventional form. However, Customs personnel are not required to tabulate or compile information for the purpose of creating a record. Only records in existence at the time of the receipt of the request will be treated as falling within the scope of the request and no request for the continuing production of documents created after receipt of the request will be honored.

(h) *''Request for record'' defined.* For purposes of uniformity in recordkeeping a ''request for a record'' is defined as a written request for a record of the U.S. Customs Service which has not been published in the FEDERAL REGISTER, the Customs Bulletin, by press release, or otherwise, or made available in a public reading room, or which has not previously been customarily furnished to requesters, whether or not the request makes reference to the Freedom of Information Act, as amended (5 U.S.C. 552).

[T.D. 81–168, 46 FR 32565, June 24, 1981; 46 FR 35084, July 7, 1981, as amended by T.D. 91–77, 56 FR 46114, Sept. 10, 1991; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 103.6 Grant or denial of initial request.

(a) *Officers designated to make initial determinations*—(1) *Service ports.* The appropriate director of a service port, or in the case of records of the Office of Investigations, the appropriate special agent in charge (SAC), shall make any initial determination of a request for a record which is maintained, respectively, at that service port or under the SAC's jurisdiction.

(2) *Headquarters.* For records located at Customs Service Headquarters, the initial determination to grant or deny a request shall be made by the appropriate Division Director at Customs Service Headquarters having custody of or functional jurisdiction over the subject matter of the requested records. In the event the request relates to records which are maintained in an office which is not within a division, the initial determination shall be made by the individual designated for that purpose by the Assistant Commissioner having responsibility for that office.

(b) *Time limit for initial determinations.* The time limit for making an initial determination to grant or deny a request for records, including the time for notifying the requester of that determination, is 10 days (excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of the request (see § 103.5(f)), unless the designated officer invokes an extension pursuant to § 103.8(a) or the requester otherwise agrees to an extension.

(c) *Grant of request.* If the appropriate Customs officer grants a request, and if the requester wants a copy of the requested records, that officer shall mail a copy of those records to the requester together with a statement of the fees for search and duplication at the time of the determination or promptly thereafter. If a requester wants to inspect the record, the appropriate Customs officer who grants the request

shall send written notice to the requester stating the time and place of inspection and the amount of any fee involved in the request. In such a case, the appropriate Customs officer shall make the record available for inspection at the time and place stated, but in a manner so as not to interfere with its use by the United States Customs Service or to exclude other persons from making an inspection. In addition, reasonable limitations may be placed on the number of records which may be inspected by a person on any given date. The requester is not allowed to remove a record from the inspection room. If, after making inspection, the requester wants a copy of all or a portion of the requested record, the appropriate Customs officer shall supply the desired copy upon payment of the established fee prescribed in § 103.10.

(d) *Denial of request.* The Customs officer who denies a request for records (whether in whole or in part) shall mail written notice of the denial to the requester. The letter of notificatimn shall contain (1) the physical location of the requested records, (2) the applicable exemption(s) and reason for not granting the request, (3) the name and title or position of the Customs officer who denied the request, (4) advice on the right to administrative appeal in accordance with § 103.7, and (5) the title and address of the Customs officer who is to decide any appeal.

(e) *Inability to locate records within time limits.* If a requested record cannot be located and evaluated within the initial 10-day period or the extension period allowed under § 103.8(a), the Customs officer who is responsible for the initial determination shall continue to search for the records. However, that officer shall also notify the requester of the facts and inform the requester that he or she may consider the notification to be a denial of access within the meaning of paragraph (d) of this section, and provide the requester with the address for the submission of an administrative appeal. The requester may also be invited, in the alternative, to agree to a voluntary extension of time in which to locate and evaluate the records. A voluntary extension of time does not waive a requester's right to appeal any ultimate denial of access or to appeal a failure to locate the records within the voluntary extension period.

[T.D. 81–168, 46 FR 32565, June 24, 1981, as amended by T.D. 96–36, 61 FR 19838, May 3, 1996]

§ 103.7 Administrative appeal of initial determination.

(a) *To whom appeals should be submitted.* A requester may submit an administrative appeal to the FOIA Appeals Officer at Headquarters, within 35 days after the date of notification described in § 103.6 or the date of the letter transmitting the last records released, whichever is later. A requester shall mail or personally deliver an appeal to the United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

(b) *Form of appeal.* The Administrative appeal shall:

(1) Be in writing and signed by the requester,

(2) Have conspicuously printed on the face of the envelope the words ''Freedom of Information Act Appeal'';

(3) Reasonably describe, in accordance with § 103.5(e), the records to which the appeal relates;

(4) Set forth the address where the requester desires to be notified of the determination on appeal;

(5) Specify the date of the initial request and the date and control number of the letter denying the initial request; and

(6) Petition the FOIA Appeals Officer at Headquarters, to grant the request for records and state any arguments in support thereof.

(c) *Disposition of appeal.* The Customs officer or employee who receives an appeal shall stamp the date of receipt on the appeal and the stamped date is the date of receipt for purposes of the appeal. FOIA Appeals Officer at Headquarters, shall acknowledge and advise the appellant of the date of receipt and of the date that a response is due under this paragraph. The FOIA Appeals Officer shall affirm the initial denial (in whole or in part) or grant the request for records and notify the appellant of that determination by letter mailed within 20 days (exclusive of Saturdays, Sunday, and legal public holidays) after the date of receipt of the appeal,

unless extended pursuant to § 103.8(a). The purpose of the letter of denial is to inform the appellant of the reason for the denial and the right to judicial review of that denial under 5 U.S.C. 552(a)(4)(B). If the FOIA Appeals Officer is unable to act on an appeal within the 20-day period (or any extension thereof pursuant to § 103.8(a)), the FOIA Appeals Officer shall send written notice of that fact to the appellant. In those circumstances, an appellant is entitled to commence an action in a district court as provided in § 103.9 despite any continuation in the processing of an appeal. However, the appellant may also be invited, in the alternative, to agree to a voluntary extension of time in which to decide the appeal. A voluntary extension does not waive the right of the appellant to ultimately commence an action in a United States district court on the appellant's request.

[T.D. 81–168, 46 FR 32565, June 24, 1981, as amended by T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 103.8 Time extensions.

(a) *Ten-day extension*. In unusual circumstances, the Customs officer who is responsible for deciding an initial request or an appeal may extend the time limitations set in §§ 103.6 and 103.7 after written notice to the requester or appellant. This notice must state the reason for the extension and the date on which the determination is expected to be dispatched. Any extension or extensions of time are limited to a cumulative total of not more than 10 additional working days. (For example, if an extension pursuant to this paragraph is invoked in connection with an initial determination, any unused days of the extension period may be invoked in connection with the determination on administrative appeal by written notice from the FOIA Appeals Officer, who is to make the appellate determination. If no extension is sought for the initial determination, an extension of 10 days may be added to the ordinary 20-day period for appellant review.) Generally, extensions will be invoked only to the extent reasonably necessary to properly respond to a request. As used in this paragraph, ''unusual circumstances'' means at least one of the following:

(1) The need to search for and collect the requested records from field facilities or other establishments in buildings other than the building in which the office of the Customs officer to whom the request is made is located.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another Department or agency having a substantial interest in the determination of the request, among two or more constituent units within the Department of the Treasury, or within offices of the United States Customs Service (other than the legal staff or Office of Congressional & Public Affairs) having substantial subject-matter interest therein. Consultations with personnel of the Department of Justice concerned with requests for records under the Freedom of Information Act, as amended (5 U.S.C. 552), do not constitute a basis for an extension under this paragraph.

(b) *Extension by judicial review*. If the United States Customs Service fails to comply with the time limitations specified in §§ 103.6 and 103.7 and the requester commences an action under § 103.9, the court in which the suit was initiated may retain jurisdiction and allow the United States Customs Service additional time to review its records, if the Customs Service shows the existence of exceptional circumstances and the exercise of due diligence in responding to the request.

[T.D. 81–168, 46 FR 32565, June 24, 1981; 46 FR 35084, July 7, 1981, as amended by T.D. 91–77, 56 FR 46114, Sept. 10, 1991]

§ 103.9 Judicial review.

(a) *Failure to comply with time limitations*. If the United States Customs Service fails to comply with the time limitations specified in §§ 103.6, 103.7 or § 103.8, a requester is considered to have exhausted the administrative remedies with respect to the request.

(b) *Procedure of initiating judicial review*. If a request for records is denied upon appeal pursuant to § 103.7, or if no

determination is made within the 10-day or 20-day periods specified in §§ 103.6 and 103.7, respectively, together with an extension pursuant to § 103.8(a) or by agreement of the requester, the requester may commence an action under 5 U.S.C. 552(a)(4)(B) in a United States district court in the district (1) in which the requester resides, (2) in which the requester's principal place of business is located, (3) in which the records are situated, or (4) in the District of Columbia. Service of process in that action is governed by the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the United States. The Chief Counsel, United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229 is the officer designated to receive any service of process.

(c) *Proceeding against officer or employee.* Under 5 U.S.C. 552(a)(4)(F), the Special Counsel, Merit Systems Protection Board, has authority, upon the issuance of a written finding by a court that the Customs officer or employee who was primarily responsible for withholding a record may have acted arbitrarily or capriciously, to initiate a proceeding to determine whether disciplinary action is warranted against that officer or employee. The Special Counsel, after investigation and consideration of the evidence submitted, submits its findings and recommendations to the Commissioner of Customs and the Secretary of the Treasury. The Special Counsel also sends copies of the findings and recommendations to the officer or employee or the representative of that officer or employee.

[T.D. 81–168, 46 FR 32565, June 24, 1981, as amended by T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 103.10 Fees for services.

(a) *In general.* (1) The fees prescribed in this section are for search and duplication and under no circumstances is there a fee for determining whether an exemption can or should be asserted, for deleting exempt matter being withheld from records to be furnished, or for monitoring a requester's inspection of records made available in this manner.

(2) Customs publications which are available for sale through the Government Printing Office are on the shelves of the reading rooms and similar public inspection facilities, but those publications are not available for sale at those facilities. Those publications may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. However, pages from those publications may be copied at the public inspection facilities in accordance with the schedule of fees set forth in paragraph (g) of this section.

(b) *When charged.* Unless charges are inapplicable, or are waived or reduced in accordance with paragraph (c) or (d) of this section, fees are charged in accordance with the schedule contained in paragraph (g) of this section for services rendered in responding to requests for records.

(c) *Services performed without charge*—(1) *Certain classes of records.* The Commissioner of Customs or any of the Commissioner's designees may determine, under the rulemaking procedures of 5 U.S.C. 553, which classes or records under their control may be provided to the public without charge, or at a reduced charge.

(2) *Records provided to government units.* Normally, in accordance with paragraph (d)(2)(ii) of this section, no charge is made for providing records to Federal, State, or foreign governments, international governmental organizations, or local governmental agencies or offices.

(d) *Waiver or reduction of fees*—(1) *Records unavailable or exempt.* Fees may be waived or reduced at the discretion of the Customs officer who determines the availability of records, if the record is not found or is exempt from disclosure.

(2) *Request for waiver or reduction of fees.* Fees may be waived or reduced on a case by case basis in accordance with this paragraph by the Customs officer who determines whether to release the record. A request for a waiver or reduction of fees must be in writing. The appropriate Customs officer shall waive or reduce a fee if the officer determines either that:

(i) The records are being requested by, or on behalf of, an individual who

in writing, under penalty or perjury, demonstrates indigency to the satisfaction of the officer and that compliance with the request does not constitute an unreasonable burden on the United States Customs Service; or

(ii) A waiver or reduction of the fees is in the public interest because furnishing the information primarily benefits the general public.

(3) *Appeal from denial of request.* An appeal from a denial of a request for waiver or reduction of fees is decided under the criteria set forth in paragraph (d)(2) of this section by the FOIA Appeals Officer. An appeal shall be in writing and mailed to the FOIA Appeals Officer within 35 days of the denial of the initial request for waiver or reduction. An appeal under this paragraph is entitled to a prompt decision.

(e) *Avoidance of unexpected fees.* In order to protect a requester from unexpected fees, a requester is required to state in the request an agreement to pay the fees determined in accordance with paragraph (g) of this section or to state an acceptable upper limit on the cost of processing the request. If the fee for processing the request is estimated to exceed that limit, or if the requester has failed to state a limit and the cost is estimated to exceed $50 and there is no decision to waive or reduce the fees, the appropriate Customs officer shall:

(1) Inform the requester of the estimated costs;

(2) Extend an offer to the requester to confer with Customs personnel in an attempt to reformulate the request in a manner which will reduce the fee and still meet the needs of the requester, and

(3) Inform the requester that the running of the time period within which a determination on the request must be made is suspended until the request is reformulated in manner to reduce the cost or until the requester pays or agrees to pay the estimated cost.

(f) *Form of payment.* (1) A requester shall pay by a check or money order that is payable to the order of the United States Customs Service.

(2) If the estimated cost exceeds $50, the requester may be required to enter into a contract for the payment of actual costs, as determined in accordance with paragraph (g) of this section, which contract may provide for prepayment of the estimated costs in whole or in part.

(g) *Amount to be charged for specified services.* A fee for a service performed is imposed and collected as set forth in this paragraph. The Commissioner of Customs or the Commissioner's designee may set an appropriate fee for any service not described below. These extraordinary fees are imposed and collected pursuant to 31 U.S.C. 483a, subject to the constraints imposed by 5 U.S.C. 552(a)(4)(A).

(1) *Duplication.* (i) The charge for photocopies per page up to 8½″×14″ is at the rate of $0.15 each.

(ii) The charge for photographs, films and other materials is their actual cost. The Customs Service may furnish the records to be released to a private contractor for copying and charge the person requesting the records the actual cost of duplication charged by the private contractor. No fee is charged where the requester furnishes the supplies and equipment and makes the copies at the Government location.

(2) *Unpriced printed materials.* The charge for unpriced printed material, which is available at the location where requested and which does not require duplication for copies to be furnished, is at the rate of $0.25 for each twenty-five pages or fraction thereof.

(3) *Search services.* The charge for services of personnel involved in locating records is $10.00 for each hour or fraction thereof. If a computer search is required because of the nature of the records sought and the manner in which the records are stored, the fee is $10.00 for each hour or fraction thereof of personnel time associated with the search plus the actual cost of extracting the stored information in the format in which it is normally produced. This actual cost of extracting information is based on computer time and supplies necessary to comply with the request.

(4) *Searches requiring travel or transportation.* The charge for transporting a record from one location to another, or for transporting a Customs officer or employee to the site of requested records when it is necessary to locate

rather then examine the records, is the actual cost of the transportation.

[T.D. 81–168, 46 FR 32565, June 24, 1981, as amended by T.D. 84–149, 49 FR 28699, July 16, 1984]

§ 103.11 Specific Customs Service records subject to disclosure.

(a) *Administrative staff manuals and instructions*. Except as exempted by § 103.12, all administrative staff manuals and instructions to staff that affect any member of the public, and indexes thereto, are available for public inspection and copying in the Customs Service public reference facilities (see § 103.1), including the following:

Forms Catalog. Customs and other agency forms currently available from the Customs Service.

Legal Precedent Retrieval System. The directory is a listing by selected keywords of all classification rulings issued since early 1974 that affect a substantial volume of imports or transactions or are of general interest or importance, and of all published classification rulings issued since August 31, 1963, including classification decisions, and classification rulings circulated within the Customs Service by the Customs Information Exchange and the Office of Regulations and Rulings. The directory also contains limited information on decisions and rulings pertaining to entry, value, drawback, marking, country of origin, and vessel repairs. The directory is maintained on microfiche and is continually updated. Duplicate microfiche are available for 15¢ each, through subscription or in individual sets. The costs of a set will depend upon the number of microfiche it contains.

Fines, Penalties, and Forfeitures Handbook. Collects in one document information relating to the total management of the fines, penalties, and forfeitures program.

Inspector Rate Book. A ready reference guide for inspection personnel. Contains an abbreviated Tariff Schedules of the United States and other reference material.

Customs Issuance System (CIS) Index. The index provides a brief description of circulars, manuals, legal rulings, decisions, and other Customs documents.

Operational Handbook of Other Agency Requirements Enforced by the U.S. Customs Service.

Customs Valuation under the Trade Agreements Act of 1979.

Fundamentals of Customs Tariff and Trade Operations Handbook. Material relating to the duties and responsibilities of import specialists: entry of merchandise, restrictions, prohibitions and other agency requirements, special trade programs, invoicing and related documentation, examination of merchandise, Customs valuation, tariff classification, liquidation, protests, and miscellaneous import specialist concerns.

(b) *Other Customs records*. In general, all other documents issued by the Secretary of the Treasury, the Commissioner of Customs, or other officers of the Department of the Treasury or of the United States Customs Service in matters administered by the United States Customs Service, if reasonably described, and unless exempted from disclosure under § 103.12, are available. The classes of records of the United States Customs Service which may be made available under this paragraph upon written request submitted in accordance with § 103.5 include, but are not limited to the following:

(1) Records relating to:

(i) Comments submitted by private parties (which are not considered to include foreign governments) in response to a published notice of proposed rulemaking and of proposed changes in tariff classification, unless the submitter states that the information is privileged or confidential, giving reasons therefor, and the Commissioner of Customs agrees that the information contained therein is exempt from disclosure under § 103.12;

(ii) Advisory committees on Customs matters;

(iii) Rosters of licensed customhouse brokers;

(iv) Names of individual licensed customhouse brokers;

(v) Names and titles of all Customs personnel;

(vi) Performance awards;

(vii) Suggestion awards;

(viii) The administration of and decisions concerning import quotas; and

(ix) Customs laboratory methods.

(2) Decisions concerning—(i) Matters arising under the Tariff Schedules of the United States and the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202);

(ii) Whether or not specific items, articles, or merchandise qualify for entry under the Trade Fair Act of 1959 (19 U.S.C. 1751 *et seq.*), and the disposition of articles previously entered under the Trade Fair Act; Customs participation and assistance at Trade Fairs;

(iii) The dutiable status of gifts pursuant to section 321, Tariff Act of 1930, as amended (19 U.S.C. 1321);

(iv) The eligibility of vehicles used in international traffic pursuant to section 332(a), Tariff Act of 1930 (19 U.S.C. 1322(a)), and other instruments of international traffic generally for duty-free entry;

(v) Prohibition from entry of merchandise produced by convict, forced, or indentured labor (19 U.S.C. 1307);

(vi) The entry or valuation of merchandise;

(vii) Liens in cases arising under section 564, Tariff Act of 1930, as amended (19 U.S.C. 1564);

(viii) Bills of lading, carriers' certificates, or rights in respect of merchandise, cases arising under section 483 or 484(c), (h), or (i), Tariff Act of 1930, as amended (19 U.S.C. 1483, 1484(c), (h), (i));

(ix) Trademarks, trade names, copyrights, patents, and related matters;

(x) Country of origin marking requirements of section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304);

(xi) Psittacine or other birds, bird feathers, bird skins, monkeys, dogs, cats, and other animals and pets prohibited entry or subject to restrictions and controls on entry;

(xii) Entry of articles admitted temporarily free of duty under bond as provided in Schedule 8, Part 5C, Tariff Schedules of the United States and Chapter 98, Subchapter XIII, HTSUS (19 U.S.C. 1202), and entry of articles admitted temporarily free of duty under A.T.A. Carnets, as provided in § 114.22(a) of this chapter;

(xiii) Tonnage taxes (regular, special, and discriminatory) and light money;

(xiv) The entry, clearance and use of vessels and permits for them to proceed coastwise;

(xv) The regulation of vessels in the foreign, coastal, fishing, and other trades of the United States;

(xvi) The limitation of the use of foreign vessels in waters under the jurisdiction of the United States;

(xvii) Salvage operations by vessels within the territorial waters of the United States (46 U.S.C. 316);

(xviii) The assessment and collection of duties on equipment or repairs of vessels or aircraft under section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), and the remission or refund of such duties;

(xix) Requirements for entry, clearance, and use of aircraft;

(xx) The arrival or departure and the use of motor vehicles, railway trains, or other vehicles;

(xxi) Adequacy of premises at Customs bonded warehouses and control of the merchandise stored therein;

(xxii) Use of protective Customs seals and labels; and

(xxiii) The itineraries of foreign vessels which had been submitted for an advisory ruling to determine whether the primary object of a contemplated voyage would be considered to unlawful coastwise trade (see § 4.80a(d) of this chapter).

[T.D. 81–168, 46 FR 32565, June 24, 1981, as amended by T.D. 85–123, 50 FR 29954, July 23, 1985; T.D. 89–1, 53 FR 51255, Dec. 21, 1988; T.D. 97–82, 62 FR 51770, Oct. 3, 1997]

§ 103.12 Exemptions.

Pursuant to 5 U.S.C. 552(b), the disclosure requirements of 5 U.S.C. 552(a) are not applicable to U.S. Customs Service records which relate to the following:

(a) *Matters kept secret pursuant to Executive order*. Matters specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and which are, in fact, properly classified pursuant to such Executive order (see 31 CFR part 2).

(b) *Certain internal rules and procedures*. Information relating solely to the internal personnel rules and practices of an agency.

(c) *Matters exempt from disclosure by statute*. Information specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), if the statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(d) *Privileged or confidential information*. Trade secrets and commercial or financial information obtained from any person which is privileged or confidential.

(e) *Certain inter-agency or intra-agency correspondence.* Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the agency.

(f) *Material involving personal privacy.* Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(g) *Certain investigatory records.* Records or information compiled for law enforcement purposes, but only to the extent that the production of such enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

(h) *Certain pending criminal investigations.* Whenever a request is made which involves access to records described in paragraph (g)(1) of this section and)—

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, Customs may, during only such times as that circumstance continues, treat the records as not subject to the requirements of this part.

(i) *Certain informant records.* Whenever informant records maintained by Customs under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, Customs may treat the records as not subject to the requirements of this part unless the informant's status as an informant has been officially confirmed.

[T.D. 81–168, 46 FR 32565, June 24, 1981, as amended by T.D. 88–22, 53 FR 12937, Apr. 20, 1988]

§ 103.13 Segregability of records.

(a) *Reasonably segregable portions.* Where the record requested contains information which is exempt from disclosure under 5 U.S.C. 552(b) and § 103.12, the reasonably segregable portions of the record shall be made available to the requester. For purposes of this section, the term ''reasonably segregable portions'' means those portions of the record: (1) Which are not exempt from disclosure by 5 U.S.C. 552(b) and § 103.12; (2) which, after deletion of the exempt material, still convey meaningful and nonmisleading information; and (3) from which it can reasonably be assumed that a skillful and knowledgeable person could not reconstruct the exempt portions.

(b) *Petitions by American manufacturers, producers, or wholesalers.* Identifying data is not to be deleted from petitions filed by American manufacturers, producers, and wholesalers pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516). See part 175 of this chapter.

Subpart B—Production or Disclosure in Federal, State, Local, and Foreign Proceedings

SOURCE: T.D. 96–36, 61 FR 19838, May 3, 1996, unless otherwise noted.

§ 103.21 Purpose and definitions.

(a) *Purpose.* (1) This subpart sets forth procedures to be followed with respect to the production or disclosure of any documents contained in Customs files, any information relating to material contained in Customs files, any testimony by a Customs employee, or any information acquired by any person as part of that person's performance of official duties as a Customs employee or because of that person's official status, hereinafter collectively referred to as ''information'', in all federal, state, local, and foreign proceedings when a subpoena, notice of deposition (either upon oral examination or written interrogatory), order, or demand, hereinafter collectively referred to as a ''demand'', of a court, administrative agency, or other authority is issued for such information.

(2) This subpart does not cover those situations where the United States is a party to the action. In situations where the United States is a party to the action, Customs employees are instructed to follow internal Customs policies and procedures.

(b) *Customs employee.* For purposes of this subpart, the term ''Customs employee'' includes all present and former officers and employees of the United States Customs Service.

(c) *Customs documents.* For purposes of this subpart, the term ''Customs documents'' includes any document (including copies thereof), no matter what media, produced by, obtained by, furnished to, or coming to the knowledge of, any Customs employee while acting in his/her official capacity, or because of his/her official status, with respect to the administration or enforcement of laws administered or enforced by the Customs Service.

(d) *Originating component.* For purposes of this subpart, the term ''originating component'' references the Customs official, or the official's designee, in charge of the office responsible for the collection, assembly, or other preparation of the information demanded or that, at the time the person whose testimony is demanded acquired the information in question, employs or employed the person whose testimony is demanded.

(e) *Disclosure to government law enforcement or regulatory agencies.* Nothing in this subpart is intended to impede the appropriate disclosure of information by Customs to federal, state, local, and foreign law enforcement or regulatory agencies, in accordance with the confidentiality requirements of the Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905), and other applicable statutes.

(f) *Disclosure to federal attorneys and the Court of International Trade.* Nothing in this subpart is intended to restrict the disclosure of Customs information requested by the Court of International Trade, U.S. Attorneys, or attorneys of the Department of Justice, for use in cases which arise under the laws administered or enforced by, or concerning, the Customs Service and which are referred by the Department of the Treasury to the Department of Justice for prosecution or defense.

(g) *Disclosure of non-Customs information.* Nothing in the subpart is intended to impede the appropriate disclosure of non-Customs information by Customs employees in any proceeding in which they are a party or witness solely in their personal capacities.

(h) *Failure of Customs employee to follow procedures.* The failure of any Customs employee to follow the procedures specified in this subpart neither creates nor confers any rights, privileges, or benefits on any person or party.

(i) *In camera inspection of records.* Nothing in this subpart authorizes Customs personnel to withhold records from a federal court, whether civil or criminal, pursuant to its order for such records appropriately made, for purposes of *in camera* inspection of the records to determine the propriety of claimed exemption(s) from disclosure.

§ 103.22 Procedure in the event of a demand for Customs information in any federal, state, or local civil proceeding or administrative action.

(a) *General prohibition against disclosure.* In any federal, state, or local civil proceeding or administrative action in which the Customs Service is not a party, no Customs employee shall, in response to a demand for Customs information, furnish Customs documents

or testimony as to any material contained in Customs files, any information relating to or based upon material contained in Customs files, or any information or material acquired as part of the performance of that person's official duties (or because of that person's official status) without the prior written approval of the Chief Counsel, as described in paragraph (b) of this section.

(b) *Employee notification to Counsel.* Whenever a demand for information is made upon a Customs employee, that employee shall immediately prepare a report that specifically describes the testimony or documents sought and notify the Assistant Chief Counsel or Associate Chief Counsel for the area where the employee is located. If the employee is located at Headquarters or outside of the United States, the employee shall immediately notify the Chief Counsel. The Customs employee shall then await instructions from the Chief Counsel concerning the response to the demand.

(c) *Requesting party's initial burden.* A party seeking Customs information shall serve on the appropriate Customs employee the demand, a copy of the Summons and Complaint, and provide an affidavit, or, if that is not feasible, a statement that sets forth a summary of the documents or testimony sought and its relevance to the proceeding. Any disclosure authorization for documents or testimony by a Customs employee shall be limited to the scope of the demand as summarized in such affidavit or statement. The Chief Counsel may, upon request and for good cause shown, waive the requirements of this paragraph.

(d) *Requesting party's notification requirement.* The demand for Customs information, pursuant to the provisions of paragraph (c) of this section, shall be served at least ten (10) working days prior to the scheduled date of the production of the documents or the taking of testimony.

(e) *Counsel notification to originating component.* Upon receipt of a proper demand for Customs information, one which complies with the provisions of paragraph (c) of this section, if the Chief Counsel believes that it will comply with any part of the demand, it will immediately advise the originating component.

(f) *Conditions for authorization of disclosure.* The Chief Counsel, subject to the provisions of paragraph (h) of this section, may authorize the production of Customs documents or the appearance and testimony of a Customs employee if:

(1) Production of the demanded documents or testimony, in the judgment of the Chief Counsel, are appropriate under the factors specified in § 103.23(a) of this subpart; and

(2) None of the factors specified in § 103.23(b) of this subpart exist with respect to the demanded documents or testimony.

(g) *Limitations on the scope of authorized disclosure.* (1) The Chief Counsel shall authorize the disclosure of Customs information by a Customs employee without further authorization from Customs officials whenever possible, *provided* that:

(i) If necessary, Counsel has consulted with the originating component regarding disclosure of the information demanded;

(ii) There is no objection from the originating component to the disclosure of the information demanded; and

(iii) Counsel has sought to limit the demand for information to that which would be consistent with the factors specified in § 103.23 of this part.

(2) In the case of an objection by the originating component, the Chief Counsel shall make the disclosure determination.

(h) *Disclosure of commercial information.* In the case of a demand for commercial information or commercial documents concerning importations or exportations, the Chief Counsel shall obtain the authorization of the Assistant Commissioner (Field Operations) or his/her designee prior to the Chief Counsel authorizing the production/disclosure of such documents/information.

§ 103.23 Factors in determining whether to disclose information pursuant to a demand.

(a) *General considerations.* In authorizing disclosures pursuant to a proper demand for Customs information, one which complies with the provisions of

§ 103.22(c), the Chief Counsel should consider the following factors:

(1) Whether the disclosure would be appropriate under the relevant substantive law concerning privilege;

(2) Whether the disclosure would be appropriate under the rules of procedure governing the case or matter in which the demand arose; and,

(3) Whether the requesting party has demonstrated that the information requested is:

(i) Relevant and material to the action pending, based on copies of the summons and complaint that are required to be attached to the subpoena *duces tecum* or other demand;

(ii) Genuinely necessary to the proceeding, *i.e.*, a showing of substantial need has been made;

(iii) Unavailable from other sources; and,

(iv) Reasonable in its scope, *i.e.*, the documents, information, or testimony sought are described with particularity.

(4) Whether consultation with the originating component requires that the Chief Counsel make a separate determination as to the disclosure of the information requested.

(b) *Circumstances where disclosure will not be made.* Among the demands in response to which disclosure will not be authorized by the Chief Counsel are those demands with respect to which any of the following factors exist:

(1) Disclosure would violate a treaty, statute (such as the Privacy Act, 5 U.S.C. 552a, the Trade Secrets Act, 18 U.S.C. 1905, or the income tax laws, 26 U.S.C. 6103 and 7213), or a rule of procedure, such as the grand jury secrecy rule, Fed.R.Crim.Proc. rule 6(e) (18 U.S.C.App.);

(2) Disclosure would violate a specific regulation;

(3) Disclosure would reveal classified or confidential information;

(4) Disclosure would reveal a confidential source or informant;

(5) Disclosure would reveal investigatory records compiled for law enforcement purposes, interfere with enforcement proceedings, or disclose investigative techniques and procedures;

(6) Disclosure would improperly reveal confidential commercial information without the owner's consent (*e.g.*, entry information);

(7) Disclosure relates to documents which were produced by another agency or entity;

(8) Disclosure would unduly interfere with the orderly conduct of Customs business;

(9) Customs has no interest, records, or other official information regarding the matter in which disclosure is sought;

(10) There is a failure to make proper service upon the United States; or

(11) There is a failure to comply with federal, state, or local rules of discovery.

§ 103.24 Procedure in the event a decision concerning a demand is not made prior to the time a response to the demand is required.

If response to a demand is required before the instructions from the Chief Counsel are received, the U.S. Attorney, his/her assistant, or other appropriate legal representative shall be requested to appear with the Customs employee upon whom the demand has been made. The U.S. Attorney, his/her assistant, or other appropriate legal representative shall furnish the court or other authority with a copy of the regulations contained in this subpart, inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of the Chief Counsel, and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

§ 103.25 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the demand in response to a request made in accordance with § 103.24 pending receipt of instructions, or rules that the demand must be complied with irrespective of instructions rendered in accordance with §§ 103.22, 103.23, 103.26, or 103.27 of this subpart not to produce the documents or disclose the information sought, the Customs employee upon whom the demand has been made shall, pursuant to this subpart, respectfully decline to comply

with the demand. *See, United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

§ 103.26 Procedure in the event of a demand for Customs information in a state or local criminal proceeding.

Port directors, special agents in charge, and chiefs of field laboratories may, in the interest of federal, state, and local law enforcement, upon receipt of demands of state or local authorities, and at the expense of the State, authorize employees under their supervision to attend trials and administrative hearings on behalf of the government in any state or local criminal case, to produce records, and to testify as to facts coming to their knowledge in their official capacities. However, in cases where a defendant in a state or local criminal case demands testimony or the production of Customs documents or information, authorization from the Chief Counsel is required as under § 103.22 of this subpart. No disclosure of information under this section shall be made if any of the factors listed in § 103.23(b) of this subpart are present.

§ 103.27 Procedure in the event of a demand for Customs information in a foreign proceeding.

(a) *Required prior approval for disclosure.* In any foreign proceeding in which the Customs Service is not a party, no Customs employee shall, in response to a demand, furnish Customs documents or testimony as to any material contained in Customs files, any information relating to or based upon material contained in Customs files, or any information or material acquired as part of the performance of that person's official duties (or because of that person's official status) without the prior approval of the Chief Counsel, as described in paragraph (b) of this section.

(b) *Employee notification to Counsel.* Whenever a demand in a foreign proceeding is made upon a Customs employee concerning pre-clearance activities within the territory of the foreign country, that employee shall immediately notify the appropriate Associate Chief Counsel responsible for the pre-clearance location. All other demands in a foreign proceeding shall be reported by Customs employees to the Chief Counsel. The Customs employee shall then await instructions from the Chief Counsel concerning the response to the demand.

(c) *Counsel notification to originating component.* Upon receipt of a proper demand for Customs information, one which complies with the provisions of § 103.22(c), if the Chief Counsel believes that it will comply with any part of the demand, it will immediately advise the originating component.

(d) *Conditions for authorization of disclosure.* The Chief Counsel, subject to the terms of paragraph (e) of this section, may authorize the disclosure of Customs documents or the appearance and testimony of a Customs employee if:

(1) Production of the demanded documents or testimony, in the judgment of the Chief Counsel, are appropriate under the factors specified in § 103.23(a) of this subpart; and

(2) None of the factors specified in § 103.23(b) of this subpart exist with respect to the demanded documents or testimony.

(e) *Limitations on the scope of authorized disclosure.* (1) The Chief Counsel shall authorize the disclosure of Customs information by a Customs employee without further authorization from Customs officials whenever possible, provided that:

(i) If necessary, Counsel has consulted with the originating component regarding disclosure of the information demanded;

(ii) There is no objection from the originating component to the disclosure of the information demanded; and

(iii) Counsel has sought to limit the demand for information to that which would be consistent with the factors specified in § 103.23 of this part.

(2) In the case of an objection by the originating component, the Chief Counsel shall make the disclosure determination.

Subpart C—Other Information Subject to Restricted Access

§ 103.31 Information on vessel manifests and summary statistical reports.

(a) *Disclosure to members of the press.* Accredited representatives of the press, including newspapers, commercial magazines, trade journals, and similar publications shall be permitted to examine vessel manifests and summary statistical reports of imports and exports and to copy therefrom for publication information and data subject to the following rules:

(1) Of the information and data appearing on outward manifests, only the name and address of the shipper, general character of the cargo, number of packages and gross weight, name of vessel or carrier, port of exit, port of destination, and country of destination may be copied and published. However, if the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure of the above information is likely to pose a threat of personal injury or property damage, that information shall not be disclosed to the public.

(2) Commercial or financial information, such as the names of the consignees, and marks and numbers shall not be copied from outward manifests or any other papers.

(3) All the information appearing on the cargo declaration (Customs Form 1302) of the inward vessel manifest may be copied and published. However, if the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that the disclosure of the information contained on the cargo declaration is likely to pose a threat of personal injury or property damage, that information shall not be disclosed to the press.

(b) *Review of data.* All copies and notations from inward or outward manifests shall be submitted for examination by a Customs officer designated for that purpose.

(c) *Disclosure to the public.* Members of the public shall not be permitted to examine vessel manifests. However, they may request and obtain from Customs, information from vessel manifests, subject to the rules set forth in paragraph (a) of this section. However, importers and exporters, or their duly authorized brokers, attorneys, or agents may be permitted to examine manifests with respect to any consignment of goods in which they have a proper and legal interest as principal or agent, but shall not be permitted to make any general examination of manifests or make any copies or notations from them except with reference to the particular importation or exportation in which they have a proper and legal interest.

(d) *Confidential treatment*—(1) *Inward manifest.* An importer or consignee may request confidential treatment of its name and address contained in inward manifests, to include identifying marks and numbers. In addition, an importer or consignee may request confidential treatment of the name and address of the shipper or shippers to such importer or consignee by using the following procedure:

(i) An importer or consignee, or authorized employee, attorney or official of the importer or consignee, must submit a certification (as described in paragraph (d)(1)(ii) of this section) claiming confidential treatment of its name and address. The name and address of an importer or consignee includes marks and numbers which reveal the name and address of the importer or consignee. An importer or consignee may file a certification requesting confidentiality for all its shippers.

(ii) There is no prescribed format for a certification. However, the certification shall include the importer's or consignee's Internal Revenue Service Employer Number, if available. There is no requirement to provide sufficient facts to support the conclusion that the disclosure of the names and addresses would likely cause substantial harm to the competitive position of the importer or consignee.

(iii) The certification must be submitted to the Disclosure Law Officer, Headquarters, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

(iv) Each initial certification will be valid for a period of two years from the date of receipt. Renewal certifications should be submitted to the Disclosure

Law Officer at least 60 days prior to the expiration of the current certification. Information so certified may be copied, but not published, by the press during the effective period of the certification. An importer or consignee shall be given written notification by Customs of the receipt of its certification of confidentiality.

(2) *Outward manifest*. If a shipper wishes to request confidential treatment by Customs of the shipper's name and address contained in an outward manifest, the following procedure shall be followed:

(i) A shipper, or authorized employee or official of the shipper, must submit a certification claiming confidential treatment of the shipper's name and address. The certification shall include the shipper's Internal Revenue Service Employer Number, if available.

(ii) There is no prescribed format for a certification.

(iii) The certification must be submitted to the Disclosure Law Officer, Headquarters, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

(iv) Each certification will be valid for a period of two (2) years from the date of its approval.

(3) If any individual shall abuse the privilege granted him to examining inward and outward manifests or shall make any improper use of any information or data obtained from such manifests or other papers filed in the customhouse, both he and the party or publication which he represents shall thereafter be denied access to such papers.

(e) *Availability of manifest data on magnetic tapes*—(1) *Availability*. Manifest data acquired from the Automated Manifest System (AMS) is available to interested members of the public on magnetic tape. This data, compiled daily, will contain all manifest transactions made on the nationwide system within the last 24 hour period. Data for which parties have requested confidential treatment in accordance with paragraph (d) of this section will not be included on the tapes. These tapes may be purchased at the government's production cost. Tapes are available for specific days or on a subscription basis.

(2) *Requests and subscriptions*. Requests for tapes must be in writing and submitted to: U.S. Customs Service, Accounting Services—Accounts Receivable, P.O. Box 68907, Indianapolis, Indiana 46278. Requests must include a check to cover the cost of the tapes requested. Actual costs and other specific information should be ascertained by contacting the Accounting Services—Accounts Receivable at (317) 298–1330. Bills for subscriptions will be issued monthly, with the first month's fee due in advance. Requested tapes will be mailed from the Customs Data Center, first class, on the next business day after compilation. Parties desiring another form of delivery will have to make their own arrangements and notify Customs in advance. Subscriptions may be canceled provided Customs receives written notice at least 10 days prior to the end of the month. The U.S. Customs Data Center must be notified in writing within seven days of technical problems with tapes or non-receipt of tapes in order to receive a replacement or credit towards future tape purchases. Refunds will not be provided. Information regarding the technical specifications of the tapes, problem tapes or the non-receipt of tapes should be directed to U.S. Customs Data Center, on (703) 644–5200.

(3) *Data elements*. The following are the data elements from the AMS manifest which will be provided to the public via magnetic tape:

1. Carrier code.
2. Vessel country code.
3. Vessel name.
4. Voyage number.
5. District/port of unlading.
6. Estimated arrival date.
7. Bill of lading number.
8. Foreign port of lading.
9. Manifest quantity.
10. Manifest units.
11. Weight.
12. Weight unit.
13. Shipper name.[1]
14. Shipper address.[1]
15. Consignee name.[1]
16. Consignee address.[1]
17. Notify party name.[1]
18. Notify party address.[1]
19. Piece count.

[1] Designates data element which will be deleted where confidentiality has been requested.

20. Description of goods.
21. Container number.
22. Seal number.

[T.D. 81–168, 46 FR 32565, June 24, 1981, as amended by T.D. 84–111, 49 FR 19953, May 10, 1984; 49 FR 23340, June 6, 1984; T.D. 85–123, 50 FR 29954, July 23, 1985; T.D. 91–77, 56 FR 46114—46115, Sept. 10, 1991; T.D. 92–92, 57 FR 44089, Sept. 24, 1992. Redesignated by T.D. 96–36, 61 FR 19838, May 3, 1996, and amended by T.D. 99–27, 64 FR 13675, Mar. 22, 1999; T.D. 01–14, 66 FR 8767, Feb. 2, 2001]

§ 103.31a Advance electronic information for air, truck, and rail cargo.

Advance cargo information that is electronically presented to Customs and Border Protection (CBP) for inbound or outbound air, rail, or truck cargo in accordance with § 122.48a, 123.91, 123.92, or 192.14 of this chapter, is per se exempt from disclosure under § 103.12(d), unless CBP receives a specific request for such records pursuant to § 103.5, and the owner of the information expressly agrees in writing to its release.

[CBP Dec. 03–32, 68 FR 68169, Dec. 5, 2003]

§ 103.32 Information concerning fines, penalties, and forfeitures cases.

Except as otherwise provided in these regulations or in other directives (including those published as Treasury Decisions), port directors and other Customs officers shall refrain from disclosing facts concerning seizures, investigations, and other pending cases until Customs action is completed. After the penalty proceeding is closed by payment of the claim amount, payment of a mitigated amount, or judicial action, the identity of the violator, the section of the law violated, the amount of penalty assessed, loss of revenue, mitigated amount (if applicable), and the amount of money paid may be disclosed to the public by the appropriate port director. Public disclosure of any other item of information concerning such cases, whether open or closed, shall only be made in conformance with the procedures provided in § 103.5.

[T.D. 81–168, 46 FR 32565, June 24, 1981. Redesignated by T.D. 96–36, 61 FR 19838, May 3, 1996

§ 103.33 Release of information to foreign agencies.

(a) The Commissioner or his designee may authorize Customs officers to exchange information or documents with foreign customs and law enforcement agencies if the Commissioner or his designee reasonably believes the exchange of information is necessary to—

(1) Ensure compliance with any law or regulation enforced or administered by Customs;

(2) Administer or enforce multilateral or bilateral agreements to which the U.S. is a party;

(3) Assist in investigative, judicial and quasi-judicial proceedings in the U.S.; and

(4) An action comparable to any of those described in paragraphs (a) (1) through (3) of this section undertaken by a foreign customs or law enforcement agency, or in relation to a proceeding in a foreign country.

(b)(1) Information may be provided to foreign customs and law enforcement agencies under paragraph (a) of this section only if the Commissioner or his designee obtains assurances from such agencies that such information will be held in confidence and used only for the law enforcement purposes for which such information is provided to such agencies by the Commissioner or his designee.

(2) No information may be provided under paragraph (a) of this section to any foreign customs or law enforcement agency that has violated any assurances described in paragraph (b)(1) of this section.

[T.D. 86–196, 51 FR 40792, Nov. 10, 1986. Redesignated by T.D. 96–36, 61 FR 19838, May 3, 1996]

§ 103.34 Sanctions for improper actions by Customs officers or employees.

(a) The improper disclosure of the confidential information contained in Customs documents, or the disclosure of information relative to the business of one importer or exporter that is acquired by a Customs officer or employee in an official capacity to any person not authorized by law or regulations to receive this information is a ground for dismissal from the United States Customs Service, suspension, or

other disciplinary action, and if done for a valuable consideration subjects that person to criminal prosecution.

(b) Sanctions for improper denials of information by Customs officers or employees are set forth in § 103.9(c).

[T.D. 81–168, 46 FR 32565, June 24, 1981. Redesignated by T.D. 96–36, 61 FR 19838, May 3, 1996]

§ 103.35 Confidential commercial information; exempt.

(a) *In general*. For purposes of this section, ''commercial information'' is defined as trade secret, commercial, or financial information obtained from a person. Commercial information provided to CBP by a business submitter will be treated as privileged or confidential and will not be disclosed pursuant to a Freedom of Information Act (FOIA) request or otherwise made known in any manner except as provided in this section.

(b) *Notice to business submitters of FOIA requests for disclosure*. Except as provided in paragraph (b)(2) of this section, CBP will provide business submitters with prompt written notice of receipt of FOIA requests or appeals that encompass their commercial information. The written notice will describe either the exact nature of the commercial information requested, or enclose copies of the records or those portions of the records that contain the commercial information. The written notice also will advise the business submitter of its right to file a disclosure objection statement as provided under paragraph (c)(1) of this section. CBP will provide notice to business submitters of FOIA requests for the business submitter's commercial information for a period of not more than 10 years after the date the business submitter provides CBP with the information, unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(1) *When notice is required*. CBP will provide business submitters with notice of receipt of a FOIA request or appeal whenever:

(i) The business submitter has in good faith designated the information as commercially- or financially-sensitive information. The business submitter's claim of confidentiality should be supported by a statement by an authorized representative of the business entity providing specific justification that the information in question is considered confidential commercial or financial information and that the information has not been disclosed to the public; or

(ii) CBP has reason to believe that disclosure of the commercial information could reasonably be expected to cause substantial competitive harm.

(2) *When notice is not required*. The notice requirements of this section will not apply if:

(i) CBP determines that the commercial information will not be disclosed;

(ii) The commercial information has been lawfully published or otherwise made available to the public; or

(iii) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(c) *Procedure when notice given*—(1) *Opportunity for business submitter to object to disclosure*. A business submitter receiving written notice from CBP of receipt of a FOIA request or appeal encompassing its commercial information may object to any disclosure of the commercial information by providing CBP with a detailed statement of reasons within 10 days of the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays). The statement should specify all the grounds for withholding any of the commercial information under any exemption of the FOIA and, in the case of Exemption 4, should demonstrate why the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. The disclosure objection information provided by a person pursuant to this paragraph may be subject to disclosure under the FOIA.

(2) *Notice to FOIA requester*. When notice is given to a business submitter under paragraph (b)(1) of this section, notice will also be given to the FOIA requester that the business submitter has been given an opportunity to object to any disclosure of the requested commercial information. The requester will be further advised that a delay in responding to the request may be considered a denial of access to records

and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. The notice will also invite the FOIA requester to agree to a voluntary extension(s) of time so that CBP may review the business submitter's disclosure objection statement.

(d) *Notice of intent to disclose.* CBP will consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose commercial information. Whenever CBP decides to disclose the requested commercial information over the objection of the business submitter, CBP will provide written notice to the business submitter of CBP's intent to disclose, which will include:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(2) A description of the commercial information to be disclosed; and,

(3) A specified disclosure date which will not be less than 10 days (exclusive of Saturdays, Sundays, and legal public holidays) after the notice of intent to disclose the requested information has been issued to the business submitter. Except as otherwise prohibited by law, CBP will also provide a copy of the notice of intent to disclose to the FOIA requester at the same time.

(e) *Notice of FOIA lawsuit.* Whenever a FOIA requester brings suit seeking to compel the disclosure of commercial information covered by paragraph (b)(1) of this section, CBP will promptly notify the business submitter in writing.

[CBP Dec. 03–02, 68 FR 47454, Aug. 11, 2003]

PART 111—CUSTOMS BROKERS

Sec.

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AUTHORITY: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 1641.

Section 111.3 also issued under 19 U.S.C. 1484, 1498;

Section 111.96 also issued under 19 U.S.C. 58c, 31 U.S.C. 9701.

SOURCE: T.D 00–17, 65 FR 13891, Mar. 15, 2000, unless otherwise noted.

§ 111.0 Scope.

This part sets forth regulations providing for the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers, including the qualifications required of applicants, and the procedures for applying for licenses and permits. This part also prescribes the duties and responsibilities of brokers, the grounds and procedures for disciplining brokers, including the assessment of monetary penalties, and the revocation or suspension of licenses and permits.

Subpart A—General Provisions

§ 111.1 Definitions.

When used in this part, the following terms have the meanings indicated:

Assistant Commissioner. ''Assistant Commissioner'' means the Assistant Commissioner, Office of Field Operations, United States Customs Service, Washington, DC.

Broker. ''Broker'' means a customs broker.

Corporate compliance activity. ''Corporate compliance activity'' means activity performed by a business entity to ensure that documents for a related business entity or entities are prepared and filed with Customs using ''reasonable care'', but such activity does not extend to the actual preparation or filing of the documents or their electronic equivalents. For purposes of this definition, a ''business entity'' is an entity that is registered or otherwise on record with an appropriate governmental authority for business licensing, taxation, or other legal purposes, and the term ''related business entity or entities'' encompasses a business entity that has more than a 50 percent ownership interest in another business entity, a business entity in which another business entity has more than a 50 percent ownership interest, and two or more business entities in which the same business entity has more than a 50 percent ownership interest.

Customs broker. ''Customs broker'' means a person who is licensed under this part to transact customs business on behalf of others.

Customs business. ''Customs business'' means those activities involving transactions with Customs concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by Customs on merchandise by reason of its importation, and the refund, rebate, or drawback of those duties, taxes, or other charges. ''Customs business'' also includes the preparation, and activities

relating to the preparation, of documents in any format and the electronic transmission of documents and parts of documents intended to be filed with Customs in furtherance of any other customs business activity, whether or not signed or filed by the preparer. However, ''customs business'' does not include the mere electronic transmission of data received for transmission to Customs and does not include a corporate compliance activity.

District. ''District'' means the geographic area covered by a customs broker permit other than a national permit. A listing of each district, and the ports thereunder, will be published periodically.

Employee. ''Employee'' means a person who meets the common law definition of employee and is in the service of a customs broker.

Freight forwarder. ''Freight forwarder'' means a person engaged in the business of dispatching shipments in foreign commerce between the United States, its territories or possessions, and foreign countries, and handling the formalities incident to such shipments, on behalf of other persons.

Officer. ''Officer'', when used in the context of an association or corporation, means a person who has been elected, appointed, or designated as an officer of an association or corporation in accordance with statute and the articles of incorporation, articles of agreement, charter, or bylaws of the association or corporation.

Permit. ''Permit'' means any permit issued to a broker under § 111.19.

Person. ''Person'' includes individuals, partnerships, associations, and corporations.

Records. ''Records'' means documents, data and information referred to in, and required to be made or maintained under, this part and any other records, as defined in § 163.1(a) of this chapter, that are required to be maintained by a broker under part 163 of this chapter.

Region. ''Region'' means the geographic area covered by a waiver issued pursuant to § 111.19(d).

Responsible supervision and control. ''Responsible supervision and control'' means that degree of supervision and control necessary to ensure the proper transaction of the customs business of a broker, including actions necessary to ensure that an employee of a broker provides substantially the same quality of service in handling customs transactions that the broker is required to provide. While the determination of what is necessary to perform and maintain responsible supervision and control will vary depending upon the circumstances in each instance, factors which Customs will consider include, but are not limited to: The training required of employees of the broker; the issuance of written instructions and guidelines to employees of the broker; the volume and type of business of the broker; the reject rate for the various customs transactions; the maintenance of current editions of the Customs Regulations, the Harmonized Tariff Schedule of the United States, and Customs issuances; the availability of an individually licensed broker for necessary consultation with employees of the broker; the frequency of supervisory visits of an individually licensed broker to another office of the broker that does not have a resident individually licensed broker; the frequency of audits and reviews by an individually licensed broker of the customs transactions handled by employees of the broker; the extent to which the individually licensed broker who qualifies the district permit is involved in the operation of the brokerage; and any circumstance which indicates that an individually licensed broker has a real interest in the operations of a broker.

Treasury Department or any representative of the Treasury Department. ''Treasury Department or any representative of the Treasury Department'' means any office, officer, or employee of the U.S. Department of the Treasury, wherever located.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 03–15, 68 FR 47460, Aug. 11, 2003]

§ 111.2 License and district permit required.

(a) *License*—(1) *General*. Except as otherwise provided in paragraph (a)(2) of this section, a person must obtain the license provided for in this part in

order to transact customs business as a broker.

(2) *Transactions for which license is not required*—(i) *For one's own account.* An importer or exporter transacting customs business solely on his own account and in no sense on behalf of another is not required to be licensed, nor are his authorized regular employees or officers who act only for him in the transaction of such business.

(ii) *As employee of broker*—(A) *General.* An employee of a broker, acting solely for his employer, is not required to be licensed where:

(*1*) *Authorized to sign documents.* The broker has authorized the employee to sign documents pertaining to customs business on his behalf, and has executed a power of attorney for that purpose. The broker is not required to file the power of attorney with the port director, but must provide proof of its existence to Customs upon request; or

(*2*) *Authorized to transact other business.* The broker has filed with the port director a statement identifying the employee as authorized to transact customs business on his behalf. However, no statement will be necessary when the broker is transacting customs business under an exception to the district permit rule.

(B) *Broker supervision; withdrawal of authority.* Where an employee has been given authority under paragraph (a)(2)(ii) of this section, the broker must exercise sufficient supervision of the employee to ensure proper conduct on the part of the employee in the transaction of customs business, and the broker will be held strictly responsible for the acts or omissions of the employee within the scope of his employment and for any other acts or omissions of the employee which, through the exercise of reasonable care and diligence, the broker should have foreseen. The broker must promptly notify the port director if authority granted to an employee under paragraph (a)(2)(ii) of this section is withdrawn. The withdrawal of authority will be effective upon receipt by the port director.

(iii) *Marine transactions.* A person transacting business in connection with entry or clearance of vessels or other regulation of vessels under the navigation laws is not required to be licensed as a broker.

(iv) *Transportation in bond.* Any carrier bringing merchandise to the port of arrival or any bonded carrier transporting merchandise for another may make entry for that merchandise for transportation in bond without being a broker.

(v) *Noncommercial shipments.* An individual entering noncommercial merchandise for another party is not required to be a broker, provided that the requirements of § 141.33 of this chapter are met.

(vi) *Foreign trade zone activities.* A foreign trade zone operator or user need not be licensed as a broker in order to engage in activities within a zone that do not involve the transfer of merchandise to the customs territory of the United States.

(b) *District permit*—(1) *General.* Except as otherwise provided in paragraph (b)(2) of this section, a separate permit (see § 111.19) is required for each district in which a broker conducts customs business.

(2) *Exceptions to district permit rule*—(i) *National permits.* A national permit issued to a broker under § 111.19(f) will constitute sufficient permit authority for the broker to act in any of the following circumstances:

(A) *Employee working in client's facility (employee implant).* When a broker places an employee in the facility of a client for whom the broker is conducting customs business at one or more other locations covered by a district permit issued to the broker, and provided that the employee's activities are limited to customs business in support of that broker and on behalf of that client but do not involve the filing of entries or other documents with Customs, the broker need not obtain a permit for the district within which the client's facility is located;

(B) *Electronic drawback claims.* A broker may file electronic drawback claims in accordance with the electronic filing procedures set forth in part 143 of this chapter even though the broker does not have a permit for the district in which the filing is made;

(C) *NCAP participation.* A broker who is a participant in the National Customs Automation Program (NCAP)

may electronically file entries for merchandise from a remote location and may electronically transact other customs business that is provided for and operational under the NCAP even though the entry is filed, or the other customs business is transacted, within a district for which the broker does not have a district permit; and

(D) *Representations after entry summary acceptance*. After the entry summary has been accepted by Customs, and except when a broker filed the entry as importer of record, a broker who did not file the entry, but who has been appointed by the importer of record, may orally or in person or in writing or electronically represent the importer of record before Customs on any issue arising out of that entry or concerning the merchandise covered by that entry even though the broker does not have a permit for the district within which those representations are made, provided that, if requested by Customs, the broker submits appropriate evidence of his right to represent the client on the matter at issue.

(ii) *Filing of drawback claims*. A broker granted a permit for one district may file drawback claims manually or electronically at the drawback office that has been designated by Customs for the purpose of filing those claims, and may represent his client before that office in matters concerning those claims, even though the broker does not have a permit for the district in which that drawback office is located.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 03–15, 68 FR 47460, Aug. 11, 2003]

§ 111.3 [Reserved]

§ 111.4 Transacting customs business without a license.

Any person who intentionally transacts customs business, other than as provided in § 111.2(a)(2), without holding a valid broker's license, will be liable for a monetary penalty for each such transaction as well as for each violation of any other provision of 19 U.S.C. 1641. The penalty will be assessed in accordance with subpart E of this part.

§ 111.5 Representation before Government agencies.

(a) *Agencies within the Treasury Department*. A broker who represents a client in the importation or exportation of merchandise may represent the client before the Treasury Department or any representative of the Treasury Department on any matter concerning that merchandise.

(b) *Agencies not within the Treasury Department*. In order to represent a client before any agency not within the Treasury Department, a broker must comply with any regulations of that agency governing the appearance of representatives before it.

Subpart B—Procedure To Obtain License or Permit

§ 111.11 Basic requirements for a license.

(a) *Individual*. In order to obtain a broker's license, an individual must:

(1) Be a citizen of the United States on the date of submission of the application referred to in § 111.12(a) and not an officer or employee of the United States Government;

(2) Attain the age of 21 prior to the date of submission of the application referred to in § 111.12(a);

(3) Be of good moral character; and

(4) Have established, by attaining a passing (75 percent or higher) grade on a written examination taken within the 3-year period before submission of the application referred to in § 111.12(a), that he has sufficient knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters to render valuable service to importers and exporters.

(b) *Partnership*. In order to qualify for a broker's license, a partnership must have at least one member of the partnership who is a broker.

(c) *Association or corporation*. In order to qualify for a broker's license, an association or corporation must:

(1) Be empowered under its articles of association or articles of incorporation to transact customs business as a broker; and

(2) Have at least one officer who is a broker.

§ 111.12 Application for license.

(a) *Submission of application and fee.* An application for a broker's license must be submitted in duplicate to the director of the port where the applicant intends to do business. The application must be under oath and executed on Customs Form 3124. The application must be accompanied by the $200 application fee prescribed in § 111.96(a) and one copy of the appropriate attachment required by the application form (Articles of Agreement or an affidavit signed by all partners, Articles of Agreement of the association, or the Articles of Incorporation). If the applicant proposes to operate under a trade or fictitious name in one or more States, evidence of the applicant's authority to use the name in each of those States must accompany the application. An application for an individual license must be submitted within the 3-year period after the applicant took and passed the written examination referred to in §§ 111.11(a)(4) and 111.13. The port director may require an individual applicant to provide a copy of the notification that he passed the written examination (see § 111.13(e)) and will require the applicant to submit fingerprints on form FD 258 or electronically at the time of filing the application. The port director may reject an application as improperly filed if the application, on its face, demonstrates that one or more of the basic requirements set forth in § 111.11 have not been met at the time of filing, in which case the application and fee will be returned to the filer without further action.

(b) *Posting notice of application.* Following receipt of the application, the port director will post a notice that the application has been filed. The notice will be posted conspicuously for at least 2 consecutive weeks in the customhouse at the port and similarly at any other port where the applicant also proposes to maintain an office. The notice also will be posted by appropriate electronic means. The notice will give the name and address of the applicant and, if the applicant is a partnership, association, or corporation, will state the names of all members or officers who are licensed as brokers. The notice will invite written comments or information regarding the issuance of the license.

(c) *Withdrawal of application.* An applicant for a broker's license may withdraw the application at any time prior to issuance of the license by providing written notice of the withdrawal to the port director. However, withdrawal of the application does not entitle the applicant to a refund of the $200 application fee.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by T.D. 01–14, 66 FR 8767, Feb. 2, 2001]

§ 111.13 Written examination for individual license.

(a) *Scope of examination.* The written examination for an individual broker's license will be designed to determine the individual's knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters necessary to render valuable service to importers and exporters. The examination will be prepared and graded at Customs Headquarters, Washington, DC.

(b) *Date and place of examination.* Written examinations will be given on the first Monday in April and October unless the regularly scheduled examination date conflicts with a national holiday, religious observance, or other foreseeable event and the agency publishes in the FEDERAL REGISTER an appropriate notice of a change in the examination date. An individual who intends to take the written examination must so advise the port director in writing at least 30 calendar days prior to the scheduled examination date and must remit the $200 examination fee prescribed in § 111.96(a) at that time. The port director will give notice of the exact time and place for the examination.

(c) *Special examination.* If a partnership, association, or corporation loses the required member or officer having an individual broker's license (see §§ 111.11(b) and (c)(2)) and its license would be revoked by operation of law under the provisions of 19 U.S.C. 1641(b)(5) and § 111.45(a) before the next scheduled written examination, Customs may authorize a special written examination for a prospective applicant for an individual license who

would serve as the required licensed member or officer. Customs may also authorize a special written examination for an individual for purposes of continuing the business of a sole proprietorship broker. A special written examination for an individual may also be authorized by Customs if a brokerage firm loses the individual broker who was exercising responsible supervision and control over an office in another district (see §111.19(d)) and the permit for that additional district would be revoked by operation of law under the provisions of 19 U.S.C. 1641(c)(3) and §111.45(b) before the next scheduled written examination. A request for a special written examination must be submitted to the port director in writing and must describe the circumstances giving rise to the need for the examination. If the request is granted, the port director will notify the prospective examinee of the exact time and place for the examination. If the individual attains a passing grade on the special written examination, the application for the license may be submitted in accordance with §111.12. The examinee will be responsible for all additional costs incurred by Customs in preparing and administering the special examination that exceed the $200 examination fee prescribed in §111.96(a), and those additional costs must be reimbursed to Customs before the examination is given.

(d) *Failure to appear for examination.* If a prospective examinee advises the port director at least 2 working days prior to the date of a regularly scheduled written examination that he will not appear for the examination, the port director will refund the $200 examination fee referred to in paragraph (b) of this section. No refund of the examination fee or additional reimbursed costs will be made in the case of a special written examination provided for under paragraph (c) of this section.

(e) *Notice of examination result.* Customs will provide to each examinee written notice of the result of the examination taken under this section. A failure of an examinee to attain a passing grade on the examination will preclude the submission of an application under §111.12 but will not preclude the examinee from taking an examination again at a later date in accordance with paragraph (b) of this section.

(f) *Appeal of failing grade on examination.* If an examinee fails to attain a passing grade on the examination taken under this section, the examinee may challenge that result by filing a written appeal with Trade Programs, Office of Field Operations, U.S. Customs Service, Washington, DC 20229 within 60 calendar days after the date of the written notice provided for in paragraph (e) of this section. Customs will provide to the examinee written notice of the decision on the appeal. If the Customs decision on the appeal affirms the result of the examination, the examinee may request review of the decision on the appeal by writing to the Secretary of the Treasury within 60 calendar days after the date of the notice of that decision.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by T.D. 03–23, 68 FR 31977, May 29, 2003]

§ 111.14 Investigation of the license applicant.

(a) *Referral of application for investigation.* The port director will immediately refer an application for an individual, partnership, association, or corporation license to the special agent in charge or other entity designated by Headquarters for investigation and report.

(b) *Scope of investigation.* An investigation under this section will ascertain facts relevant to the question of whether the applicant is qualified and will cover, but need not be limited to:

(1) The accuracy of the statements made in the application;

(2) The business integrity of the applicant; and

(3) When the applicant is an individual (including a member of a partnership or an officer of an association or corporation), the character and reputation of the applicant.

(c) *Referral to Headquarters.* The port director will forward the originals of the application and the report of investigation to the Assistant Commissioner. The port director will also submit his recommendation for action on the application.

(d) *Additional investigation or inquiry.* The Assistant Commissioner may require further investigation to be conducted if additional facts are deemed necessary to pass upon the application. The Assistant Commissioner may also require the applicant (or in the case of a partnership, association, or corporation, one or more of its members or officers) to appear in person before him or before one or more representatives of the Assistant Commissioner for the purpose of undergoing further written or oral inquiry into the applicant's qualifications for a license.

§ 111.15 Issuance of license.

If the Assistant Commissioner finds that the applicant is qualified and has paid all applicable fees prescribed in § 111.96(a), he will issue a license. A license for an individual who is a member of a partnership or an officer of an association or corporation will be issued in the name of the individual licensee and not in his capacity as a member or officer of the organization with which he is connected. The license will be forwarded to the port director, who will deliver it to the licensee.

§ 111.16 Denial of license.

(a) *Notice of denial.* If the Assistant Commissioner determines that the application for a license should be denied for any reason, notice of denial will be given by him to the applicant and to the director of the port at which the application was filed. The notice of denial will state the reasons why the license was not issued.

(b) *Grounds for denial.* The grounds sufficient to justify denial of an application for a license include, but need not be limited to:

(1) Any cause which would justify suspension or revocation of the license of a broker under the provisions of § 111.53;

(2) The failure to meet any requirement set forth in § 111.11;

(3) A failure to establish the business integrity and good character of the applicant;

(4) Any willful misstatement of pertinent facts in the application for the license;

(5) Any conduct which would be deemed unfair in commercial transactions by accepted standards; or

(6) A reputation imputing to the applicant criminal, dishonest, or unethical conduct, or a record of that conduct.

§ 111.17 Review of the denial of a license.

(a) *By the Assistant Commissioner.* Upon the denial of an application for a license, the applicant may file with the Assistant Commissioner, in writing, a request that further opportunity be given for the presentation of information or arguments in support of the application by personal appearance, or in writing, or both. This request must be received by the Assistant Commissioner within 60 calendar days of the denial.

(b) *By the Secretary.* Upon the decision of the Assistant Commissioner affirming the denial of an application for a license, the applicant may file with the Secretary of the Treasury, in writing, a request for any additional review that the Secretary deems appropriate. This request must be received by the Secretary within 60 calendar days of the Assistant Commissioner's affirmation of the denial of the application for a license.

(c) *By the Court of International Trade.* Upon a decision of the Secretary of the Treasury affirming the denial of an application for a license, the applicant may appeal the decision to the Court of International Trade, provided that the appeal action is commenced within 60 calendar days after the date of entry of the Secretary's decision.

§ 111.18 Reapplication for license.

An applicant who has been denied a license may reapply at any time by complying with the provisions of § 111.12.

§ 111.19 Permits.

(a) *General.* Each person granted a broker's license under this part will be concurrently issued a permit for the district in which the port through which the license was delivered to the licensee (see § 111.15) is located and without the payment of the $100 fee required by § 111.96(b), if it is shown to

the satisfaction of the port director that the person intends to transact customs business within that district and the person otherwise complies with the requirements of this part.

(b) *Submission of application for initial or additional district permit.* A broker who intends to conduct customs business at a port within another district for which he does not have a permit, or a broker who was not concurrently granted a permit with the broker's license under paragraph (a) of this section, and except as otherwise provided in paragraph (f) of this section, must submit an application for a permit in a letter to the director of the port at which he intends to conduct customs business. Each application for a permit must set forth or attach the following:

(1) The applicant's broker license number and date of issuance;

(2) The address where the applicant's office will be located within the district and the telephone number of that office;

(3) A copy of a document which reserves the applicant's business name with the state or local government;

(4) The name of the individual broker who will exercise responsible supervision and control over the customs business transacted in the district;

(5) A list of all other districts for which the applicant has a permit to transact customs business;

(6) The place where the applicant's brokerage records will be retained and the name of the applicant's designated recordkeeping contact (see §§ 111.21 and 111.23); and

(7) A list of all persons who the applicant knows will be employed in the district, together with the specific employee information prescribed in § 111.28(b)(1)(i) for each of those prospective employees.

(c) *Fees.* Each application for a district permit under paragraph (b) of this section must be accompanied by the $100 and $125 fees specified in §§ 111.96(b) and (c). In the case of an application for a national permit under paragraph (f) of this section, the $100 fee specified in § 111.96(b) and the $125 fee specified in § 111.96(c) must be paid at the port through which the applicant's license was delivered (see § 111.15) prior to submission of the application. The $125 fee specified in § 111.96(c) also must be paid in connection with the issuance of an initial district permit concurrently with the issuance of a license under paragraph (a) of this section.

(d) *Responsible supervision and control*—(1) *General.* The applicant for a district permit must have a place of business at the port where the application is filed, or must have made firm arrangements satisfactory to the port director to establish a place of business, and must exercise responsible supervision and control over that place of business once the permit is granted. Except as otherwise provided in paragraph (d)(2) of this section, the applicant must employ in each district for which a permit is granted at least one individual broker to exercise responsible supervision and control over the customs business conducted in the district.

(2) *Exception to district rule.* If the applicant can demonstrate to the satisfaction of Customs that he regularly employs at least one individual broker in a larger geographical area in which the district is located and that adequate procedures exist for that individual broker to exercise responsible supervision and control over the customs business conducted in the district, Customs may waive the requirement for an individual broker in that district. A request for a waiver under this paragraph, supported by information on the volume and type of customs business conducted, or planned to be conducted, and supported by evidence demonstrating that the applicant is able to exercise responsible supervision and control through the individual broker employed in the larger geographical area, must be sent to the port director in the district in which the waiver is sought. The port director will review the request for a waiver and make recommendations which will be sent to the Office of Field Operations, Customs Headquarters, for review and decision. A written decision on the waiver request will be issued by the Office of Field Operations and, if the waiver is granted, the decision letter will specify the region covered by the waiver.

(e) *Action on application; list of permitted brokers.* The port director who

receives the application will issue a written decision on the district permit application and will issue the district permit if the applicant meets the requirements of paragraphs (b), (c), and (d) of this section. If the port director is of the opinion that the district permit should not be issued, he will submit his written reasons for that opinion to the Office of Field Operations, Customs Headquarters, for appropriate instructions on whether to grant or deny the district permit. Each port director will maintain and make available to the public an alphabetical list of brokers permitted through his port.

(f) *National permit*. A broker who has a district permit issued under paragraph (a) or paragraph (e) of this section may apply for a national permit for the purpose of transacting customs business in any circumstance described in §111.2(b)(2)(i). An application for a national permit under this paragraph must be in the form of a letter addressed to the Office of Field Operations, U.S. Customs Service, Washington, DC 20229, and must:

(1) Identify the applicant's broker license number and date of issuance;

(2) Set forth the address and telephone number of the office designated by the applicant as the office of record for purposes of administration of the provisions of this part regarding all activities of the applicant conducted under the national permit. That office will be noted in the national permit when issued;

(3) Set forth the name, broker license number, office address, and telephone number of the individual broker who will exercise responsible supervision and control over the activities of the applicant conducted under the national permit; and

(4) Attach a receipt or other evidence showing that the fees specified in §111.96(b) and (c) have been paid in accordance with paragraph (c) of this section.

(g) *Review of the denial of a permit*—(1) *By the Assistant Commissioner*. Upon the denial of an application for a permit under this section, the applicant may file with the Assistant Commissioner, in writing, a request that further opportunity be given for the presentation of information or arguments in support of the application by personal appearance, or in writing, or both. This request must be received by the Assistant Commissioner within 60 calendar days of the denial.

(2) *By the Court of International Trade*. Upon a decision of the Assistant Commissioner affirming the denial of an application for a permit under this section, the applicant may appeal the decision to the Court of International Trade, provided that the appeal action is commenced within 60 calendar days after the date of entry of the Assistant Commissioner's decision.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by T.D. 01–14, 66 FR 8767, Feb. 2, 2001; CBP Dec. 03–13, 68 FR 43630, July 24, 2003]

Subpart C—Duties and Responsibilities of Customs Brokers

§ 111.21 Record of transactions.

(a) Each broker must keep current in a correct, orderly, and itemized manner records of account reflecting all his financial transactions as a broker. He must keep and maintain on file copies of all his correspondence and other records relating to his customs business.

(b) Each broker must comply with the provisions of this part and part 163 of this chapter when maintaining records that reflect on his transactions as a broker.

(c) Each broker must designate a knowledgeable company employee to be the contact for Customs for brokerwide customs business and financial recordkeeping requirements.

§ 111.22 [Reserved]

§ 111.23 Retention of records.

(a) *Place and period of retention*—(1) *Place*. Records must be retained by a broker in accordance with the provisions of this part and part 163 of this chapter within the broker district that covers the Customs port to which they relate unless the broker chooses to consolidate records at one or more other locations, and provides advance notice of that consolidation to Customs, in accordance with paragraph (b) of this section.

(2) *Period*. The records described in paragraph (a)(1) of this section, other than powers of attorney, must be retained for at least 5 years after the date of entry. Powers of attorney must be retained until revoked, and revoked powers of attorney and letters of revocation must be retained for 5 years after the date of revocation or for 5 years after the date the client ceases to be an ''active client'' as defined in § 111.29(b)(2)(ii), whichever period is later. When merchandise is withdrawn from a bonded warehouse, records relating to the withdrawal must be retained for 5 years from the date of withdrawal of the last merchandise withdrawn under the entry.

(b) *Notification of consolidated records*—(1) *Applicability*. Subject to the requirements of paragraph (b)(2) of this section and except when a restriction applies under § 163.5(b) of this chapter, the option of maintaining records on a consolidated system basis is available to brokers who have been granted permits to do business in more than one district.

(2) *Form and content of notice*. If consolidated storage is desired by the broker, he must submit a written notice addressed to the Director, Regulatory Audit Division, U.S. Customs Service, 909 S.E. First Avenue, Miami, Florida 33131. The written notice must include:

(i) Each address at which the broker intends to maintain the consolidated records. Each such location must be within a district where the broker has been granted a permit;

(ii) A detailed statement describing all the records to be maintained at each consolidated location, the methodology of record maintenance, a description of any automated data processing to be applied, and a list of all the broker's customs business activity locations; and

(iii) An agreement that there will be no change in the records, the manner of recordkeeping, or the location at which they will be maintained, unless the Director, Regulatory Audit Division, in Miami is first notified.

§ 111.24 Records confidential.

The records referred to in this part and pertaining to the business of the clients serviced by the broker are to be considered confidential, and the broker must not disclose their contents or any information connected with the records to any persons other than those clients, their surety on a particular entry, and the Field Director, Regulatory Audit Division, the special agent in charge, the port director, or other duly accredited officers or agents of the United States, except on subpoena by a court of competent jurisdiction.

§ 111.25 Records must be available.

During the period of retention, the broker must maintain the records referred to in this part in such a manner that they may readily be examined. Records required to be made or maintained under the provisions of this part must be made available upon reasonable notice for inspection, copying, reproduction or other official use by Customs regulatory auditors or special agents or other authorized Customs officers within the prescribed period of retention or within any longer period of time during which they remain in the possession of the broker. Records subject to the requirements of part 163 of this chapter must be made available to Customs in accordance with the provisions of that part.

§ 111.26 Interference with examination of records.

Except in accordance with the provisions of part 163 of this chapter, a broker must not refuse access to, conceal, remove, or destroy the whole or any part of any record relating to his transactions as a broker which is being sought, or which the broker has reasonable grounds to believe may be sought, by the Treasury Department or any representative of the Treasury Department, nor may he otherwise interfere, or attempt to interfere, with any proper and lawful efforts to procure or reproduce information contained in those records.

§ 111.27 Audit or inspection of records.

The Field Director, Regulatory Audit Division, will make any audit or inspection of the records required by this subpart to be kept and maintained by a broker as may be necessary to enable

the port director and other proper officials of the Treasury Department to determine whether or not the broker is complying with the requirements of this part.

§ 111.28 Responsible supervision.

(a) *General.* Every individual broker operating as a sole proprietor and every licensed member of a partnership that is a broker and every licensed officer of an association or corporation that is a broker must exercise responsible supervision and control (see § 111.1) over the transaction of the customs business of the sole proprietorship, partnership, association, or corporation.

(b) *Employee information*—(1) *Current employees*—(i) *General.* Each broker must submit, in writing, to the director of each port at which the broker intends to transact customs business, a list of the names of persons currently employed by the broker at that port. The list of employees must be submitted upon issuance of a permit for an additional district under § 111.19, or upon the opening of an office at a port within a district for which the broker already has a permit, and before the broker begins to transact customs business as a broker at the port. For each employee, the broker also must provide the social security number, date and place of birth, current home address, last prior home address, and, if the employee has been employed by the broker for less than 3 years, the name and address of each former employer and dates of employment for the 3-year period preceding current employment with the broker. After the initial submission, an updated list, setting forth the name, social security number, date and place of birth, and current home address of each current employee, must be submitted with the status report required by § 111.30(d).

(ii) *New employees.* In the case of a new employee, the broker must submit to the port director the written information required under paragraph (b)(1)(i) of this section within 10 calendar days after the new employee has been employed by the broker for 30 consecutive days.

(2) *Terminated employees.* Within 30 calendar days after the termination of employment of any person employed longer than 30 consecutive days, the broker must submit the name of the terminated employee, in writing, to the director of the port at which the person was employed.

(3) *Broker's responsibility.* Notwithstanding a broker's responsibility for providing the information required in paragraph (b)(1) of this section, in the absence of culpability by the broker, Customs will not hold him responsible for the accuracy of any information that is provided to the broker by the employee.

(c) *Termination of qualifying member or officer.* In the case of an individual broker who is a qualifying member of a partnership for purposes of § 111.11(b) or who is a qualifying officer of an association or corporation for purposes of § 111.11(c)(2), that individual broker must immediately provide written notice to the Assistant Commissioner when his employment as a qualifying member or officer terminates and must send a copy of the written notice to the director of each port through which a permit has been granted to the partnership, association, or corporation.

(d) *Change in ownership.* If the ownership of a broker changes and ownership shares in the broker are not publicly traded, the broker must immediately provide written notice of that fact to the Assistant Commissioner and must send a copy of the written notice to the director of each port through which a permit has been granted to the broker. When a change in ownership results in the addition of a new principal to the organization, and whether or not ownership shares in the broker are publicly traded, Customs reserves the right to conduct a background investigation on the new principal. The port director will notify the broker if Customs objects to the new principal, and the broker will be given a reasonable period of time to remedy the situation. If the investigation uncovers information which would have been the basis for a denial of an application for a broker's license and the principal's interest in the broker is not terminated to the satisfaction of the port director, suspension or revocation proceedings may be initiated under subpart D of this part. For purposes of this paragraph, a

''principal'' means any person having at least a 5 percent capital, beneficiary or other direct or indirect interest in the business of a broker.

§ 111.29 Diligence in correspondence and paying monies.

(a) *Due diligence by broker.* Each broker must exercise due diligence in making financial settlements, in answering correspondence, and in preparing or assisting in the preparation and filing of records relating to any customs business matter handled by him as a broker. Payment of duty, tax, or other debt or obligation owing to the Government for which the broker is responsible, or for which the broker has received payment from a client, must be made to the Government on or before the date that payment is due. Payments received by a broker from a client after the due date must be transmitted to the Government within 5 working days from receipt by the broker. Each broker must provide a written statement to a client accounting for funds received for the client from the Government, or received from a client where no payment to the Government has been made, or received from a client in excess of the Governmental or other charges properly payable as part of the client's customs business, within 60 calendar days of receipt. No written statement is required if there is actual payment of the funds by a broker.

(b) *Notice to client of method of payment*—(1) All brokers must provide their clients with the following written notification:

If you are the importer of record, payment to the broker will not relieve you of liability for Customs charges (duties, taxes, or other debts owed Customs) in the event the charges are not paid by the broker. Therefore, if you pay by check, Customs charges may be paid with a separate check payable to the ''U.S. Customs Service'' which will be delivered to Customs by the broker.

(2) The written notification set forth in paragraph (b)(1) of this section must be provided by brokers as follows:

(i) On, or attached to, any power of attorney provided by the broker to a client for execution on or after September 27, 1982; and

(ii) To each active client no later than February 28, 1983, and at least once at any time within each 12-month period after that date. An active client means a client from whom a broker has obtained a power of attorney and for whom the broker has transacted customs business on at least two occasions within the 12-month period preceding notification.

§ 111.30 Notification of change of business address, organization, name, or location of business records; status report; termination of brokerage business.

(a) *Change of address.* When a broker changes his business address, he must immediately give written notice of his new address to each director of a port that is affected by the change of address. In addition, if an individual broker is not actively engaged in transacting business as a broker and changes his non-business mailing address, he must give written notice of the new address in the status report required by paragraph (d) of this section.

(b) *Change in an organization.* A partnership, association, or corporation broker must immediately provide written notice of any of the following to the director of each port through which it has been granted a permit:

(1) The date on which a licensed member or officer ceases to be the qualifying member or officer for purposes of § 111.11(b) or (c)(2), and the name of the broker who will succeed as the qualifying member or officer; and

(2) Any change in the Articles of Agreement, Charter, or Articles of Incorporation relating to the transaction of customs business, or any other change in the legal nature of the organization (for example, conversion of a general partnership to a limited partnership, merger with another organization, divestiture of a part of the organization, or entry into bankruptcy protection).

(c) *Change in name.* A broker who changes his name, or who proposes to operate under a trade or fictitious name in one or more States within the district in which he has been granted a permit and is authorized by State law to do so, must submit to the Office of Field Operations, U.S. Customs Service, Washington, DC 20229, evidence of

his authority to use that name. The name must not be used until the approval of Headquarters has been received. In the case of a trade or fictitious name, the broker must affix his own name in conjunction with each signature of the trade or fictitious name when signing customs documents.

(d) *Status report*—(1) *General*. Each broker must file a written status report with Customs on February 1, 1985, and on February 1 of each third year after that date. The report must be accompanied by the fee prescribed in § 111.96(d) and must be addressed to the director of the port through which the license was delivered to the licensee (see § 111.15). A report received during the month of February will be considered filed timely. No form or particular format is required.

(2) *Individual*. Each individual broker must state in the report required under paragraph (d)(1) of this section whether he is actively engaged in transacting business as a broker. If he is so actively engaged, he must also:

(i) State the name under which, and the address at which, his business is conducted if he is a sole proprietor;

(ii) State the name and address of his employer if he is employed by another broker, unless his employer is a partnership, association or corporation broker for which he is a qualifying member or officer for purposes of § 111.11(b) or (c)(2); and

(iii) State whether or not he still meets the applicable requirements of § 111.11 and § 111.19 and has not engaged in any conduct that could constitute grounds for suspension or revocation under § 111.53.

(3) *Partnership, association or corporation*. Each corporation, partnership or association broker must state in the report required under paragraph (d)(1) of this section the name under which its business as a broker is being transacted, its business address, the name and address of each licensed member of the partnership or licensed officer of the association or corporation who qualifies it for a license under § 111.11(b) or (c)(2), and whether it is actively engaged in transacting business as a broker, and the report must be signed by a licensed member or officer.

(4) *Failure to file timely*. If a broker fails to file the report required under paragraph (d)(1) of this section by March 1 of the reporting year, the broker's license is suspended by operation of law on that date. By March 31 of the reporting year, the port director will transmit written notice of the suspension to the broker by certified mail, return receipt requested, at the address reflected in Customs records. If the broker files the required report and pays the required fee within 60 calendar days of the date of the notice of suspension, the license will be reinstated. If the broker does not file the required report within that 60-day period, the broker's license is revoked by operation of law without prejudice to the filing of an application for a new license. Notice of the revocation will be published in the Customs Bulletin.

(e) *Custody of records*. Upon the permanent termination of a brokerage business, written notification of the name and address of the party having legal custody of the brokerage business records must be provided to the director of each port where the broker was transacting business within each district for which a permit has been issued to the broker. That notification will be the responsibility of:

(1) The individual broker, upon the permanent termination of his brokerage business;

(2) Each member of a partnership who holds an individual broker's license, upon the permanent termination of a partnership brokerage business; or

(3) Each association or corporate officer who holds an individual broker's license, upon the permanent termination of an association or corporate brokerage business.

§ 111.31 Conflict of interest.

(a) *Former officer or employee of U.S. Government*. A broker who was formerly an officer or employee in U.S. Government service must not represent a client before the Treasury Department or any representative of the Treasury Department in any matter to which the broker gave personal consideration or gained knowledge of the facts while in U.S. Government service, except as provided in 18 U.S.C. 207.

(b) *Relations with former officer or employee of U.S. Government.* A broker must not knowingly assist, accept assistance from, or share fees with a person who has been employed by a client in a matter pending before the Treasury Department or any representative of the Treasury Department to which matter that person gave personal consideration or gained personal knowledge of the facts or issues of the matter while in U.S. Government service.

(c) *Importations by broker or employee.* A broker who is an importer himself must not act as broker for an importer who imports merchandise of the same general character as that imported by the broker unless the client has full knowledge of the facts. The same restriction will apply if a broker's employee is an importer.

§ 111.32 False information.

A broker must not file or procure or assist in the filing of any claim, or of any document, affidavit, or other papers, known by such broker to be false. In addition, a broker must not knowingly give, or solicit or procure the giving of, any false or misleading information or testimony in any matter pending before the Treasury Department or any representative of the Treasury Department.

§ 111.33 Government records.

A broker must not procure or attempt to procure, directly or indirectly, information from Government records or other Government sources of any kind to which access is not granted by proper authority.

§ 111.34 Undue influence upon Treasury Department employees.

A broker must not influence or attempt to influence the conduct of any representative of the Treasury Department in any matter pending before the Treasury Department or any representative of the Treasury Department by the use of duress or a threat or false accusation, or by the offer of any special inducement or promise of advantage, or by bestowing any gift or favor or other thing of value.

§ 111.35 Acceptance of fees from attorneys.

With respect to customs transactions, a broker must not demand or accept from any attorney (whether directly or indirectly, including, for example, from a client as a part of any arrangement with an attorney) on account of any case litigated in any court of law or on account of any other legal service rendered by an attorney any fee or remuneration in excess of an amount measured by or commensurate with the time, effort and skill expended by the broker in performing his services.

§ 111.36 Relations with unlicensed persons.

(a) *Employment by unlicensed person other than importer.* When a broker is employed for the transaction of customs business by an unlicensed person who is not the actual importer, the broker must transmit to the actual importer either a copy of his bill for services rendered or a copy of the entry, unless the merchandise was purchased on a delivered duty-paid basis or unless the importer has in writing waived transmittal of the copy of the entry or bill for services rendered.

(b) *Service to others not to benefit unlicensed person.* Except as otherwise provided in paragraph (c) of this section, a broker must not enter into any agreement with an unlicensed person to transact customs business for others in such manner that the fees or other benefits resulting from the services rendered for others inure to the benefit of the unlicensed person.

(c) *Relations with a freight forwarder.* A broker may compensate a freight forwarder for referring brokerage business, subject to the following conditions:

(1) The importer or other party in interest is notified in advance by the forwarder or broker of the name of the broker selected by the forwarder for the handling of his Customs transactions;

(2) The broker transmits directly to the importer or other party in interest:

(i) A true copy of his brokerage charges if the fees and charges are to be collected by or through the forwarder, unless this requirement is

waived in writing by the importer or other party in interest; or

(ii) A statement of his brokerage charges and an itemized list of any charges to be collected for the account of the freight forwarder if the fees and charges are to be collected by or through the broker;

(3) No part of the agreement of compensation between the broker and the forwarder, nor any action taken pursuant to the agreement, forbids or prevents direct communication between the importer or other party in interest and the broker; and

(4) In making the agreement and in all actions taken pursuant to the agreement, the broker remains subject to all other provisions of this part.

§ 111.37 Misuse of license or permit.

A broker must not allow his license, permit or name to be used by or for any unlicensed person (including a broker whose license or permit is under suspension), other than his own employees authorized to act for him, in the solicitation, promotion or performance of any customs business or transaction.

§ 111.38 False representation to procure employment.

A broker must not knowingly use false or misleading representations to procure employment in any customs matter. In addition, a broker must not represent to a client or prospective client that he can obtain any favors from the Treasury Department or any representative of the Treasury Department.

§ 111.39 Advice to client.

(a) *Withheld or false information.* A broker must not withhold information relative to any customs business from a client who is entitled to the information. Moreover, a broker must exercise due diligence to ascertain the correctness of any information which he imparts to a client, and he must not knowingly impart to a client false information relative to any customs business.

(b) *Error or omission by client.* If a broker knows that a client has not complied with the law or has made an error in, or omission from, any document, affidavit, or other paper which the law requires the client to execute, he must advise the client promptly of that noncompliance, error, or omission.

(c) *Illegal plans.* A broker must not knowingly suggest to a client or prospective client any illegal plan for evading payment of any duty, tax, or other debt or obligation owing to the U.S. Government.

§ 111.40 Protests.

A broker must not act on behalf of any person, or attempt to represent any person, regarding any protest unless he is authorized to do so in accordance with part 174 of this chapter.

§ 111.41 Endorsement of checks.

A broker must not endorse or accept, without authority of his client, any U.S. Government draft, check, or warrant drawn to the order of the client.

§ 111.42 Relations with person who is notoriously disreputable or whose license is under suspension, canceled "with prejudice," or revoked.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, a broker must not knowingly and directly or indirectly:

(1) Accept employment to effect a Customs transaction as associate, correspondent, officer, employee, agent, or subagent from any person who is notoriously disreputable or whose broker license was revoked for any cause or is under suspension or was cancelled ''with prejudice;''

(2) Assist in the furtherance of any customs business or transactions of any person described in paragraph (a)(1) of this section;

(3) Employ, or accept assistance in the furtherance of any customs business or transactions from, any person described in paragraph (a)(1) of this section, without the approval of the Assistant Commissioner (see § 111.79);

(4) Share fees with any person described in paragraph (a)(1) of this section; or

(5) Permit any person described in paragraph (a)(1) of this section to participate, directly or indirectly and

whether through ownership or otherwise, in the promotion, control, or direction of the business of the broker.

(b) *Client exception.* Nothing in this section will prohibit a broker from transacting customs business on behalf of a bona fide importer or exporter who may be notoriously disreputable or whose broker license is under suspension or was cancelled ''with prejudice'' or revoked.

§§ 111.43–111.44 [Reserved]

§ 111.45 Revocation by operation of law.

(a) *License.* If a broker that is a partnership, association, or corporation fails to have, during any continuous period of 120 days, at least one member of the partnership or at least one officer of the association or corporation who holds a valid individual broker's license, that failure will, in addition to any other sanction that may be imposed under this part, result in the revocation by operation of law of the license and any permits issued to the partnership, association, or corporation. The Assistant Commissioner or his designee will notify the broker in writing of an impending revocation by operation of law under this section 30 calendar days before the revocation is due to occur.

(b) *Permit.* If a broker who has been granted a permit for an additional district fails, for any continuous period of 180 days, to employ within that district (or region, as defined in § 111.1, if an exception has been granted pursuant to § 111.19(d)) at least one person who holds a valid individual broker's license, that failure will, in addition to any other sanction that may be imposed under this part, result in the revocation of the permit by operation of law.

(c) *Notification.* If the license or an additional permit of a partnership, association, or corporation is revoked by operation of law under paragraph (a) or (b) of this section, the Assistant Commissioner or his designee will notify the organization of the revocation. If an additional permit of an individual broker is revoked by operation of law under paragraph (b) of this section, the Assistant Commissioner or his designee will notify the broker. Notice of any revocation under this section will be published in the Customs Bulletin.

(d) *Applicability of other sanctions.* Notwithstanding the operation of paragraph (a) or (b) of this section, each broker still has a continuing obligation to exercise responsible supervision and control over the conduct of its brokerage business and to otherwise comply with the provisions of this part. Any failure on the part of a broker to meet that continuing obligation during the 120 or 180-day period referred to in paragraph (a) or (b) of this section, or during any shorter period of time, may result in the initiation of suspension or revocation proceedings or the assessment of a monetary penalty under subpart D or subpart E of this part.

Subpart D—Cancellation, Suspension, or Revocation of License or Permit, and Monetary Penalty in Lieu of Suspension or Revocation

§ 111.50 General.

This subpart sets forth provisions relating to cancellation, suspension, or revocation of a license or a permit, or assessment of a monetary penalty in lieu of suspension or revocation, under section 641(d)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1641(d)(2)(B)). The provisions relating to assessment of a monetary penalty under sections 641(b)(6) and (d)(2)(A), Tariff Act of 1930, as amended (19 U.S.C. 1641(b)(6) and (d)(2)(A)), are set forth in subpart E of this part.

§ 111.51 Cancellation of license or permit.

(a) *Without prejudice.* The Assistant Commissioner may cancel a broker's license or permit ''without prejudice'' upon written application by the broker if the Assistant Commissioner determines that the application for cancellation was not made in order to avoid proceedings for the suspension or revocation of the license or permit. If the Assistant Commissioner determines that the application for cancellation was made in order to avoid those proceedings, he may cancel the license or permit ''without prejudice''

only with authorization from the Secretary of the Treasury.

(b) *With prejudice.* The Assistant Commissioner may cancel a broker's license or permit ''with prejudice'' when specifically requested to do so by the broker. The effect of a cancellation ''with prejudice'' is in all respects the same as if the license or permit had been revoked for cause by the Secretary except that it will not give rise to a right of appeal.

§ 111.52 Voluntary suspension of license or permit.

The Assistant Commissioner may accept a broker's written voluntary offer of suspension of the broker's license or permit for a specific period of time under any terms and conditions to which the parties may agree.

§ 111.53 Grounds for suspension or revocation of license or permit.

The appropriate Customs officer may initiate proceedings for the suspension, for a specific period of time, or revocation of the license or permit of any broker for any of the following reasons:

(a) The broker has made or caused to be made in any application for any license or permit under this part, or report filed with Customs, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any application or report any material fact which was required;

(b) The broker has been convicted, at any time after the filing of an application for a license under § 111.12, of any felony or misdemeanor which:

(1) Involved the importation or exportation of merchandise;

(2) Arose out of the conduct of customs business; or

(3) Involved larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

(c) The broker has violated any provision of any law enforced by Customs or the rules or regulations issued under any provision of any law enforced by Customs;

(d) The broker has counseled, commanded, induced, procured, or knowingly aided or abetted the violations by any other person of any provision of any law enforced by Customs or the rules or regulations issued under any provision of any law enforced by Customs;

(e) The broker has knowingly employed, or continues to employ, any person who has been convicted of a felony, without written approval of that employment from the Assistant Commissioner;

(f) The broker has, in the course of customs business, with intent to defraud, in any manner willfully and knowingly deceived, misled or threatened any client or prospective client; or

(g) The broker no longer meets the applicable requirements of § 111.11 and § 111.19.

§ 111.54 [Reserved]

§ 111.55 Investigation of complaints.

Every complaint or charge against a broker which may be the basis for disciplinary action will be forwarded for investigation to the special agent in charge of the area in which the broker is located. The special agent in charge will submit a report on the investigation to the director of the port and send a copy of it to the Assistant Commissioner.

§ 111.56 Review of report on investigation.

The port director will review the report of investigation to determine if there is sufficient basis to recommend that charges be preferred against the broker. He will then submit his recommendation with supporting reasons to the Assistant Commissioner for final determination together with a proposed statement of charges when recommending that charges be preferred.

§ 111.57 Determination by Assistant Commissioner.

The Assistant Commissioner will make a determination on whether or not charges should be preferred, and he will notify the port director of his decision.

§ 111.58 Content of statement of charges.

Any statement of charges referred to in this subpart must give a plain and concise, but not necessarily detailed, description of the facts claimed to constitute grounds for suspension or revocation of the license or permit. The statement of charges also must specify the sanction being proposed (that is, suspension of the license or permit or revocation of the license or permit), but if a suspension is proposed the charges need not state a specific period of time for which suspension is proposed. A statement of charges which fairly informs the broker of the charges against him so that he is able to prepare his response will be deemed sufficient. Different means by which a purpose might have been accomplished, or different intents with which acts might have been done, so as to constitute grounds for suspension or revocation of the license may be alleged in the alternative under a single count in the statement of charges.

§ 111.59 Preliminary proceedings.

(a) *Opportunity to participate.* The port director will advise the broker of his opportunity to participate in preliminary proceedings with an opportunity to avoid formal proceedings against his license or permit.

(b) *Notice of preliminary proceedings.* The port director will serve upon the broker, in the manner set forth in § 111.63, written notice that:

(1) Transmits a copy of the proposed statement of charges;

(2) Informs the broker that formal proceedings are available to him;

(3) Informs the broker that sections 554 and 558, Title 5, United States Code, will be applicable if formal proceedings are necessary;

(4) Invites the broker to show cause why formal proceedings should not be instituted;

(5) Informs the broker that he may make submissions and demonstrations of the character contemplated by the cited statutory provisions;

(6) Invites any negotiation for settlement of the complaint or charge that the broker deems it desirable to enter into;

(7) Advises the broker of his right to be represented by counsel;

(8) Specifies the place where the broker may respond in writing; and

(9) Advises the broker that the response must be received within 30 calendar days of the date of the notice.

§ 111.60 Request for additional information.

If, in order to prepare his response, the broker desires additional information as to the time and place of the alleged misconduct, or the means by which it was committed, or any other more specific information concerning the alleged misconduct, he may request that information in writing. The broker's request must set forth in what respect the proposed statement of charges leaves him in doubt and must describe the particular language of the proposed statement of charges as to which additional information is needed. If in the opinion of the port director that information is reasonably necessary to enable the broker to prepare his response, he will furnish the broker with that information.

§ 111.61 Decision on preliminary proceedings.

The port director will prepare a summary of any oral presentations made by the broker or his attorney and forward it to the Assistant Commissioner together with a copy of each paper filed by the broker. The port director will also give to the Assistant Commissioner his recommendation on action to be taken as a result of the preliminary proceedings. If the Assistant Commissioner determines that the broker has satisfactorily responded to the proposed charges and that further proceedings are not warranted, he will so inform the port director who will notify the broker. If no response is filed by the broker or if the Assistant Commissioner determines that the broker has not satisfactorily responded to all of the proposed charges, he will advise the port director of that fact and instruct him to prepare, sign, and serve a notice of charges and the statement of charges. If one or more of the charges in the proposed statement of charges was satisfactorily answered by the broker in the preliminary proceedings,

the Assistant Commissioner will instruct the port director to omit those charges from the statement of charges.

§ 111.62 Contents of notice of charges.

The notice of charges must inform the broker that:

(a) Sections 554 and 558, Title 5, United States Code, are applicable to the formal proceedings;

(b) The broker may be represented by counsel;

(c) The broker will have the right to cross-examine witnesses;

(d) Within 10 calendar days after service of this notice, the broker will be notified of the time and place of a hearing on the charges; and

(e) Prior to the hearing on the charges, the broker may file, in duplicate with the port director, a verified answer to the charges.

§ 111.63 Service of notice and statement of charges.

(a) *Individual.* The port director will serve the notice of charges and the statement of charges against an individual broker as follows:

(1) By delivery to the broker personally;

(2) By certified mail addressed to the broker, with demand for a return card signed solely by the addressee;

(3) By any other means which the broker may have authorized in a written communication to the port director; or

(4) If attempts to serve the broker by the methods prescribed in paragraphs (a)(1) through (a)(3) of this section are unsuccessful, the port director may serve the notice and statement by leaving them with the person in charge of the broker's office.

(b) *Partnership, association or corporation.* The port director will serve the notice of charges and the statement of charges against a partnership, association, or corporation broker as follows:

(1) By delivery to any member of the partnership personally or to any officer of the association or corporation personally;

(2) By certified mail addressed to any member of the partnership or to any officer of the association or corporation, with demand for a return card signed solely by the addressee;

(3) By any other means which the broker may have authorized in a written communication to the port director; or

(4) If attempts to serve the broker by the methods prescribed in paragraphs (b)(1) through (b)(3) of this section are unsuccessful, the port director may serve the notice and statement by leaving them with the person in charge of the broker's office.

(c) *Certified mail; evidence of service.* When the service under this section is by certified mail, the receipt of the return card duly signed will be satisfactory evidence of service.

§ 111.64 Service of notice of hearing and other papers.

(a) *Notice of hearing.* After service of the notice and statement of charges, the port director will serve upon the broker and his attorney if known, by one of the methods set forth in § 111.63 or by ordinary mail, a written notice of the time and place of the hearing. The hearing will be scheduled to take place within 30 calendar days after service of the notice of hearing.

(b) *Other papers.* Other papers relating to the hearing may be served by one of the methods set forth in § 111.63 or by ordinary mail or upon the broker's attorney.

§ 111.65 Extension of time for hearing.

If the broker or his attorney requests in writing a delay in the hearing for good cause, the hearing officer designated pursuant to § 111.67(a) may reschedule the hearing and in that case will notify the broker or his attorney in writing of the extension and the new time for the hearing.

§ 111.66 Failure to appear.

If the broker or his attorney fails to appear for a scheduled hearing, the hearing officer designated pursuant to § 111.67(a) will proceed with the hearing as scheduled and will hear evidence submitted by the parties. The provisions of this part will apply as though the broker were present, and the Secretary of the Treasury may issue an order of suspension of the license or permit for a specified period of time or revocation of the license or permit, or assessment of a monetary penalty in

lieu of suspension or revocation, in accordance with § 111.74 if he finds that action to be in order.

§ 111.67 Hearing.

(a) *Hearing officer*. The hearing officer must be an administrative law judge appointed pursuant to 5 U.S.C. 3105.

(b) *Rights of the broker*. The broker or his attorney will have the right to examine all exhibits offered at the hearing and will have the right to cross-examine witnesses and to present witnesses who will be subject to cross-examination by the Government representatives.

(c) *Interrogatories*. Upon the written request of either party, the hearing officer may permit deposition upon oral or written interrogatories to be taken before any officer duly authorized to administer oaths for general purposes or in customs matters. The other party to the hearing will be given a reasonable time in which to prepare cross-interrogatories and, if the deposition is oral, will be permitted to cross-examine the witness. The deposition will become part of the hearing record.

(d) *Transcript of record*. The port director will provide a competent reporter to make a record of the hearing. When the record of the hearing has been transcribed by the reporter, the port director will deliver a copy of the transcript of record to the hearing officer, the broker and the Government representative without charge.

(e) *Government representatives*. The Assistant Commissioner will designate one or more persons to represent the Government at the hearing.

§ 111.68 Proposed findings and conclusions.

The hearing officer will allow the parties a reasonable period of time after delivery of the transcript of record in which to submit proposed findings and conclusions and supporting reasons for the findings as contemplated by 5 U.S.C. 557(c).

§ 111.69 Recommended decision by hearing officer.

After review of the proposed findings and conclusions submitted by the parties pursuant to § 111.68, the hearing officer will make his recommended decision in the case and certify the entire record to the Secretary of the Treasury. The hearing officer's recommended decision must conform to the requirements of 5 U.S.C. 557.

§ 111.70 Additional submissions.

Upon receipt of the record, the Secretary of the Treasury will afford the parties a reasonable opportunity to make any additional submissions that are permitted under 5 U.S.C. 557(c) or otherwise required by the circumstances of the case.

§ 111.71 Immaterial mistakes.

The Secretary of the Treasury will disregard an immaterial misnomer of a third person, an immaterial mistake in the description of any person, thing, or place, or ownership of any property, any other immaterial mistake in the statement of charges, or a failure to prove immaterial allegations in the description of the broker's conduct.

§ 111.72 Dismissal subject to new proceedings.

If the Secretary of the Treasury finds that the evidence produced at the hearing indicates that a proper disposition of the case cannot be made on the basis of the charges preferred, he may instruct the port director to serve appropriate charges as a basis for new proceedings to be conducted in accordance with the procedures set forth in this subpart.

§ 111.73 [Reserved]

§ 111.74 Decision and notice of suspension or revocation or monetary penalty.

If the Secretary of the Treasury finds that one or more of the charges in the statement of charges is not sufficiently proved, he may base a suspension, revocation, or monetary penalty action on any remaining charges if the facts alleged in the charges are established by the evidence. If the Secretary of the Treasury, in the exercise of his discretion and based solely on the record, issues an order suspending a broker's license or permit for a specified period of time or revoking a broker's license or permit or, except in a case described in § 111.53(b)(3), assessing a monetary

penalty in lieu of suspension or revocation, the Assistant Commissioner will promptly provide written notification of the order to the broker and, unless an appeal from the Secretary's order is filed by the broker (see § 111.75), the Assistant Commissioner will publish a notice of the suspension or revocation, or the assessment of a monetary penalty, in the FEDERAL REGISTER and in the Customs Bulletin. If no appeal from the Secretary's order is filed, an order of suspension or revocation or assessment of a monetary penalty will become effective 60 calendar days after issuance of written notification of the order unless the Secretary finds that a more immediate effective date is in the national or public interest. If a monetary penalty is assessed and no appeal from the Secretary's order is filed, payment of the penalty must be tendered within 60 calendar days after the effective date of the order, and, if payment is not tendered within that 60-day period, the license or permit of the broker will immediately be suspended until payment is made.

§ 111.75 Appeal from the Secretary's decision.

An appeal from the order of the Secretary of the Treasury suspending or revoking a license or permit, or assessing a monetary penalty, may be filed by the broker in the Court of International Trade as provided in section 641(e), Tariff Act of 1930, as amended (19 U.S.C. 1641(e)). The commencement of those proceedings will, unless specifically ordered by the Court, operate as a stay of the Secretary's order.

§ 111.76 Reopening the case.

(a) *Grounds for reopening.* Provided that no appeal is filed in accordance with § 111.75, a person whose license or permit has been suspended or revoked, or against whom a monetary penalty has been assessed in lieu of suspension or revocation, may make written application in duplicate to the Assistant Commissioner to reopen the case and have the order of suspension or revocation or monetary penalty assessment set aside or modified on the ground that new evidence has been discovered or on the ground that important evidence is now available which could not be produced at the original hearing by the exercise of due diligence. The application must set forth the precise character of the evidence to be relied upon and must state the reasons why the applicant was unable to produce it when the original charges were heard.

(b) *Procedure.* The Assistant Commissioner will forward the application, together with his recommendation for action thereon, to the Secretary of the Treasury. The Secretary may grant or deny the application to reopen the case and may order the taking of additional testimony before the Assistant Commissioner. The Assistant Commissioner will notify the applicant of the Secretary's decision. If the Secretary grants the application and orders a hearing, the Assistant Commissioner will set a time and place for the hearing and give due written notice of the hearing to the applicant. The procedures governing the new hearing and recommended decision of the hearing officer will be the same as those governing the original proceeding. The original order of the Secretary will remain in effect pending conclusion of the new proceedings and issuance of a new order under § 111.77.

§ 111.77 Notice of vacated or modified order.

If, pursuant to § 111.76 or for any other reason, the Secretary of the Treasury issues an order vacating or modifying an earlier order under § 111.74 suspending or revoking a broker's license or permit, or assessing a monetary penalty, the Assistant Commissioner will notify the broker in writing and will publish a notice of the new order in the FEDERAL REGISTER and in the Customs Bulletin.

§ 111.78 Reprimands.

If a broker fails to observe and fulfill the duties and responsibilities of a broker as set forth in this part but that failure is not sufficiently serious to warrant initiation of suspension or revocation proceedings, Headquarters, or the port director with the approval of Headquarters, may serve the broker with a written reprimand. The reprimand, and the facts on which it is based, may be considered in connection with any future disciplinary proceeding

that may be instituted against the broker in question.

§ 111.79 Employment of broker who has lost license.

Five years after the revocation or cancellation ''with prejudice'' of a license, the ex-broker may petition the Assistant Commissioner for authorization to assist, or accept employment with, a broker. The petition will not be approved unless the Assistant Commissioner is satisfied that the petitioner has refrained from all activities described in § 111.42 and that the petitioner's conduct has been exemplary during the period of disability. The Assistant Commissioner will also give consideration to the gravity of the misconduct which gave rise to the petitioner's disability. In any case in which the misconduct led to pecuniary loss to the Government or to any person, the Assistant Commissioner will also take into account whether the petitioner has made restitution of that loss.

§ 111.80 [Reserved]

§ 111.81 Settlement and compromise.

The Assistant Commissioner, with the approval of the Secretary of the Treasury, may settle and compromise any disciplinary proceeding which has been instituted under this subpart according to the terms and conditions agreed to by the parties including, but not limited to, the assessment of a monetary penalty in lieu of any proposed suspension or revocation of a broker's license or permit.

Subpart E—Monetary Penalty and Payment of Fees

§ 111.91 Grounds for imposition of a monetary penalty; maximum penalty.

Customs may assess a monetary penalty or penalties as follows:

(a) In the case of a broker, in an amount not to exceed an aggregate of $30,000 for one or more of the reasons set forth in §§ 111.53 (a) through (f) other than those listed in § 111.53(b)(3), and provided that no license or permit suspension or revocation proceeding has been instituted against the broker under subpart D of this part for any of the same reasons; or

(b) In the case of a person who is not a broker, in an amount not to exceed $10,000 for each transaction or violation referred to in § 111.4 and in an amount not to exceed an aggregate of $30,000 for all those transactions or violations.

§ 111.92 Notice of monetary penalty.

(a) *Pre-penalty notice.* If assessment of a monetary penalty under § 111.91 is contemplated, Customs will issue a written notice which advises the broker or other person of the allegations or complaints against him and explains that the broker or other person has a right to respond to the allegations or complaints in writing within 30 days of the date of mailing of the notice. The Fines, Penalties, and Forfeitures Officer has discretion to provide additional time for good cause.

(b) *Penalty notice.* If the broker or other person files a timely response to the written notice of the allegations or complaints, the Fines, Penalties, and Forfeiture Officer will review this response and will either cancel the case, issue a notice of penalty in an amount which is lower than that provided for in the written notice of allegations or complaints or issue a notice of penalty in the same amount as that provided in the written notice of allegations or complaints. If no response is received from the broker or other person, the Fines, Penalties, and Forfeitures Officer will issue a notice of penalty in the same amount as that provided in the written notice of allegations or complaints.

[T.D. 00–57, 65 FR 53575, Sept. 5, 2000]

§ 111.93 Petition for relief from monetary penalty.

A broker or other person who receives a notice issued under § 111.92(b) may file a petition for relief from the monetary penalty in accordance with the procedures set forth in part 171 of this chapter.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by T.D. 00–57, 65 FR 53575, Sept. 5, 2000]

§ 111.94 Decision on monetary penalty.

Customs will follow the procedures set forth in part 171 of this chapter in considering any petition for relief filed under § 111.93. After Customs has considered the allegations or complaints set forth in the notice issued under § 111.92 and any timely response made to the notice by the broker or other person, the Fines, Penalties, and Forfeitures Officer will issue a written decision to the broker or other person setting forth the final determination and the findings of fact and conclusions of law on which the determination is based. If the final determination is that the broker or other person is liable for a monetary penalty, the broker or other person must pay the monetary penalty, or make arrangements for payment of the monetary penalty, within 60 calendar days of the date of the written decision. If payment or arrangements for payment are not timely made, Customs will refer the matter to the Department of Justice for institution of appropriate judicial proceedings.

§ 111.95 Supplemental petition for relief from monetary penalty.

A decision of the Fines, Penalties, and Forfeitures Officer with regard to any petition filed in accordance with part 171 of this chapter may be the subject of a supplemental petition for relief. Any supplemental petition also must be filed in accordance with the provisions of part 171 of this chapter.

§ 111.96 Fees.

(a) *License fee; examination fee; fingerprint fee.* Each applicant for a broker's license pursuant to § 111.12 must pay a fee of $200 to defray the costs to Customs in processing the application. Each individual who intends to take the written examination provided for in § 111.13 must pay a $200 examination fee before taking the examination. An individual who submits an application for a license must also pay a fingerprint check and processing fee; the port director will inform the applicant of the current Federal Bureau of Investigation fee for conducting fingerprint checks and the Customs fingerprint processing fee, the total of which must be paid to Customs before further processing of the application will occur.

(b) *Permit fee.* A fee of $100 must be paid in connection with each permit application under § 111.19 to defray the costs of processing the application, including an application for reinstatement of a permit that was revoked by operation of law or otherwise.

(c) *User fee.* Payment of an annual user fee of $125 is required for each permit, including a national permit under § 111.19(f), granted to an individual, partnership, association, or corporate broker. The user fee is payable when an initial district permit is issued concurrently with a license under § 111.19(a), or in connection with the filing of an application for a permit under § 111.19 (b) or (f), and for each subsequent calendar year at the port through which the broker was granted the permit or at the port referred to in § 111.19(c) in the case of a national permit. The user fee must be paid by the due date as published annually in the FEDERAL REGISTER, and must be remitted in accordance with the procedures set forth in § 24.22(i) of this chapter. When a broker submits an application for a permit or is issued an initial district permit under § 111.19, the full $125 user fee must be remitted with the application or when the initial district permit is issued, regardless of the point during the calendar year at which the application is submitted or the initial district permit is issued. If a broker fails to pay the annual user fee by the published due date, the appropriate port director will notify the broker in writing of the failure to pay and will revoke the permit to operate. The notice will constitute revocation of the permit.

(d) *Status report fee.* The status report required under § 111.30(d) must be accompanied by a fee of $100 to defray the costs of administering the reporting requirement.

(e) *Method of payment.* All fees prescribed under this section must be paid by check or money order payable to the United States Customs Service.

[T.D 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 03–13, 68 FR 43630, July 24, 2003]

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

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AUTHORITY: 19 U.S.C. 66, 1551, 1565, 1623, 1624.

SOURCE: T.D. 73–140, 38 FR 13551, May 23, 1973, unless otherwise noted.

§ 112.0 Scope.

This part sets forth regulations providing for the bonding of carriers which will receive merchandise for transportation in bond, the licensing of cartmen and lightermen, and the procedures for applying for such bonds and licenses. This part also sets forth the regulations concerning the obtaining of identification cards by cartmen and lightermen, and their employees and the procedures for revoking or suspending licenses and identification cards. Provisions setting forth the duties and responsibilities of cartmen and lightermen are set forth in part 125 of this chapter.

[T.D. 73–140, 38 FR 13551, May 23, 1973, as amended by T.D. 94–81, 59 FR 51494, Oct. 12, 1994]

Subpart A—General Provisions

§ 112.1 Definitions.

When used in this part, the following terms shall have the meaning indicated:

Carrier. A ''carrier'' is one who undertakes to transport goods, merchandise or people.

Cartman. A ''cartman'' is one who undertakes to transport goods or merchandise within the limits of the port.

Common carrier. A ''common carrier'' is a carrier owning or operating a railroad, steamship, or other transportation line or route which undertakes to transport goods or merchandise for all of the general public who choose to employ him.

Contract carrier. A ''contract carrier'' is a carrier which undertakes to transport specific goods or merchandise for a specific person or group of persons, and is authorized to operate as such by any agency of the United States.

District. ''District'' means the geographic area in which the parties excepted by the last sentence of § 112.2(b)(2) may operate under their bonds without obtaining a cartage or lighterage license issued under this part. A listing of each district, and the ports thereunder, will be published on or before October 1, 1995, and whenever updated.

Freight forwarder. A ''freight forwarder'' is one who engages in the business of dispatching shipments on behalf of other persons, for a consideration, in foreign or domestic commerce between the United States, its territories or possessions, and foreign countries, and of handling the formalities incident to such shipments, and is authorized to operate as such by any agency of the United States.

Lighterman. A ''lighterman'' is one who transports goods or merchandise on a barge, scow, or other small vessel to or from a vessel within the port, or from place to place within a port.

Private carrier. A ''private carrier'' is a carrier of his own goods or merchandise.

[T.D. 73–140, 38 FR 13551, May 23, 1973, as amended by T.D. 95–77, 60 FR 50019, Sept. 27, 1995]

§ 112.2 Bond or license required.

(a) *Carriers*. A bond provided for in this part is required to transact business as a carrier receiving merchandise for transportation in bond.

(b) *Cartmen and lightermen*—(1) *Necessity for bond*. A bond, as provided for in this part, is required to transact business as a cartman or lighterman. The cartage or lighterage of merchandise designated for examination, entered for warehouse, taken to container stations or centralized examination stations, taken into custody as unclaimed or destined for admission to a foreign trade zone may be done under the bond of a cartman or lighterman who is licensed pursuant to the provisions of this part or that of a bonded carrier, as provided for in paragraph (a) of this section. Foreign trade zone operators, bonded warehouse proprietors, container station operators and centralized examination station operators may engage in limited cartage or lighterage under their respective bonds. A foreign trade zone operator may engage in cartage or lighterage under his bond only for merchandise destined for his foreign trade zone and may also transport merchandise to his zone from anywhere within the district boundaries (see definition of ''district'' at § 112.1) where the foreign trade zone is located. A bonded warehouse proprietor may engage in cartage or lighterage under his bond only for merchandise destined for his bonded warehouse and may also transport merchandise to his warehouse from anywhere within the district boundaries (see definition of ''district'' at § 112.1) where the bonded warehouse is located. A container station operator may engage in cartage or lighterage under his bond only for merchandise destined for his container station and may also transport merchandise to his container station from anywhere within the district boundaries (see definition of ''district'' at § 112.1) where the container station is located. A centralized examination station operator may engage in cartage or lighterage under his bond only for merchandise destined for his centralized examination station and may also transport merchandise to his centralized examination station from anywhere within the district boundaries (see definition of ''district'' at § 112.1) where the centralized examination station is located.

(2) *Necessity for license*. A license, as provided for in this part, is required to transact business as a cartman or lighterman for the cartage or lighterage of merchandise. Bonded carriers may engage in cartage and lighterage under their bonds without obtaining a license. Foreign trade zone operators, bonded warehouse proprietors, container station operators and centralized examination station operators may engage, under their bonds, in the limited cartage and lighterage and other transportation described in this paragraph without obtaining a license.

[T.D. 73–140, 38 FR 13551, May 23, 1973, as amended by T.D. 94–81, 59 FR 51494, Oct. 12, 1994; T.D. 95–77, 60 FR 50020, Sept. 27, 1995]

Subpart B—Authorization of Carriers To Carry Bonded Merchandise

§ 112.11 Carriers which may be authorized.

(a) *From port to port in the United States*. The port director may authorize the following types of carriers to receive merchandise for transportation in bond from one port to another in the United States upon compliance with the provisions of this subpart:

(1) Common carriers.

(2) Contract carriers.

(3) Freight forwarders.

(4) Private carriers, if:

(i) The merchandise (including containerized merchandise) to be transported is the property of the private carrier; and

(ii) The private carrier files a bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter,

(b) *Between ports in Canada or Mexico through the United States*. Canadian and Mexican motor vehicle common carriers may be authorized to transport merchandise under bond between ports in Canada or Mexico through the

United States (see part 123 of this chapter), upon compliance with the provisions of this subpart.

[T.D. 73–140, 38 FR 13551, May 23, 1973, as amended by T.D. 81–243, 46 FR 45602, Sept. 14, 1981; T.D. 84–213, 49 FR 41171, Oct. 19, 1984]

§ 112.12 Application for authorization.

(a) *General requirements.* All carriers and freight forwarders desiring to be authorized to receive merchandise for transportation in bond shall file with the port director concerned a bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter, in a sum specified by the port director accompanied by a fee of $50. A check or money order shall be made payable to the United States Customs Service.

(b) *Special requirements.* In addition to the requirements in paragraph (a) of this section, the specified carriers shall also file with the port director the following documents:

(1) *Common carriers other than railroad, steamship, or airline companies.* Common carriers other than railroad, steamship, or airline companies generally known to be engaged in common carriage, shall file a certified extract of its articles of incorporation or charter showing that it is authorized to engage in common carriage, and a statement that it is operating or intends to operate as a common carrier.

(2) *Contract carriers and freight forwarders.* Contract carriers and freight forwarders shall file a certificate from the appropriate agency of the United States showing that the applicant is authorized to operate as a contract carrier or freight forwarder by that agency and a statement showing that the applicant is operating or intends to operate as such.

(3) *Private carriers.* The private carrier shall file the bond with the director of the port where the private carrier intends to operate. If the private carrier intends to operate in two or more Customs ports, he shall file the bond with the director of one of the ports, send a copy of the bond to the director for each additional port, and include with the bond and copies of the bond a list of all Customs districts in which he intends to operate. If the private carrier is the proprietor of one or more Customs bonded warehouses or bonded container stations, or the operator of a foreign trade zone, to which imported merchandise will be transported, he shall accompany the bond and copies of the bond by a statement showing the location of each warehouse, container station, or zone.

(4) *Motor carriers.* All motor carriers shall file:

(i) A detailed description of the terminal facilities employed by the principal at the points of origin and destination on the routes covered; and

(ii) A statement showing that facilities are available for the segregation and safeguarding of the packages designated by the port director for examination from a particular shipment.

[T.D. 73–140, 38 FR 13551, May 23, 1973, as amended by T.D. 81–243, 46 FR 45602, Sept. 14, 1981; T.D. 84–213, 49 FR 41171, Oct. 19, 1984; T.D. 86–16, 51 FR 5063, Feb. 11, 1986]

§ 112.13 Approval of applications.

The port director shall approve an application for authorization as carriers of bonded merchandise and the bond filed, authorizing the applicant to act as a carrier of bonded merchandise provided he is satisfied that:

(a) The amount of the bond is sufficient.

(b) All documents required by this subpart have been furnished and are in proper form; and

(c) The fee prescribed has been paid.

§ 112.14 Discontinuance of carrier bonds.

Carrier bonds may be discontinued at any time by the Commissioner of Customs or by the director of the port where the bond is filed. Authorized carriers desiring to terminate such bonds shall make application therefor to such port director.

Subpart C—Licensing of Cartmen and Lightermen

§ 112.21 License required.

A customhouse cartage or lighterage license issued by the port director in accordance with this part or specific authorization of the Commissioner of Customs shall be required to perform Customs cartage or lighterage, except as provided in §§ 18.3 and 125.12 of this

chapter or, as provided in § 112.2(b), when such merchandise is to be transported under the bond of the foreign trade zone operator, bonded warehouse proprietor, centralized examination station operator, container station operator, or a bonded carrier.

[T.D. 94–81, 59 FR 51495, Oct. 12, 1994]

§ 112.22 Application for license.

(a) *General requirements*. An applicant for a customhouse cartage or lighterage license shall file with the director of the port where he proposes to conduct business the following:

(1) A bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter, in an amount specified by the port director.

(2) Payment of a fee of $100. A check or money order shall be made payable to the United States Customs Service.

(3) If required by the port director, a list showing the names and addresses of the managing officers and members of the organization or of the persons who will receive or transport imported merchandise which has not been released from Customs custody, or a list of all such persons and their addresses.

(b) *Special requirements*—(1) *Cartman licensed by city or State*. Any cartman licensed by city or State authorities shall present to the port director his city or State license, after which such documents shall be returned.

(2) *Lighterman*. A lighterman shall present his vessel's marine documents, if any have been issued, to the port director for examination, after which such documents shall be returned.

(c) *Reapplication by certain terminated licensees*. Where the applicant for a customhouse cartage or lighterage license has previously been issued such a license and the license has been terminated pursuant to § 113.56 of this chapter, the port director may waive the filing of the items described in paragraphs (a)(2) and (a)(3) of this section, as well as the investigation described in § 112.23, provided the application is made within 30 days of the effective date of the termination of the previous license. Any requirements waived by the port director under this paragraph will be deemed to have been complied with for purposes of § 112.24(b).

[T.D. 73–140, 38 FR 13551, May 23, 1973, as amended by T.D. 74–200, 39 FR 27128, July 25, 1974; T.D. 76–324, 41 FR 50822, Nov. 18, 1976; T.D. 84–213, 49 FR 41171, Oct. 19, 1984]

§ 112.23 Investigation of applicant.

The port director may refer the application for a cartman's or lighterman's license to the appropriate special agent in charge where investigation and report concerning the character, qualification, and experience of the applicant as well as the nature and fitness of the equipment to be used.

§ 112.24 Issuance of license.

The port director shall issue a customhouse cartage and lighterage license on Customs Form 3857 provided he is satisfied that:

(a) The character, qualifications, and experience of the applicant and fitness of his equipment are satisfactory.

(b) The applicant has complied with all the requirements of § 112.22.

§ 112.25 Bonded carriers.

A carrier or freight forwarder who has filed a bond on Customs Form 301 containing the bond conditions set forth in § 113.63 of this chapter may transport merchandise within a port for which the bond provides coverage.

[T.D. 94–81, 59 FR 51495, Oct. 12, 1994]

§ 112.26 Duration of license.

A license issued in accordance with this subpart shall remain in force and effect until the license is suspended or revoked pursuant to § 112.30 or until the required bond is terminated pursuant to § 113.27 of this chapter.

[T.D. 76–324, 41 FR 50822, Nov. 18, 1976, as amended by T.D. 84–213, 49 FR 41171, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984; T.D. 97–82, 62 FR 51770, Oct. 3, 1997]

§ 112.27 Marking of vehicles and vessels.

(a) *Marking required*. Every vehicle licensed by Customs for cartage and every barge, scow, or other lighter licensed by Customs for lighterage shall be marked with the legend ''Customhouse License No. _____'', and the

name of the person or firm to whom the license has been issued. The abbreviated legend ''C.H.L. No. _____'' may be used.

(b) *Size of marking*. The marking required by this section shall appear in letters and figures not less than 3 inches high.

(c) *Place of marking*—(1) *Carts, trucks, drays, and other vehicles*. Every cart, truck, dray, or other vehicle used for Customs cartage by a licensed cartman shall be marked with the required legend and name on each side by painting directly onto the vehicle, or by the permanent attachment of signs bearing the required marking. However, if such marking is found by the port director to be impractical, he may designate some other conspicuous place upon the vehicle where the marking shall appear.

(2) *Barges, scows, lighters, and other vessels*. Every barge, scow, lighter, or other vessel used for Customs lighterage by a licensed lighterman shall be conspicuously marked with the required legend and name.

(d) *Removal of marking upon termination of license*. The markings required by this section shall be removed upon termination of the license.

[T.D. 73–140, 38 FR 13551, May 23, 1973, as amended by T.D. 84–213, 49 FR 41171, Oct. 19, 1984]

§ 112.28 Production of license.

Inspectors or other Customs officers may require any person claiming to be a licensed customhouse cartman or lighterman to produce his license for inspection.

§ 112.29 Records.

(a) *Records of cartage and lighterage*. The port director may require that licensed Customs cartmen and lightermen shall make, keep, and promptly submit for Customs inspection and examination upon request therefor such current written records relating to cartage and lighterage as may be needed for purposes of local Customs administration. Cartmen and lightermen shall maintain these records for 3 years from the expiration date of the related contract for cartage or lighterage.

(b) *Current list of officers, members, or employees*. The port director may require a licensee to furnish, at such times and intervals as the port director deems necessary, a current list showing the names and addresses of the managing officers and members of the organization or of the persons who will receive or transport imported merchandise which has not been released from Customs custody, or a list of all such persons and their addresses.

[T.D. 73–140, 38 FR 13551, May 23, 1973, as amended by T.D. 79–159, 44 FR 31968, June 4, 1979]

§ 112.30 Suspension or revocation of license.

(a) *Grounds for suspension or revocation of licenses*. The port director may revoke or suspend the license of a cartman or lighterman if:

(1) His license is not promptly produced upon demand;

(2) His vehicle or vessel is not properly marked, as required by § 112.27;

(3) The cartman or lighterman refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation relative to the cartage or lighterage of merchandise, including the making, keeping, and submitting of current written records relating to cartage and lighterage;

(4) The license was obtained through fraud or the misstatement of a material fact;

(5) The holder of such a license or an officer of a corporation holding such a license is convicted of or has committed acts which would constitute a felony, or a misdemeanor involving theft, smuggling, or a theft-connected crime. Any change in the employment status of the corporate officer (e.g., discharge, resignation, demotion, or promotion) prior to conviction of a misdemeanor involving theft, smuggling, or a theft-connected crime, resulting from acts committed while a corporate officer, will not preclude application of this provision;

(6) The holder of such license permits it to be used by any other person;

(7) The holder of such license fails to surrender promptly, or satisfactorily explain the failure to surrender, to the port director, identification cards of

persons no longer employed by him where identification cards are required pursuant to § 112,41;

(8) The holder of such license fails to furnish a current list of names and addresses of officers and members or employees when required by the port director pursuant to § 112.29;

(9) The holder is guilty of any negligence, dishonest or deceptive practices or carelessness in the conduct of his business; or

(10) The port director determines that the bond is not sufficient in amount or lacks sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time.

(b) *Notice of revocation or suspension.* The port director shall suspend or revoke a license by serving notice of the proposed action in writing upon the holder of the license. Such notice shall be in the form of a statement specifically setting forth the grounds for revocation or suspension of the license and shall be final and conclusive upon the licensee unless he shall file with the port director a written notice of appeal in accordance with paragraph (c) of this section.

(c) *Notice of appeal.* The licensee may file a written notice of appeal from the revocation or suspension within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed in duplicate, and shall set forth the response of the licensee to the statement of the port director. The licensee in his notice of appeal may request a hearing.

(d) *Hearing on appeal*—(1) *Notification of and time of hearing.* If a hearing is requested, it shall be held before a hearing officer designated by the Secretary of the Treasury or his designee within 30 days following application therefor. The licensee shall be notified of the time and place of the hearing at least 5 days prior thereto.

(2) *Conduct of hearing.* The holder of the license may be represented by counsel at the revocation or suspension hearing. All evidence and testimony of witnesses in such proceeding, including substantiation of charges and the answer thereto, shall be presented with both parties having the right of cross-examination. A stenographic record of the proceedings shall be made and a copy thereof shall be delivered to the licensee. At the conclusion of such proceedings or review of a written appeal, the hearing officer or the port director, as the case may be, shall forthwith transmit all papers and the stenographic record of the hearing, if held, to the Commissioner of Customs, together with his recommendation for final action.

(3) *Additional arguments.* Following a hearing and within 10 calendar days after delivery of a copy of the stenographic record, the licensee may submit to the Commissioner of Customs in writing additional views and arguments on the basis of such record.

(4) *Failure to appear.* If neither the licensee nor his attorney appear for a scheduled hearing, the hearing officer shall conclude the hearing and transmit all papers with his recommendation to the Commissioner of Customs.

(e) *Decision on the appeal.* The Commissioner shall render his decision, in writing, stating his reasons therefor, with respect to the action proposed by the hearing officer or the port director. Such decision shall be transmitted to the port director and served by him on the licensee.

(f) *Review by the Court of International Trade.* Any licensee adversely affected by a decision of the Commissioner of Customs may appeal the decision in the Court of International Trade.

[T.D. 73–140, 38 FR 13551, May 23, 1973, as amended by T.D. 85–90, 50 FR 21431, May 24, 1985; T.D. 88–63, 53 FR 40220, Oct. 14, 1988]

Subpart D—Identification Cards

§ 112.41 Identification cards required.

A port director may require each licensed cartman or lighterman and each employee thereof who receives, transports, or otherwise handles imported merchandise which has not been released from Customs custody to carry and display upon request of a Customs officer an identification card issued by Customs. The card shall be in the possession of the person in whose name it is issued at all times when he is engaged in transactions with respect to imported merchandise. An identification card shall not be issued to any

person whose employment in connection with the transportation of bonded merchandise will, in the judgment of the port director, endanger the revenue.

[T.D. 73–140, 38 FR 13551, May 23, 1973, as amended by T.D. 99–64, 64 FR 43266, Aug. 10, 1999]

§ 112.42 Application for identification card.

An application for an identification card required pursuant to § 112.41 of this part, shall be filed personally by the applicant with the port director on Customs Form 3078 together with two 1¼″ × 1¼″ color photographs of the applicant. The fingerprints of the applicant shall also be required on form FD 258 or electronically at the time of filing the application. The port director shall inform the applicant of the current Federal Bureau of Investigation user fee for conducting fingerprint checks and the Customs administrative processing fee, the total of which must be tendered with the application. The application may be referred for investigation and report concerning the character of the applicant.

[T.D. 93–18, 58 FR 15772, Mar. 24, 1993, as amended by T.D. 01–14, 66 FR 8767, Feb. 2, 2001]

§ 112.43 Form of identification card.

The identification card shall be issued on Customs Form 3873 and shall not be valid unless signed by the employee and a Customs officer and the U.S. Customs seal is impressed thereon. The holder shall encase the card in protective transparent plastic so that both sides are clearly visible.

§ 112.44 Changes in information on identification cards.

Where there has been a change in the name, address, or employer of the holder, the card shall be promptly submitted by the cardholder to the port director, supported by application in proper form indicating the change so that it may be officially changed on the Customs records. New cards shall be issued when necessary.

§ 112.45 Surrender of identification cards.

The identification card shall be surrendered by the holder or licensee to the port director when:

(a) The employee holder leaves the employment of the licensed cartman or lighterman;

(b) The cartman or lighterman bond or license is terminated; or

(c) The card is revoked or suspended pursuant to § 112.48.

§ 112.46 Report of loss or theft.

The loss or theft of an identification card shall be promptly reported by the cardholder to the port director.

§ 112.47 Wrongful presentation.

If an identification card is presented by a person other than the one to whom it was issued, such card shall be forthwith confiscated.

§ 112.48 Revocation or suspension of identification cards.

(a) *Grounds for revocation or suspension of identification cards.* An identification card issued pursuant to this part may be revoked or suspended by the port director for any of the following grounds:

(1) Such card was obtained through fraud or the misstatement of a material fact;

(2) The holder of such card is convicted of a felony, or convicted of a misdemeanor involving theft, smuggling, or any theft-connected crime;

(3) The holder permits the card to be used by any other person, or refuses to produce it upon the proper demand of a Customs officer; or

(4) The holder fails to abide by the rules and regulations prescribed in § 112.45 and part 125 of this chapter.

(b) *Notice of revocation or suspension.* The port director shall suspend or revoke an identification card by serving notice of the proposed action in writing upon the holder of the card. Such notice shall be in the form of a statement specifically setting forth the grounds for revocation or suspension of the card and shall be final and conclusive upon the holder unless he shall file with the port director a written notice of appeal in accordance with paragraph (c) of this section.

(c) *Notice of appeal*. The holder may file a written notice of appeal from the revocation or suspension within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed, in duplicate, and shall set forth the response of the holder to the statement of the port director. The holder in his notice of appeal may request a hearing.

(d) *Hearing on appeal*—(1) *Notification of and time of hearing*. If a hearing is requested, it shall be held before a hearing officer designated by the Secretary of the Treasury or his designee within 30 days following application therefor. The holder shall be notified of the time and place of hearing at least 5 days prior thereto.

(2) *Conduct of hearing*. The holder of the card may be represented by counsel at the revocation or suspension hearing. All evidence and testimony of witnesses in such proceeding, including substantiation of charges and the answer thereto, shall be presented with both parties having the right of cross-examination. A stenographic record of the proceedings shall be made and a copy thereof shall be delivered to the cardholder. At the conclusion of such proceedings or review of a written appeal, the hearing officer or the port director, as the case may be, shall forthwith transmit all papers and the stenographic record of the hearing, if held, to the Commissioner of Customs, together with his recommendation for final action.

(3) *Additional arguments*. Following a hearing and within 10 calendar days after delivery of a copy of the stenographic record, the holder of the card may submit to the Commissioner of Customs in writing additional views and arguments on the basis of such record.

(4) *Failure to appear*. If neither the cardholder nor his attorney appear for a scheduled hearing, the hearing officer shall conclude the hearing and transmit all papers with his recommendation to the Commissioner of Customs.

(e) *Decision on the appeal*. The Commissioner shall render his decision, in writing, stating his reasons therefor, with respect to the action proposed by the hearing officer or the port director. Such decision shall be transmitted to the port director and served by him on the cardholder.

§ 112.49 Temporary identification cards.

(a) *Issuance*. When an identification card is required by the port director under § 112.41, and the port director determines that the application for the identification card cannot be administratively processed in a reasonable period of time, any licensed cartman or lighterman may upon written request have a temporary identification card issued by the port director to his employee if he can show to the satisfaction of the port director that a hardship to his business would result pending issuance of an identification card.

(b) *Validity and renewal*. The temporary identification card shall be valid for a period of 60 days. The port director may renew the temporary identification card for additional 30-day periods if he feels that the circumstances under which the temporary identification card was originally issued continue to exist. The temporary identification card shall be returned by the holder or licensee to the port director when the identification card is issued or the privileges granted thereby are withdrawn.

(c) *Withdrawal of temporary card*. The temporary identification card may be withdrawn at any time if in the judgment of the port director continuation of the privileges granted thereby would endanger the revenue or if the holder of the temporary identification card refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation.

(d) *Bond*. The licensed cartman or lighterman shall as a condition precedent to the issuance of a temporary identification card to his employee be required to post a bond in a penal sum, the amount to be determined by the port director, to guarantee return of the temporary identification card by the holder upon its withdrawal or upon issuance of a permanent identification card and to cover any loss or damage caused to the United States by the holder of the temporary identification card. The bond shall be on Customs Form 301 and contain the bond conditions set forth in § 113.63 of this chapter

and be in such amount as determined by the port director.

[T.D. 73–140, 38 FR 13551, May 23, 1973, as amended by T.D. 84–213, 49 FR 41171, Oct. 19, 1984]

PART 113—CUSTOMS BONDS

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AUTHORITY: 19 U.S.C. 66, 1623, 1624.

Subpart E also issued under 19 U.S.C. 1484, 1551, 1565.

Section 113.74 also issued under 19 U.S.C. 1337.

Section 113.75 and Appendix C also issued under 19 U.S.C. 1484b.

SOURCE: T.D. 84–213, 49 FR 41171, Oct. 19, 1984, unless otherwise noted.

§ 113.0 Scope.

This part sets forth the general requirements applicable to bonds. It contains the general authority and powers of the Commissioner of Customs in requiring bonds, bond approval and execution, bond conditions, general and special bond requirements, the requirements which must be met to be either a principal or a surety, the requirements concerning the production of documents, the authority and manner of assessing liquidated damages and requirements for cancelling the bond or charges against a bond.

Subpart A—General Provisions

§ 113.1 Authority to require security or execution of bond.

Where a bond or other security is not specifically required by law, the Commissioner of Customs, pursuant to Treasury Department Order No. 165 Revised, as amended (T.D. 53654, 19 FR 7241, November 6, 1954), may by regulation or specific instruction require, or authorize the port director to require, such bonds or other security considered necessary for the protection of the revenue or to assure compliance with any pertinent law, regulation, or instruction.

§ 113.2 Powers of Commissioner of Customs relating to bonds.

Whenever a bond is required or authorized by law, regulation, or instruction, the Commissioner of Customs may:

(a) Prescribe the conditions and form of the bond and fix the amount of penalty, whether for the payment of liquidated damages, or of a penal sum, except as otherwise specifically provided by law.

(b) Provide for the approval of the sureties on the bond, without regard to any general provision of law.

(c) Authorize the execution of a term bond, the conditions of which shall extend to and cover similar cases of importations over a period of time, not to exceed one year or such longer period he may fix, when in his opinion special circumstances warrant a longer period.

(d) Authorize the taking of a consolidated bond (single entry or term) in lieu of separate bonds to assure compliance with two or more provisions of law, regulation, or instruction. Such a consolidated bond shall have the same force and effect as the separate bonds in lieu of which it was taken. The Commissioner of Customs may fix the penalty for violation of a consolidated bond without regard to any other provision of law, regulation, or instruction.

§ 113.3 Liability of surety on a terminated bond.

The surety, as well as the principal, remains liable on a terminated bond for obligations incurred prior to termination.

§ 113.4 Bonds and carnets.

(a) *Bonds.* All bonds required to be given under the Customs laws or regulations shall be known as Customs bonds.

(b) *Carnets.* A carnet is an international customs document which serves simultaneously as a customs entry document and as a customs bond. Therefore, carnets, provided for in part 114 of this chapter, are ordinarily acceptable without posting further security under the Customs laws or regulations requiring bonds.

Subpart B—Bond Application and Approval of Bond

§ 113.11 Bond approval.

Each person who is required by law, regulation, or specific instruction to post a bond to secure a Customs transaction or multiple transactions must submit the bond on Customs Form 301. If the transaction(s) will occur at one Customs port, the bond shall be filed with and approved by the director of that port where the transaction(s) will take place. If the transactions will occur in more than one port the bond may be filed with and approved by any port director. Only one continuous bond for a particular activity will be authorized for each principal. The port director will determine whether the bond is in proper form and provides

adequate security for the transaction(s). A bond relating to repayment of an erroneous drawback payment containing the bond conditions set forth in § 113.65 shall be filed with the appropriate drawback office for approval.

§ 113.12 Bond application.

(a) *Single entry bond application.* In order to insure that the revenue is adequately protected the port director may require a person who will be engaged in a single Customs transaction relating to the importation or entry of merchandise to file a written bond application which may be in the form of a letter. The application shall identify the value and nature of the merchandise involved in the transaction to be secured. When the proper bond in a sufficient amount is filed with the entry summary or with the entry, or when the entry summary is filed at the time of entry, an application will not be required.

(b) *Continuous bond application.* If a person wants to secure multiple transactions relating to the importation or entry of merchandise or the operation of a bonded smelting or refining warehouse, a bond application, which may be in the form of a letter, shall be submitted to the port director.

(1) *Information required.* The application shall contain the following information:

(i) The general character of the merchandise to be entered; and

(ii) The total amount of ordinary Customs duties (including any taxes required by law to be treated as duties) accruing on all merchandise imported by the principal during the calendar year preceding the date of the application, plus the estimated amount of any other tax or taxes on the merchandise to be collected by Customs. The total amount of duties and taxes shall be that which would have been required to be deposited had the merchandise been entered for consumption even though some or all of the merchandise may have been entered under bond. If the value or nature of the merchandise to be imported will change in any material respect during the next year the change shall be identified. If no imports were made during the calendar year prior to the application, a statement of the duties and taxes it is estimated will accrue on all importations during the current year shall be submitted.

(2) *Application updates.* If the port director approves a bond based upon the application, whenever there is a significant change in the information provided under this paragraph, the principal on the bond shall submit a new application containing an update of the information required by paragraph (b)(1) of this section. The new application shall be filed no later than 30 days after the new facts become known to the principal.

(c) *Certification.* Any application submitted under this section shall be signed by the applicant and contain the following certification:

> I certify that the factual information contained in this application is true and accurate and any information provided which is based upon estimates is based upon the best information available on the date of this application.

§ 113.13 Amount of bond.

(a) *Minimum amount of bond.* The amount of any Customs bond shall not be less than $100, except when the law or regulation expressly provides that a lesser amount may be taken. Fractional parts of a dollar shall be disregarded in computing the amount of a bond. The bond always shall be stated as the next highest dollar.

(b) *Guidelines for determining amount of bond.* In determining whether the amount of a bond is sufficient, the port director or drawback office in the case of a bond relating to repayment of erroneous drawback payment (see § 113.11) should at least consider:

(1) The prior record of the principal in timely payment of duties, taxes, and charges with respect to the transaction(s) involving such payments;

(2) The prior record of the principal in complying with Customs demands for redelivery, the obligation to hold unexamined merchandise intact, and other requirements relating to enforcement and administration of Customs and other laws and regulations;

(3) The value and nature of the merchandise involved in the transaction(s) to be secured;

(4) The degree and type of supervision that Customs will exercise over the transaction(s);

(5) The prior record of the principal in honoring bond commitments, including the payment of liquidated damages; and

(6) Any additional information contained in any application for a bond.

(c) *Periodic review of bond sufficiency.* The port directors and drawback offices shall periodically review each bond filed in their respective port or drawback office in the case of a bond relating to repayment of erroneous drawback payment (see § 113.11) to determine whether the bond is adequate to protect the revenue and insure compliance with the law and regulations. If the port director or drawback office determines that the bond is inadequate, the principal shall be immediately notified in writing. The principal shall have 30 days from the date of notification to remedy the deficiency.

(d) *Additional security.* Notwithstanding the provisions of this section or any other provision of this chapter, if a port director or drawback office believes that acceptance of a transaction secured by a continuous bond would place the revenue in jeopardy or otherwise hamper the enforcement of Customs laws or regulations, he shall require additional security.

§ 113.14 Approved form of bond inadequate.

If the port director believes that none of the conditions contained in subpart G of this part is applicable to a transaction sought to be secured, the port director shall draft conditions which will cover the transaction, but before execution of the bond the conditions shall be submitted to Headquarters, Attention: Director, International Trade Compliance Division, for approval.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 113.15 Retention of approved bonds.

All bonds approved by the port director, except the bond containing the agreement to pay court costs (condemned goods) (see § 113.72) shall remain on file in the port office unless the port director is directed in writing by the Director, International Trade Compliance Division, as to other disposition. The bond containing the agreement to pay court costs (condemned goods), shall be transmitted to the United States attorney, as required by section 608, Tariff Act of 1930, as amended (19 U.S.C. 1608). The bond relating to repayment of erroneous drawback payment containing the conditions set forth in § 113.65 shall be retained in the appropriate drawback office.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

Subpart C—Bond Requirements

§ 113.21 Information required on the bond.

(a)(1) *Identification of principal and sureties.* The names of the principal and sureties and their respective places of residence shall appear in the bond. In the case of a corporate principal or surety, its legal designation and the address of its principal place of business shall appear.

(2) *Identification of trade names and unincorporated divisions of a corporate principal.* The principal may list on the bond trade names and the names of unincorporated divisions of the corporate principal which do not have a separate and distinct legal status who are authorized to use the bond in their own name.

(b) *Date of execution.* Each bond shall bear the date it was actually executed.

(c) *Statement of the amount.* The amount of the bond shall be stated in figures.

(d) *Use of abbreviations.* Abbreviations shall not be used except in dates and the state of incorporation of the principal or the surety.

(e) *Blank spaces on the bond.* Lines shall be drawn through all spaces and blocks on the bond which are not filled in.

§ 113.22 Witnesses required.

(a) *Generally.* The signature of each party to a bond executed by a noncorporate principal or surety shall be witnessed by two persons, who shall sign

their names as witnesses, and include their addresses.

(b) *Witness for both principal and surety*. When two persons signing as witnesses act for both principal and surety, they shall so indicate by stating on the bond ''as to both''.

(c) *Corporate principal or surety*. No witnesses are required where bonds are executed by properly authorized officers or agents of a corporate principal or corporate surety. For requirements concerning the execution of a bond by an authorized officer or agent of a corporate principal or surety, see §§ 113.33 and 113.37 of this part.

§ 113.23 Changes made on the bond.

(a) *Definition of the types of changes*—(1) *Modification or interlineation*. Modifications or interlineations are changes which go to the substance of the bond, or are basic revisions of the bond.

(2) *Alterations or erasures*. Alterations or erasures consist of minor changes, such as the correction of typographical errors, or change of address, which do not go to the substance, or result in basic revision of the bond.

(b) *Prior to signing*. When erasures, alterations, modifications, or interlineations are made on the bond prior to its signing by the parties to the bond, a statement by an agent of the surety company or by the personal sureties to that effect shall be placed upon the bond.

(c) *After signing*. If erasures or alterations are made after the bond is signed, but prior to the approval of the bond by Customs, the consent of all the parties shall be written on the bond. Except in cases where a change in the bond is expressly authorized by regulation, or by the Commissioner, no modification or interlineation shall be made on the bond after execution. When a modification or interlineation is desired, a new bond will be executed.

(d) *After approval of the bond by Customs*. Except in cases where a change in the bond is expressly authorized by regulations, or instructions from the Commissioner, the port director shall not permit a change as defined in paragraph (a) of this section after the bond has been approved by Customs. When changes are desired, a new bond is required, which, when approved, shall supersede the existing bond.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984]

§ 113.24 Riders.

(a) *Types of riders*. The port director may accept the following types of bond riders.

(1) *Name change of principal*. A bond rider to change the name of a principal on a bond may be used only when the change in name does not change the legal identity or status of the principal. If a new corporation is created as a result of a merger, reorganization or similar action, a bond rider for a name change of the principal can not be used. A new bond would be required.

(2) *Address change*. A bond rider may be used to change the address of a principal on a bond.

(3) *Addition and deletion of trade names and unincorporated divisions of a corporate principal*. A bond rider may be used to add to or delete from a bond trade names and the names of unincorporated divisions of a corporate principal which do not have a separate and distinct legal status.

(b) *Where filed*. A rider must be filed at the port where the bond was approved.

(c) *Attachment of rider to bond*. All riders expressly authorized by the Commissioner shall be securely attached to the related bond to prevent their loss or misplacement.

(d) *Format of rider*. The riders shall be signed, sealed, witnessed, executed, include a certificate as to corporate principal, if applicable, and otherwise comply with the requirements of this part. The riders shall contain the following conditions:

(1) *Name change of principal*.

By this rider to the Customs Form 301,_____ (bond number), dated ____, executed by ____, (former name), as principal, ____, (importer number), the, ____ (new name), hereby certifies that it is the same entity formerly known as ____, (former name), and the principal and surety agree that they are responsible for any act secured by this bond done under principal's former name. Principal and surety agree to be bound under this bond to the same extent as if this bond had been executed in the principal's new name. This rider is effective on ____ (date).

(2) *Address change.*

By this rider to Customs Form 301, _____ (bond number) executed on ____ (date), by ____, (principal's name), as principal, ____, (importer number), and ____ (surety's name and code), as surety, which is effective on ____ (date), the principal, surety or both, intend that the bond be amended to show _____ (new address) as their address. The principal, surety or both, as may be appropriate agree to be bound as though this bond has been executed with the new address(s) shown.

(3) *Addition or deletion of trade names and unincorporated divisions of a corporate principal*—(i) *Addition rider.*

By this rider to the Customs Form 301, ____, (bond number), executed on ____, (date), by ____, (principal's name), as principal, ____, (importer number) and ____, (surety's name and code), as surety, which is effective on ____ (date), the principal and surety agree that the below listed names are unincorporated units of the principal or are trade or business names used by the principal in its business and that this bond covers its business and that this bond covers any act done in those names to the same extent as though done in the name of the principal. The principal and surety agree that any such act shall be considered to be the act of the principal.

(ii) *Deletion rider.*

By this rider to the Customs Form 301, ____, (bond number), executed on ____, (date), by ____, (principals name) as principal, ____, (importer number and ____, (surety's name and surety code), as surety, which is effective on ____, (date), the principal and surety agree that the below listed names of unincorporated units of the principal or trade or business names used by the principal in its business are deleted from the bond effective upon the date of approval of the rider by the appropriate Customs bond approval official.

§ 113.25 Seals.

When a seal is required, the seal shall be affixed adjoining the signatures of principal and surety, if individuals, and the corporate seal shall be affixed close to the signatures of persons signing on behalf of a corporation. Bonds shall be under seal in accordance with the law of the state in which executed. However, when the charter or governing statute of a corporation requires its acts to be evidenced by its corporate seal, such seal is required.

§ 113.26 Effective dates of bonds and riders.

(a) *General.* Bonds including the application, if required by § 113.12, and riders may be filed up to 30 days before the effective date in order to provide adequate time for Customs administrative review and processing.

(b) *Single transaction bond.* A single transaction bond is effective on the date of the transaction identified on the Customs Bond, Customs Form 301.

(c) *Continuous bond.* A continuous bond is effective on the effective date identified on the Customs Bond, Customs Form 301.

(d) *Riders for name change of principal, address change, and addition of trade names and unincorporated divisions of a corporate principal.* Riders for a name change of principal, address change, and addition of trade names and unincorporated divisions of a corporate principal are effective on the effective date identified on the rider.

(e) *Rider to delete trade names and unincorporated divisions of a corporate principal.* A rider to delete trade names and unincorporated divisions of a corporate principal is effective on the effective date identified on the rider if the date is at least 10 business days after the date the port receives the rider. If the rider is not received 10 business days before the identified effective date or no effective date is identified on the rider, it will be effective on the close of business of the tenth business day after it is received in the port.

§ 113.27 Effective dates of termination of bond.

(a) *Termination by principal.* A request by a principal to terminate a bond shall be made in writing to the port director or drawback office in the case of a bond relating to repayment of erroneous drawback payment where the bond was approved. The termination shall take effect on the date requested if the date is at least 10 business days after the date of receipt of the request. Otherwise the termination shall be effective on the close of business 10 business days after the request is received at the port or drawback office. If no termination date is requested, the termination shall take effect on the tenth

business day following the date of receipt of the request by the port director, or drawback office in the case of bonds relating to repayment of erroneous drawback payment.

(b) *Termination by surety*. A surety may, with or without the consent of the principal, terminate a Customs bond on which it is obligated. The surety shall provide reasonable written notice to both the director of the port where the bond was approved or appropriate drawback office in the case of bonds relating to repayment of an erroneous drawback payment and the principal of the intent to terminate. The written notice shall state the date on which the termination shall be effective and shall be sent to both Customs and the principal by certified mail, with a return receipt requested. Thirty days shall constitute reasonable notice unless the surety can show to the satisfaction of the port director, or drawback office in the case of bonds relating to repayment of an erroneous drawback payment, that a lesser time is reasonable under the facts and circumstances.

(c) *Effect of termination*. If a bond is terminated no new Customs transactions shall be charged against the bond. A new bond in an appropriate amount on Customs Form 301, containing the appropriate bond conditions set forth in subpart G of this part, shall be filed before further Customs activity may be transacted.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984]

Subpart D—Principals and Sureties

§ 113.30 Information pertaining to principals and sureties on the bond.

The general information pertaining to the principal and surety which must be given in the body of the bond is set forth in § 113.21.

§ 113.31 Same party as principal and surety; attorney in fact.

(a) *Same party as principal and surety*. The same person, partnership, or corporation cannot be both principal and surety on a bond.

(b) *Attorney in fact for principal or surety*. In executing a bond, a person may act as:

(1) Attorney in fact for both principal and surety;

(2) Surety and attorney in fact for the principal; or

(3) Principal and attorney in fact for the surety.

§ 113.32 Partnerships as principals.

(a) *Names of partners on the bond*—(1) *In general*. Unless written notice of the full names of all partners in the partnership has been previously filed with the port director or drawback office in the case of a bond relating to repayment of erroneous drawback payment, the names of all persons composing the partnership shall appear in the body of the bonds.

(2) *Limited partnerships*. Bonds submitted by limited partnerships need only have the firm name and the names of the general partners authorized to bind the firm on them. The bond must be accompanied by a copy of the partnership agreement. For this purpose, a partnership or a limited partnership means any business association recognized as such under the laws of the state where the association is organized.

(b) *Execution*. Partnership bonds shall be executed in the firm name, with the name of the member or attorney of the firm executing it appearing immediately below the firm signature.

(c) *Action of one principal binding on all principals of the partnership*. Pursuant to section 495, Tariff Act of 1930, as amended (19 U.S.C. 1495), when a bond is executed by any member of the partnership, the bond shall be binding on the other partners in like manner and to the same extent as if such other partners had personally joined in the execution. However, in the case of a limited partnership, the limited partners will not be bound by the actions of any other partner in the firm, except as provided for in the partnership agreement.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 86–204, 51 FR 42998, Nov. 28, 1986]

§ 113.33 Corporations as principals.

(a) *Name of corporation on the bonds*. The name of a corporation executing a Customs bond as a principal, may be printed or placed thereon by means of

a rubber stamp or otherwise, followed by the written signature of the authorized officer or attorney.

(b) *Signature and seal of the corporation on the bond.* The bond of a corporate principal shall be signed by an authorized officer or attorney of the corporation and the corporate seal shall be affixed immediately adjoining the signature of the person executing the bond, as provided for in § 113.25.

(c) *Bond executed by an officer of corporation.* When a bond is executed by an officer of a corporation, a power of attorney shall not be required if the person signing the bond on behalf of the corporation is known to the port director or drawback office to be the president, vice president, treasurer, or secretary of the corporation. The officer's signature shall be prima facie evidence of that officer's authority to bind the corporation. When a power of attorney is required it shall conform to the requirements of subpart C, part 141, of this chapter.

(d) *Bond executed by an attorney in fact.* When an attorney in fact executes a bond on behalf of a corporate principal and a power of attorney has not been filed with the port director (unless exempted from filing by § 141.46 of this chapter), there shall be attached a power of attorney executed by an officer of the corporation whose authority to execute the power shall be shown as prescribed in paragraph (c) of this section.

(e) *Subsidiaries as co-principals.* The provisions of this section shall be applicable to each corporate subsidiary which joins its parent corporation by signing the bond as co-principal.

§ 113.34 Co-principals.

A bond with a co-principal may be used by a person having a distinct legal status (e.g., individual, partnership, corporation) to join another person with the same distinct legal status on the bond. A bond with a co-principal shall not be used to join an entity which does not have a distinct legal status (e.g. an unincorporated division of a corporation). However, an entity which does not have a distinct legal status may use another bond if listed on the bond by the principal at the time of execution or by subsequent rider (see § 113.24). A bond with co-principal may not be used to join different legal entities (e.g. an individual and a corporation, a partnership and a corporation).

§ 113.35 Individual sureties.

(a) *Number required.* If individuals sign as sureties, there shall be two sureties on the bond, unless the port director is satisfied that one surety is sufficient to protect the revenue and insure compliance with the law and regulations.

(b) *Qualifications to act as surety.* (1) *Residency and citizenship.* Each individual surety on a Customs bond must be both a resident and citizen of the United States.

(2) *Married women.* A married woman may be accepted as a surety, unless the state in which the bond is executed prohibits her from acting in that capacity.

(3) *Granting of power of attorney.* Any individual other than a married woman in a state where she is prohibited from acting as a surety may grant a power of attorney to sign as surety on Customs bonds. Unless the power is unlimited, all persons to which the power relates shall be named.

(4) *Property requirements.* Each individual surety must have property available as security within the limits of the port where the contract of suretyship is to be approved. The current market value of the property less any encumbrance must be equal to or greater than the amount of the bond. If one individual surety is accepted, the individual surety must have property the value of which, less any encumbrance, is equal to or greater than twice the amount of the bond.

(c) *Oath and evidence of solvency.* Before being accepted as a surety, the individual shall:

(1) Take an oath on Customs Form 3579, setting forth:

(i) The amount of assets over and above all debts and liabilities and such exemptions as may be allowed by law; and

(ii) The general description and the location of one or more pieces of real estate owned within the limits of the port and the value thereof over and above all encumbrances.

(2) Produce such evidence of solvency and financial responsibility as the port director may require.

(d) *Determination of financial responsibility*. An individual surety shall not be accepted on a bond until the port director is satisfied as to the financial responsibility of the individual. The port director may refer the matter to the special agent-in-charge for immediate investigation to verify the financial responsibility of the surety.

(e) *Continuancy of financial responsibility*. In order to follow the continued solvency and financial responsibility of individual sureties, the port director shall require a new oath and determine the financial responsibility of each individual surety as prescribed in paragraphs (c) and (d) of this section at least once every 6 months, and more often if deemed advisable.

§ 113.36 Partner acting as surety on behalf of a partner or on behalf of a partnership.

A member of a partnership shall not be accepted as an individual surety on a bond executed by the partnership as principal. A partner may be an individual surety for a fellow partner on a bond if (a) the transaction is in an individual capacity and unrelated to the partnership, (b) sufficient unencumbered nonpartnership property is available as security, and (c) the individual qualifies as an individual surety under the provisions of § 113.35 of this part.

§ 113.37 Corporate sureties.

(a) *Lists of corporations and limits of their bonds*. Treasury Department Circular 570 contains a list of corporations authorized to act as sureties on bonds, with the amount in which each may be accepted. Unless otherwise directed by the Commissioner of Customs, no corporation shall be accepted as surety on a bond if not named in the current Circular as amended by FEDERAL REGISTER notice and no bond shall be for a greater amount than the respective limit stated in the Circular, unless the excess is protected as prescribed in § 223.11, Bureau of Government Financial Operations Regulations (31 CFR 223.11).

(b) *Name of corporation on the bond*. The name of a corporation executing a Customs bond, as a surety, may be printed or placed thereon by means of a rubber stamp or otherwise, followed by the written signature of the authorized officer or attorney.

(c) *Name of agent or attorney on the bond*. The agent or attorney acting for a corporate surety shall have stamped, printed, or typed on each bond executed by him, below his signature, his full name as it appears on the bond.

(d) *Social security number of agent or attorney on the bond*. In the appropriate place on each bond executed by the agent or attorney acting for a corporate surety, the agent or attorney shall place his/her social security number, as it appears on the corporate surety power of attorney.

(e) *Signature and seal of the corporation on the bond*. A bond executed by a corporate surety shall be signed by an authorized officer or attorney of the corporation and the corporate seal shall be affixed immediately adjoining the signature of the person executing the bond, as provided for in § 113.25.

(f) *Two or more corporate sureties as sureties on the same obligation*. Two or more corporate sureties may be accepted as sureties on any obligation the amount of which does not exceed the limitations of their aggregate qualifying power as fixed and determined by the Secretary of the Treasury. The amount for which each corporate surety may act as surety in all cases must be within the limitation prescribed by the Secretary, unless the excess is protected as prescribed in § 223.11, Bureau of Government Financial Operations Regulations (31 CFR 223.11). Each corporate surety shall limit its liability to a definite specified amount, in terms, upon the face of the bond by attaching the following:

CORPORATE SURETIES AGREEMENT FOR LIMITATION OF LIABILITY

____ (name of surety), ____ (surety code), a surety company incorporated under laws of the State of ____, authorized to conduct a surety business in the State of ____, and having its principal place of business at ____ (address), and ____ (names of surety), ____ (surety code), a surety company incorporated

under the laws of the State of ____ and having its principal place of business at ____ (address), as sureties, and ____ (name of principal), as principal, are jointly and severally obligated to the United States in the amount of ____ ($) on a bond executed on _____ (date of execution) with each surety jointly and severally obligate with the principal in the amounts listed below and no more:

____ (name of surety) ____
($)
____ (name of surety) ____
($)

By this agreement the principal and sureties bind themselves and agree that for the purpose of allowing a joint action against any or all of them, and for that purpose only, this agreement and the bond under which they are obligated and which is incorporated by reference into this agreement, shall be treated as the joint and several as well as the several obligation of each of the parties.

Signed and sealed this ____ day of ____19____
____Principal
____Surety
____Surety
____Port Director (Drawback Office)

(g) *Power of attorney for the agent or attorney of the surety*. Corporations may execute powers of attorney to act in their behalf in the following manner:

(1) *Execution and contents*. The corporate surety power of attorney shall be executed on Customs Form 5297, and shall contain the following information:

(i) Corporate surety name and number,

(ii) Name and address of agent or attorney, and social security number of agent or attorney,

(iii) Port(s) where the agent or attorney is authorized to act,

(iv) Date of execution of power of attorney,

(v) Seal of the corporate surety,

(vi) Signature of any two principal officers of corporation, and

(vii) Dollar amount of authorization.

(2) *Filing*. The corporate surety power of attorney executed on Customs Form 5297 shall be filed with Customs. The original(s) of the corporate surety power of attorney shall be retained at the port where it(they) was(were) filed.

(3) *Use at port where power of attorney not filed before receipt of computer printout*. If the grantee desires to use the power of attorney at a port covered by the power of attorney, other than the one where the power of attorney was filed, before the first computer printout reflecting this power of attorney is received, the Customs Form 5297, shall be filed in triplicate (original and two copies), rather than duplicate. The second copy shall be validated by Customs and returned to the grantee. The grantee, at the time of filing a bond at a port other than the port where the power of attorney was filed, shall provide this validated copy of the power of attorney as proof of the grant of authority. The validity of this copy of the power of attorney shall expire when the first computer printout reflecting this power of attorney is received.

(4) *Term and revocation*. Corporate surety powers of attorney shall continue in force and effect until revoked. Any surety desiring that a designated agent or attorney be divested of a power of attorney must execute a revocation on Customs Form 5297. The revocation shall take effect on the close of business on the date requested provided the corporate surety power of attorney is received 5 days before the date requested; otherwise the revocation will be effective at the close of business 5 days after the request is received at the port office.

(5) *Change on the power of attorney*. No change shall be made on the Customs Form 5297 after it has been approved by Customs except the following: (i) Grantee name change, (ii) grantee address change, and (iii) the addition of port(s) to the corporate surety power of attorney on file. To make any other change to the power of attorney two separate Customs Forms 5297 shall be submitted, one revoking the previous power of attorney, and one containing a new grant of authority.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984; T.D. 95–77, 60 FR 50020, Sept. 27, 1995]

§ 113.38 Delinquent sureties.

(a) *Acceptance as surety when in default as principal on another Customs bond*. No person shall be accepted as surety on any Customs bond while in default as principal on any other Customs bond.

(b) *Acceptance as surety when in default as surety on another Customs bond*. A surety on a Customs bond which is in default may be accepted as surety on other Customs bonds only to the extent

that the surety assets are unencumbered by the default.

(c)(1) *Nonacceptance of bond by port director*. A port director may refuse to accept a bond secured by an individual or corporate surety when the surety, without just cause, is significantly delinquent either in the number of outstanding bills or dollar amounts thereof. If the port director believes that a substantial question of law exists as to whether a breach of bond obligation has occurred he should request internal advice under the provisions of § 177.11 from the Director, International Trade Compliance Division, Customs Headquarters.

(2) *Nonacceptance of bond upon instructions by Commissioner*. The Commissioner may, when he believes the circumstances warrant, issue instructions to the port directors that they shall not accept a bond secured by an individual or corporate surety when that surety, without just cause, is significantly delinquent either in the number of outstanding bills or dollar amounts thereof.

(3) *Notice of surety*. The appropriate Customs officer may take the above actions only after the surety has been provided reasonable notice with an opportunity to pay delinquent amounts, provide justification for the failure to pay, or demonstrate the existence of a significant legal issue justifying further delay in payment.

(4) *Review and final decision*. After a review of any submission made by the surety under paragraph (c)(3) of this section, if the appropriate Customs officer is still of the opinion bonds secured by the surety should not be accepted, written notice of the decision shall be provided to the surety in person or by certified mail, return receipt requested, at least five days before the date that Customs will no longer accept the bonds of the surety. When notice is sent to the surety of the decision not to accept the surety's bonds the appropriate Customs officer shall notify the Director, International Trade Compliance Division, Customs Headquarters. Notice shall be given to the importing public by posting a copy of the decision in the customhouse. The decision shall also be published in the Customs Bulletin.

(5) *Duration of decision*. Any decision not to accept a given surety's bond shall remain in effect for a minimum of five days or until all outstanding delinquencies are resolved, whichever is later.

(6) *Actions consistent with requirements*. Any action not to accept the bonds of a surety under paragraphs (c)(1) and (2) of this section shall be consistent with the requirements of this section.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991; T.D. 95–77, 60 FR 50020, Sept. 27, 1995; T.D. 99–27, 64 FR 13675, Mar. 22, 1999; T.D. 99–64, 64 FR 43266, Aug. 10, 1999]

§ 113.39 Procedure to remove a surety from Treasury Department Circular 570.

If a port director or Fines, Penalties, and Forfeitures Officer is unsatisfied with a surety company because the company has neglected or refused to pay a valid demand made on the surety company's bond or otherwise has failed to honor an obligation on that bond, the port director may take the following steps to recommend that the surety company be removed from Treasury Department Circular 570.

(a) *Report to Headquarters*. A port director or Fines, Penalties, and Forfeitures Officer shall send the following evidence to Headquarters, Attn: Director, International Trade Compliance Division.

(1) A copy of the bond in issue;

(2) A copy of the entry or other evidence which shows that there was a default on the bond;

(3) A copy of all notices, demands or correspondence sent to the surety company requesting the honoring of the bond obligation;

(4) A copy of all correspondence from the surety company; and

(5) A written report of the facts known to the port director or Fines, Penalties, and Forfeitures Officer showing the unsatisfactory performance by the surety company of the bond obligation(s).

(b) *Review by Headquarters*. The Director, International Trade Compliance Division, shall review submitted evidence and determine whether further action against the surety company is

warranted. If it is determined that further action is warranted, a report recommending appropriate action will be submitted to the Fiscal Assistant Secretary, Department of the Treasury, as required by § 223.18(a), Bureau of Government Financial Operations Regulations (31 CFR 223.18(a)). The port director and Fines, Penalties, and Forfeitures Officer will be informed in writing of Headquarters action regarding their request for removal of the surety.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991; T.D. 95–77, 60 FR 50020, Sept. 27, 1995; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 113.40 Acceptance of cash deposits or obligations of the United States in lieu of sureties on bonds.

(a) *General provision.* In lieu of sureties on any bond required or authorized by any law, regulation, or instruction which the Secretary of the Treasury or the Commissioner of Customs is authorized to enforce, the port director is authorized to accept United States money, United States bonds (except for savings bonds), United States certificates of indebtedness, Treasury notes, or Treasury bills in an amount equal to the amount of the bond.

(b) *Authority to sell United States obligations on default.* At the time of deposit of any obligation of the United States, other than United States money, with the port director or other appropriate Customs officer, the obligor shall deliver a duly executed power of attorney and agreement authorizing the port director or other appropriate Customs officer, as, in case of any default in the performance of any of the conditions of the bond, to sell the obligation so deposited and to apply the proceeds of sale, in whole or in part, to the satisfaction of any damages, demands, or deficiency arising by reason of default. The format of the power of attorney and agreement, when the obligor is a corporation, is set forth below, and shall be modified as appropriate when the obligor is either an individual or a partnership:

POWER OF ATTORNEY AND AGREEMENT

(FOR CORPORATION)

____, (name of corporation) a corporation duly incorporated under the laws of the State of ____, and having its principal office in the City of ____, State of ____, as authorized by a resolution of the board of directors of the corporation, passed on the ____ day of ____, 19—, a duly certified copy of which is attached, does constitute and appoint _____ (name and official title of bond-approving officer), and his successors in office, as attorney for said corporation, for and in the name of the corporation to collect or to sell, assign, and transfer the securities described as follows:

_____

The securities having been deposited by it as security for the performance of the agreements undertaken in a bond with the United States, executed on the date of _____, 19—, the terms and conditions of which are incorporated by reference into this power of attorney and agreement and made a part hereof. The undersigned agrees that in case of any default in the performance of any of the agreements the attorney shall have full power to collect the securities or any part thereof, or to sell, assign, and transfer the securities or any part thereof at public or private sale, without notice, free from any equity of redemption and without appraisement or valuation, notice and right to redeem being waived and to apply the proceeds of the sale or collection in whole or in part to the satisfaction of any obligation arising by reason of default. The undersigned further agrees that the authority granted by this agreement is irrevocable. The corporation for itself, its successors and assigns, ratifies and confirms whatever the attorney shall do by virtue of this agreement.

Witnessed, signed, and sealed, this ____ day of ____ 19—.

[Corporate seal.]

By ____ _____

Before me, the undersigned, a notary public within and for the County of ____, in the State of ____ (or the District of Columbia), personally appeared ____ (name and title of officer) and for and in behalf of said ____, a corporation, acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this — day of ____, 19—.

[Notarial seal.]

Notary Public _____

NOTE: Securities must be described by title, date of maturity, rate of interest, denomination, serial number, and whether coupon or registered. Failure to give a complete description will warrant rejection of this power of attorney.

(c) *Application of United States money on default.* If cash is deposited in lieu of sureties on the bond, the port director or other appropriate Customs officer, as appropriate is authorized to apply the cash, in whole or in part, to the

satisfaction of any damages, demands, or deficiency arising by reason of a default under the bond.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984]

Subpart E—Production of Documents

§ 113.41 Entry made prior to production of documents.

When entry is made prior to the production of a required document, the importer shall indicate in the ''Missing Documents'' box (box 16) on Customs Form 7501 the missing document, whether the importer gives a bond or stipulates to produce the document.

§ 113.42 Time period for production of documents.

Except when another period is fixed by law or regulations, any document for the production of which a bond or stipulation is given shall be delivered within 120 days from the date of notice from Customs requesting such document, or within any extension of such time which may be granted pursuant to § 133.43(a). If the period ends on a Saturday, Sunday, or holiday, delivery on the next business day shall be accepted as timely.

[T.D. 85–167, 50 FR 40363, Oct. 3, 1985]

§ 113.43 Extension of time period.

(a) *Application received within time period.* If a document referred to in § 113.42 is not produced within 120 days from the date of the transaction in connection with which the bond was given, the port director, in his discretion, upon written application of the importer, may extend the period for one further period of 2 months.

(b) *Late application.* No application for the extension of the period of any bond given to assure the production of a missing document shall be allowed by the port director if the application is received later than 2 months after the expiration of the period of the bond, and any extension shall not be allowed by the port director for a period of more than 2 months from the date of expiration of the period.

(c) *Acceptance of a free-entry or reduced-duty document prior to liquidation.* When a bond is given for the production of any free-entry or reduced-duty document and a satisfactory document is produced prior to liquidation of the entry or within the period during which a valid reliquidation may be completed, provided the failure to file was not due to willful negligence or fraudulent intent, it shall be accepted as satisfying the requirement that it be filed in connection with the entry, and the bond charge for its production shall be cancelled.

[T.D. 84-213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 85-167, 50 FR 40363, Oct. 3, 1985]

§ 113.44 Assent of sureties to an extension of a bond.

(a) *Extension prescribed by law or regulations.* The assent of the sureties to any extension of the period prescribed in a bond is not necessary when the extension is authorized by law or regulations.

(b) *Other extension.* The assent of the sureties shall be obtained before any extension of the period prescribed in a bond other than an extension authorized by law or regulation, is allowed.

§ 113.45 Charge for production of a missing document made against a continuous bond.

When a continuous bond secures the production of a missing document and the bond is breached by the principal's failure to timely produce that document, the claim for liquidated damages shall be in an amount equal to the amount of the single entry bond that would have been taken had the transaction been covered by a single entry bond.

Subpart F—Assessment of Damages and Cancellation of Bond

§ 113.51 Cancellation of bond or charge against the bond.

The Commissioner of Customs may authorize the cancellation of any bond provided for in this part or any charge that may have been made against the bond, in the event of a breach of any condition of the bond, upon payment of a lesser amount or penalty or upon

such other terms and conditions as may be deemed sufficient.

§ 113.52 Failure to satisfy the bond.

If any Customs bond, except one given only for the production of free-entry or reduced-duty documents (see §§113.43(c) of this chapter), is unsatisfied upon the expiration of 90 days after liability has accrued under the bond, the matter shall be reported to the Department of Justice for prosecution unless measures have been taken to file an application for relief or protest in accordance with the provisions of this chapter or to satisfactorily settle the matter.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 00–57, 65 FR 53575, Sept. 5, 2000]

§ 113.53 Waiver of Customs requirement supported by a bond.

(a) *Waiver by the Commissioner of Customs*. When a Customs requirement supported by a bond is waived by the Commissioner of Customs, the waiver may be:

(1) Unconditional, in which case the importer is relieved from the payment of liquidated damages;

(2) Conditioned upon prior settlement of the bond obligation by payment of liquidated damages; or

(3) Conditioned upon such other terms and conditions as the Commissioner may deem sufficient.

(b) *Waiver by the port director*. When a Customs requirement supported by a bond is waived by the port director pursuant to the authority conferred by these regulations, the waiver shall be unconditional.

§ 113.54 Cancellation of erroneous charges.

(a) *Bonds*. Section 172.11(b) of this chapter sets forth provisions relating to the cancellation of charges against the bond when it is determined that the act or omission forming the basis for the claim for liquidated damages did not in fact occur.

(b) *Carnets*. Section 114.34 of this chapter sets forth provisions relating to the cancellation of erroneous charges involving carnets.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 00–57, 65 FR 53575, Sept. 5, 2000]

§ 113.55 Cancellation of export bonds.

(a) *Manner of cancellation*. A bond to assure exportation as defined in §101.1 of this chapter may be cancelled:

(1) *Upon exportation*. Upon the listing of the merchandise on the outward manifest or outward bill of lading, the inspector's certificate of lading, the record of clearance of the vessel or of the departure of the vehicle, and the production of a foreign landing certificate if the certificate is required by the port director.

(2) *Upon payment of liquidated damages*. Upon the payment of liquidated damages.

(b) *Cancellation of bond charges of an international carrier*. The conditions of the bond of an international carrier may be considered as having been complied with upon the production of the applicable documents listed in paragraph (a)(1) of this section.

(c) *Foreign landing certificate*. A foreign landing certificate, when required, shall be produced within six months from the date of exportation and shall be signed by a revenue officer of the foreign country to which the merchandise is exported, unless it is shown that the country has no Customs administration, in which case the certificate may be signed by the consignee or by the vessel's agent at the place of landing. Landing certificates are required in the following cases:

(1) *Mandatory*. A landing certificate shall be required in every case to establish the exportation of narcotic drugs or any equipment, stores (except such articles as are placed on board vessels or aircraft under the provisions of section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317)), or machinery for vessels.

(2) *Optional with the port director*. A landing certificate may be required by the port director for merchandise exported from the United States, or residue cargo, when a certificate is deemed necessary for the protection of the revenue.

(3) *Waiver*. Except as provided in § 4.88 of this chapter, in cases where landing certificates are required and they cannot be produced, an application for waiver thereof may be made to the Commissioner of Customs through the port director, accompanied by such proof of exportation and landing abroad as may be available.

(d) *Articles less than $10*. In the case of articles for which the ordinary Customs duty estimated at the time of entry did not exceed $10 and which are exported without Customs supervision, but within the period during which the articles are authorized to remain in the Customs territory of the United States under bond (including any lawful extension), the bond may be cancelled upon production of evidence of exportation satisfactory to the port director.

Subpart G—Customs Bond Conditions

§ 113.61 General.

Each section in this subpart identifies specific coverage for a particular Customs activity. When an individual or organization files a bond with Customs the activity in which they plan on engaging will be identified on the bond. The bond conditions listed in this subpart which correspond to that activity will be incorporated by reference into the bond.

§ 113.62 Basic importation and entry bond conditions.

A bond for basic importation and entry shall contain the conditions listed in this section and may be either a single entry or a continuous bond.

BASIC IMPORTATION AND ENTRY BOND CONDITIONS

(a) *Agreement to Pay Duties, Taxes, and Charges*. (1) If merchandise is imported and released from Customs custody or withdrawn from a Customs bonded warehouse into the commerce of, or for consumption in, the United States, or under § 181.53 of this chapter is withdrawn from a duty-deferral program for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, the obligors (principal and surety, jointly and severally) agree to:

(i) Deposit, within the time prescribed by law or regulation, any duties, taxes, and charges imposed, or estimated to be due, at the time of release or withdrawal; and

(ii) Pay, as demanded by Customs, all additional duties, taxes, and charges subsequently found due, legally fixed, and imposed on any entry secured by this bond.

(2) If the principal enters any merchandise into a Customs bonded warehouse, the obligors agree;

(i) To pay any duties, taxes, and charges found to be due on any of that merchandise which remains in the warehouse at the expiration of the warehousing time limit set by law; and

(ii) That the obligation to pay duties, taxes, and charges on the merchandise applies whether it is properly withdrawn by the principal, or by the principal's transferee, or is unlawfully removed by the principal or any other person, without regard to whether the merchandise is manipulated, unless payment was made or secured to be made by some other person.

(3) Under this agreement, the obligation to pay any and all duties, taxes, and charges due on any entry ceases on the date the principal timely files with the port director a bond of the owner in which the owner agrees to pay all duties, taxes, and charges found due on that entry; provided a declaration of the owner has also been properly filed.

(b) *Agreement to Make or Complete Entry*. If all or part of imported merchandise is released before entry under the provisions of the special delivery permit procedures under 19 U.S.C. 1448(b), released before completion of the entry under 19 U.S.C. 1484(a), or withdrawn from warehouse under 19 U.S.C. 1557(a) (see § 10.62b of this chapter), the principal agrees to file within the time and in the manner prescribed by law and regulation, documentation to enable Customs to:

(1) Determine whether the merchandise may be released from Customs custody;

(2) Properly assess duties on the merchandise;

(3) Collect accurate statistics with respect to the merchandise; and

(4) Determine whether applicable requirements of law and regulation are met.

(c) *Agreement to Produce Documents and Evidence.* If merchandise is released conditionally to the principal before all required documents or other evidence is produced, the principal agrees to furnish Customs with any document or evidence as required by law or regulation, and within the time specified by law or regulations.

(d) *Agreement to Redeliver Merchandise.* If merchandise is released conditionally from Customs custody to the principal before all required evidence is produced, before its quantity and value are determined, or before its right of admission into the United States is determined, the principal agrees to redeliver timely, on demand by Customs, the merchandise released if it:

(1) Fails to comply with the laws or regulations governing admission into the United States;

(2) Must be examined, inspected, or appraised as required by 19 U.S.C. 1499; or

(3) Must be marked with the country of origin as required by law or regulation.

It is understood that any demand for redelivery will be made no later than 30 days after the date that the merchandise was released or 30 days after the end of the conditional release period (whichever is later).

(e) *Agreement to Rectify Any Non-Compliance with Provisions of Admission.* If merchandise is released conditionally to the principal before its right of admission into the United States is determined, the principal, after notification, agrees to mark, clean, fumigate, destroy, export or do any other thing to the merchandise in order to comply with the law and regulations governing its admission into the United States within the time period set in the notification.

(f) *Agreement for Examination of Merchandise.* If the principal obtains permission to have any merchandise examined elsewhere than at a wharf or other place in charge of a Customs officer, the principal agrees to:

(1) Hold the merchandise at the place of examination until the merchandise is properly released;

(2) Transfer the merchandise to another place on receipt of instructions from Customs made before release; and

(3) Keep any Customs seal or cording on the merchandise intact until the merchandise is examined by Customs.

(g) *Reimbursement and Exoneration of the United States.* The obligors agree to:

(1) Pay the compensation and expenses of any Customs officer, as required by law or regulation; and

(2) Exonerate the United States and its officers from any risk, loss, or expense arising out of principal's importation, entry, or withdrawal of merchandise.

(h) *Agreement on Duty-Free Entries or Withdrawals.* If the principal enters or withdraws any merchandise, without payment of duty and tax, or at a reduced rate of duty and tax, as permitted under the law, the principal agrees:

(1) To use and handle the merchandise in the manner and for the purpose entitling it to duty-free treatment;

(2) If a fishing vessel, to present the original approved application to Customs within 24 hours on each arrival of the vessel in the Customs territory of the United States from a fishing voyage;

(3) To furnish timely proof to Customs that any merchandise entered or withdrawn under any law permitting duty-free treatment was used in accordance with that law; and

(4) To keep safely all withdrawn beverages remaining on board while the vessel is in port, as may be required by Customs.

(i) *Agreement to comply with Customs Regulations applicable to Customs security areas at airports.* If access to the Customs security areas at airports is desired, the principal (including its employees, agents, and contractors) agrees to comply with the Customs Regulations in this chapter applicable to Customs security areas at airports. If the principal defaults, the obligors (principal and surety, joint and severally) agree to pay liquidated damages of $1000 for each default or such other amount as may be authorized by law or regulation.

(j) *Agreement to comply with electronic entry and/or advance cargo information filing requirements.* (1) If the principal is

qualified to utilize electronic entry filing as provided for in part 143, subpart D, of this chapter, the principal agrees to comply with all conditions set forth in that subpart and to send and accept electronic transmissions without the necessity of paper copies.

(2) If the principal elects to provide advance inward air or truck cargo information to Customs and Border Protection (CBP) electronically, the principal agrees to provide such cargo information to CBP in the manner and in the time period required, respectively, under § 122.48a or 123.92 of this chapter. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each regulation violated.

(k) *Agreement to ensure and establish issuance of softwood lumber export permit and collection of export fees.* In the case of a softwood lumber product imported from Canada that is subject to the requirement that the Government of Canada issue an export permit pursuant to the Softwood Lumber Agreement, the principal agrees, as set forth in § 12.140(a) of this chapter, to assume the obligation to ensure within 20 working days of release of the merchandise, and establish to the satisfaction of Customs, that the applicable export permit has been issued by the Government of Canada.

(l) *Consequence of default.* (1) If the principal defaults on agreements in this condition other than conditions in paragraphs (a), (g), (i), (j)(2), or (k) of this section the obligors agree to pay liquidated damages equal to the value of the merchandise involved in the default, or three times the value of the merchandise involved in the default if the merchandise is restricted or prohibited merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation.

(2) It is understood and agreed that whether the default involves merchandise is determined by Customs and that the amount to be collected under these conditions shall be based upon the quantity and value of the merchandise as determined by Customs. Value as used in these provisions means value as determined under 19 U.S.C. 1401a.

(3) If the principal defaults on agreements in this condition other than conditions (a) or (g) and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default or such other amount as may be authorized by law or regulation.

(4) If the principal defaults on agreements in the condition set forth in paragraph (a)(1)(i) of this section only, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to two times the unpaid duties, taxes and charges estimated to be due or $1,000, whichever is greater. A default on the condition set forth in paragraph (a)(1)(i) of this section shall be presumed if any monetary instrument authorized for the payment of estimated duties, taxes and charges by § 24.1(a) of this chapter is returned unpaid by a financial institution, or if a payment authorized under Automated Clearinghouse (see § 24.25 of this chapter) is not transmitted electronically to Customs in a timely manner. If the principal defaults on agreements in both of the conditions as set forth in paragraphs (a)(1)(i) and (b) of this section, the measure of liquidated damages assessed shall be as provided in paragraph (l)(1) of this section for a default of the agreements in the condition set forth in paragraph (b) of this section. For purposes of this paragraph, the phrase ''unpaid duties, taxes and charges'' shall include any appropriate ad valorem fees described in § 24.23 of this chapter, fees relating to dutiable mail described in § 24.22(f) of this chapter, and harbor maintenance fees described in § 24.24(e)(3) (i) and (ii) of this chapter.

(5) If the principal defaults on agreements in the condition set forth in paragraph (k) of this section only, the

obligors agree to pay liquidated damages equal to $100 per thousand board feet of the imported lumber.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 88–46, 53 FR 29230, Aug. 3, 1988; T.D. 88–72, 53 FR 45902, Nov. 15, 1988; T.D. 90–92, 55 FR 49884, Dec. 3, 1990; T.D. 93–37, 58 FR 30984, May 28, 1993; T.D. 96–14, 61 FR 2911, Jan. 30, 1996; T.D. 96–18, 61 FR 6780, Feb. 22, 1996; T.D. 97–9, 62 FR 8623, Feb. 26, 1997; T.D. 98–56, 63 FR 32945, June 16, 1998; T.D. 00–87, 65 FR 77815, Dec. 13, 2000; T.D. 01–26, 66 FR 16854, Mar. 28, 2001; CBP Dec. 03–32, 68 FR 68169, Dec. 5, 2003]

§ 113.63 Basic custodial bond conditions.

A basic custodial bond shall contain the conditions listed in this section and shall be a continuous bond.

BASIC CUSTODIAL BOND CONDITIONS

(a) *Receipt of Merchandise*. The principal agrees:

(1) To operate as a custodian of any bonded merchandise received, including merchandise collected for transport to his facility, and to comply with all regulations regarding the receipt, carriage, safekeeping, and disposition of such merchandise;

(2) To accept only merchandise authorized under Customs Regulations;

(3) To maintain all records required by regulations relating to merchandise received into bond, and to produce the records upon demand by an authorized Customs officer;

(4) If authorized to use the alternative transfer procedure set forth in § 144.34(c) of this chapter, to operate as constructive custodian for all merchandise transferred under those procedures, thereby assuming primary responsibility for the continued proper custody of the merchandise notwithstanding its geographical location;

(5) If authorized to operate a container station under the Customs Regulations, to report promptly to Customs each arrival of a container and its merchandise by delivery of the manifest and the application for transfer, or by other approved notice.

(b) *Carriage and Safekeeping of Merchandise*. The principal agrees:

(1) If a bonded carrier, to use only authorized means of conveyance;

(2) To keep safe any merchandise placed in its custody including, when approved by Customs, repacking and transferring such merchandise when necessary for its safety or preservation;

(3) To comply with Customs Regulations relating to the handling of bonded merchandise; and

(4) If authorized to use the alternative transfer procedure set forth in § 144.34(c) of this chapter, to keep safe any merchandise so transferred.

(c) *Disposition of Merchandise*. The principal agrees:

(1) If a bonded carrier, to report promptly the arrival of merchandise at the destination port by delivering to Customs the manifest or other approved notice;

(2) If a cartage or lighterage business, to deliver promptly and safely to Customs any merchandise placed in the principal's custody together with any related cartage and lighterage ticket and manifest;

(3) To dispose of merchandise in a manner authorized by Customs Regulations; and

(4) To file timely with Customs any report required by Customs Regulations.

(5) In the case of Class 9 warehouses, to provide reasonable assurance of exportation of merchandise withdrawn under the sales ticket procedure of § 144.37(h) of this chapter.

(d) *Agreement to Redeliver Merchandise to Customs*. If the principal is designated a bonded carrier, or licensed to operate a cartage or lighterage business, or authorized to use the alternative transfer procedure set forth in § 144.34(c) of this chapter, the principal agrees to redeliver timely, on demand by Customs, any merchandise delivered to unauthorized locations or to the consignee without the permission of Customs. It is understood that the demand for redelivery shall be made no later than 30 days after Customs discovers the improper delivery.

(e) *Compliance with Licensing and Operating Requirements*. The principal agrees to comply with all Customs laws and regulations relating to principal's facilities, conveyances, and employees.

(f) *Agreement to comply with Customs Regulations applicable to Customs security areas at airports.* If access to Customs security areas at airports is desired, the principal (including its employee, agents, and contractors) agrees to comply with the Customs Regulations applicable to Customs security areas at airports. If the principal defaults, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages of $1000 for each default or such other amount as may be authorized by law or regulation.

(g) *Reimbursement and Exoneration of the United States.* The principal and surety agree to:

(1) Pay the compensation and expenses of any Customs officer as required by law or regulation;

(2) Pay the cost of any locks, seals, and other fastenings required by Customs Regulations for securing merchandise placed in the principal's custody;

(3) Pay for any expenses connected with the suspension or termination of the bonded status of the premises;

(4) Exonerate the United States and its officers from any risk, loss, or expense arising out of the principal's custodial operation; and

(5) Pay any charges found to be due Customs arising out of the principal's custodial operation.

(h) *Consequence of Default.* (1) If the principal defaults on conditions (a) through (e) in this agreement, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to the value of the merchandise involved in the default or three times the value of the merchandise involved in the default if the merchandise is restricted or prohibited merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation.

(2) It is understood and agreed that the amount to be collected under conditions (a) through (e) of this agreement shall be based upon the quantity and value of the merchandise as determined by Customs. Value as used in these provisions means value as determined under 19 U.S.C. 1401a.

(3) If the principal defaults on conditions (a) through (e) in this agreement and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default or such other amount as may be authorized by law or regulation. It is understood and agreed that whether the default involves merchandise is determined by Customs.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984, as amended by T.D. 86–178, 51 FR 34959, Oct. 1, 1986; T.D. 88–46, 53 FR 29230, Aug. 3, 1988; T.D. 88–72, 53 FR 45902, Nov. 15, 1988; 54 FR 33672, Aug. 16, 1989; T.D. 92–81, 57 FR 37701, Aug. 20, 1992; T.D. 94–81, 59 FR 51495, Oct. 12, 1994; T.D. 97–19, 62 FR 15840, Apr. 3, 1997; T.D. 01–26, 66 FR 16854, Mar. 28, 2001]

§ 113.64 International carrier bond conditions.

A bond for international carriers shall contain the conditions listed in this section and may be either a single entry or continuous bond.

INTERNATIONAL CARRIER BOND CONDITIONS

(a) *Agreement to Pay Penalties, Duties, Taxes, and Other Charges.* If any vessel, vehicle, or aircraft, or any master, owner, or person in charge of a vessel, vehicle or aircraft, slot charterer, or any non-vessel operating common carrier as defined in § 4.7(b)(3)(ii) of this chapter or other party as specified in § 122.48a(c)(1)(ii)–(c)(1)(iv) of this chapter, incurs a penalty, duty, tax or other charge provided by law or regulation, the obligors (principal and surety, jointly and severally) agree to pay the sum upon demand by Customs and Border Protection (CBP). If the principal (carrier) fails to pay passenger processing fees to Customs no later than 31 days after the close of the calendar quarter in which they were collected pursuant to § 24.22(g) of this chapter, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to two times the passenger processing fees which have been collected but not timely paid to Customs as prescribed by regulation.

(b) *Agreement on Unlading, Safekeeping, and Disposition of Merchandise, Supplies, Crew Purchases, Etc.* The principal agrees to comply with all laws and Customs Regulations applicable to unlading, safekeeping, and disposition

of merchandise, supplies, crew purchases, and other articles on board the vehicle, vessel, or aircraft; and to redeliver the foregoing to Customs upon demand as provided by Customs Regulations. If principal defaults, obligors agree to pay liquidated damages equal to the value of the merchandise involved in the default or three times the value of the merchandise involved in the default if the merchandise is restricted or prohibited merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation. It is understood and agreed that the amount to be collected under this condition shall be based upon the quantity and value of the merchandise as determined by Customs. Value as used in these provisions means value as determined under 19 U.S.C. 1401a.

(c) *Non-vessel operating common carrier (NVOCC); other party*. If a slot charterer, non-vessel operating common carrier (NVOCC) as defined in § 4.7(b)(3)(ii) of this chapter, or other party specified in § 122.48a(c)(1)(ii)–(c)(1)(iv) of this chapter, elects to provide advance cargo information to CBP electronically, the NVOCC or other party, as a principal under this bond, in addition to compliance with the other provisions of this bond, also agrees to provide such cargo information to CBP in the manner and in the time period required under those respective sections. If the NVOCC or other party, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each regulation violated.

(d) *Agreement to Deliver Export Documents*. If the principal's vessel, vehicle, or aircraft is granted clearance without filing a complete outward manifest and all required export documents, the principal agrees to file timely the required manifest and all required export documents. If the principal defaults, the obligors agree to pay liquidated damages of $50 per day for the first 3 days, and $100 per day thereafter, up to $1,000 in total.

(e) *Agreement to comply with Customs Regulations applicable to Customs security areas at airports*. If access to Customs security areas at airports is desired, the principal (including its employees, agents, and contractors) agrees to comply with the Customs Regulations applicable to Customs security areas at airports. If the principal defaults, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages of $1000 for each default or such other amount as may be authorized by law or regulation.

(f) *Exoneration of the United States*. The obligors agree to exonerate the United States and its officers from any risk, loss, or expense arising out of entry or clearance of the carrier, or handling of the articles on board.

(g) *Unlawful disposition*. (1) Principal agrees that it will not allow seized or detained merchandise, marked with warning labels of the fact of seizure or detention, to be placed on board a vessel, vehicle, or aircraft for exportation or to be otherwise disposed of without written permission from Customs, and that if it fails to prevent such placement or other disposition, it will redeliver the merchandise to Customs within 30 days, upon demand made within 10 days of Customs discovery of the unlawful placement or other disposition.

(2) Principal agrees that it will act, in regard to merchandise in its possession on the date the redelivery demand is issued, in accordance with any Customs demand for redelivery made within 10 days of Customs discovery that there is reasonable cause to believe that the merchandise was exported in violation of the export control laws.

(3) Obligors agree that if the principal defaults in either of these obligations, they will pay, as liquidated damages, an amount equal to three times the value of the merchandise which was not redelivered.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 85–123, 50 FR 29954, July 23, 1985; T.D. 87–124, 52 FR 37135, Oct. 5, 1987; T.D. 88–46, 53 FR 29230, Aug. 3, 1988; 53 FR 44186, Nov. 2, 1988; T.D. 88–72, 53 FR 45902, Nov. 15, 1988; T.D. 93–37, 58 FR 30984, May 28, 1993; T.D. 01–26, 66 FR 16854, Mar. 28, 2001; T.D. 02–62, 67 FR 66333, Oct. 31, 2002; CBP Dec. 03–32, 68 FR 68169, Dec. 5, 2003]

§ 113.65 Repayment of erroneous drawback payment bond conditions.

A bond for repayment of erroneous drawback shall contain the conditions

listed in this section and may be either a single entry or continuous bond.

REPAYMENT OF ERRONEOUS DRAWBACK PAYMENT BOND CONDITIONS

(a) *Agreement Under Exporter's Summary Procedure.* If the principal is permitted to file drawback claims under the exporter's summary procedure and the principal's drawback claims are paid before a final determination that the principal:

(1) Is entitled to the drawback claimed.

(2) Correctly described the exported articles in the claim.

(3) Correctly stated the facts of exportation in the claim; the principal and surety, jointly and severally agree to refund, on demand, any money claimed by Customs to have been erroneously paid as a result of an incorrect statement on the drawback claim, and

(4) The principal agrees to pay any charges due Customs as provided by law or regulation.

(b) *Agreement Under Accelerated Payment of Drawback.* If the principal receives an accelerated payment of drawback based on the principal's calculation of the drawback claim, the principal and surety, jointly and severally agree to refund on demand the full amount of any overpayment, as determined on liquidation of the drawback claim.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 86–178, 51 FR 34959, Oct. 1, 1986; T.D. 88–72, 53 FR 45902, Nov. 15, 1988]

§ 113.66 Control of containers and instruments of international traffic bond conditions.

A bond for control of containers and instruments of international traffic shall contain the conditions listed in this section and shall be a continuous bond.

CONTROL OF CONTAINERS AND INSTRUMENTS OF INTERNATIONAL TRAFFIC BOND CONDITIONS

(a) *Agreement to Enter Any Diverted Instrument of International Traffic.* If the principal brings in and takes out of the Customs territory of the United States an instrument of international traffic without entry and without payment of duty, as provided by the Customs Regulations and section 322(a), Tariff Act of 1930, as amended, the principal agrees to:

(1) Report promptly to Customs when the instrument is diverted to point-to-point local traffic in the Customs territory of the United States or when the instrument is otherwise withdrawn in the Customs territory of the United States from its use as an instrument of international traffic;

(2) Promptly enter the instrument unless exempt from entry; and

(3) Pay any duty due on the instrument at the rate in effect and in its condition on the date of diversion or withdrawal.

(b) *Agreement to Comply With the Provisions of subheading 9801.00.10, or 9803.00.50 Harmonized Tariff Schedule of the United States (HTSUS).* If the principal gets free release of any serially numbered shipping container classifiable under subheading 9801.00.10 or 9803.00.50, HTSUS, the principal agrees:

(1) Not to advance the value or improve its condition abroad or claim (or make a previous claim) drawback on, any container released under subheading 9801.00.10, HTSUS;

(2) To pay the initial duty due and otherwise comply with every condition in subheading 9803.00.50, HTSUS, on any container released under that item;

(3) To mark that container in the manner required by Customs;

(4) To keep records which show the current status of that container in service and the disposition of that container if taken out of service; and

(5) To remove or strike out the markings on that container when it is taken out of service or when the principal transfers ownership of it.

(c) *Agreement to comply with application approved under 19 CFR 10.41b(b).* If the principal establishes a program for the cross-border movements of shipping devices based upon an application approved as provided in §10.41b(b) of this chapter (19 CFR 10.41b(b)), the principal agrees:

(1) To timely file complete and accurate reports on the shipping devices, and to pay any applicable duty due on the devices and repairs made to such

devices, as provided in the approved application;

(2) To retain complete and accurate records regarding the shipping devices, and to make such records available to Customs for inspection and audit upon reasonable notice, as also required in the approved application; and

(3) To otherwise comply with every other condition of the approved application.

(d) *Consequence of Default.* (1) If the principal defaults on agreements in these conditions, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to the value of the merchandise involved in the default or such other amount as may be authorized by law or regulation.

(2) It is understood and agreed that the amount to be collected under these conditions shall be based upon the quantity and value of the merchandise as determined by Customs.

(3) If the principal defaults on the agreements in these conditions and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default or such other amount as may be authorized by law or regulation. It is understood and agreed that whether the default involves merchandise is determined by Customs.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 88–72, 53 FR 45902, Nov. 15, 1988; T.D. 89–1, 53 FR 51255, Dec. 21, 1988; T.D. 96–20, 61 FR 7990, Mar. 1, 1996]

§ 113.67 Commercial gauger and commercial laboratory bond conditions.

COMMERCIAL GAUGER BOND CONDITIONS

(a) *Commercial gauger bond conditions.* A commercial gauger's bond shall contain the conditions listed in this section and shall be a continuous bond.

(1) If the principal is a commercial gauger whose reports of gauging or whose samples are accepted for Customs purposes, the principal agrees to:

(i) Gauge or sample merchandise according to the standards and procedures set out in the Customs Regulations;

(ii) Abide by the requirements set out in § 151.13(b) of this chapter; and

(iii) Submit properly any required report, proof, abstract, or sample to Customs.

(2)(i) If the principal defaults, the obligors (principal and surety) agree to pay liquidated damages equal to the value of the merchandise involved in the default or three times the value of the merchandise involved in the default if the merchandise is restricted or prohibited merchandise or alcoholic beverages or such other amount as may be authorized by law or regulation.

(ii) If the principal defaults on the agreements in these conditions and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default or such other amount as may be authorized by law or regulation.

(iii) It is understood and agreed that whether the default involves merchandise is determined by Customs, that the amount to be collected under this condition shall be based on the quantity and value of the merchandise as determined by Customs and that value as used in these provisions means value as determined under 19 U.S.C. 1401a.

COMMERCIAL LABORATORY BOND CONDITIONS

(b) *Commercial laboratory bond conditions.* A commercial laboratory's bond shall contain the conditions listed in this subsection and shall be a continuous bond.

(1) If the principal is a commercial laboratory whose laboratory analysis reports are accepted for Customs purposes, the principal agrees to:

(i) Conduct laboratory analyses according to the standards and procedures set out in the Customs Regulations;

(ii) Abide by the requirements set out in §§ 151.12(c) and 151.14 of this chapter; and

(iii) Submit properly any required report, proof, abstract, or sample to Customs.

(2)(i) If the principal defaults, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to the value of the merchandise involved in the default or three

times the value of the merchandise involved in the default if the merchandise is restricted or prohibited merchandise or alcoholic beverages or such other amount as may be authorized by law or regulation.

(ii) If the principal defaults on the agreements in these conditions and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default or such other amount as may be authorized by law or regulation.

(iii) It is understood and agreed that whether the default involves merchandise is determined by Customs, that the amount to be collected under this condition shall be based on the quantity and value of the merchandise as determined by Customs and that value as used in these provisions means value as determined under 19 U.S.C. 1401a.

[T.D. 87–39, 52 FR 9787, Mar. 26, 1987, as amended by T.D. 88–72, 53 FR 45902, Nov. 15, 1988; T.D. 99–67, 64 FR 48534, Sept. 7, 1999; T.D. 01–26, 66 FR 16854, Mar. 28, 2001]

§ 113.68 Wool and fur products labeling acts and fiber products identification act bond conditions.

A bond to comply with wool and fur products labeling acts and fiber products identification act shall contain the conditions listed in this section and shall be a single entry bond.

WOOL AND FUR PRODUCTS LABELING ACTS AND FIBER PRODUCTS IDENTIFICATION ACT

(a) If the principal obtains release from Customs custody of any wool or fur product (hereafter ''merchandise'') that is subject to the provisions of the Wool Products Labeling Act of 1939, the Fur Products Labeling Act, or the Fiber Products Identification Act, the principal guarantees that the merchandise complies with every provision of those Acts, as applicable.

(b) If any of the released merchandise does not comply with each applicable provision of the Wool Products Labeling Act of 1939, the Fur Products Labeling Act, or the Fiber Products Identification Act, the obligors (principal or surety, jointly and severally) agree to pay liquidated damages equal to two times the value of the merchandise involved in the default and duty thereon. It is understood and agreed that the amount to be collected under this condition shall be based upon the quantity and value of the merchandise as determined by Customs. Value as used in these provisions means value as determined under 19 U.S.C. 1401a.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 88–72, 53 FR 45902, Nov. 15, 1988]

§ 113.69 Production of bills of lading bond conditions.

A bond to produce a bill of lading shall contain the conditions listed in this section and shall be a single entry bond.

PRODUCTION OF BILL OF LADING BOND CONDITIONS

If the principal obtains release of any merchandise before filing a valid bill of lading on that merchandise with Customs, the obligors (principal and surety, jointly and severally) agree to:

(a) Produce timely a valid bill of lading for the merchandise; and

(b) Relieve the United States and its employees from all liability, to indemnify the United States and its employees against loss, and defend any action brought on a claim for loss based on the release without production of a valid bill of lading.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 88–72, 53 FR 45902, Nov. 15, 1988]

§ 113.70 Bond condition to indemnify United States for detention of copyrighted material.

A bond to indemnify the United States for detention of copyrighted material shall contain the conditions listed in this section and shall be a single entry bond.

BOND CONDITION TO INDEMNIFY UNITED STATES FOR DETENTION OF COPYRIGHTED MATERIAL

If Customs detains any articles alleged by the principal to be a piratical copy of material covered by the principal's copyright pending a final determination whether the articles are prohibited entry under the copyright laws, the obligors (principal and surety, jointly and severally) agree to hold the

United States and its employees, and the importer or owner of those articles, jointly and severally, harmless from any material depreciation of those articles and any loss or damage caused by the detention in the event it is finally determined that the articles are not a piratical copy of the material.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 88–72, 53 FR 45902, Nov. 15, 1988]

§ 113.71 Bond condition to observe neutrality.

A bond to observe neutrality shall contain the conditions listed in this section and shall be a single entry bond.

BOND CONDITION TO OBSERVE NEUTRALITY

(a) If clearance is granted to the principal's vessel, which is armed or is built for a war-like purpose, with a cargo of arms and munitions, so that it is likely to be used to commit hostilities against people or countries with whom the Government of the United States is at peace, the principal guarantees that the vessel will not be used to commit hostilities against any country, state, colony, or people with whom the Government is at peace.

(b) If the principal defaults, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to twice the value of the vessel and cargo.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 88–72, 53 FR 45902, Nov. 15, 1988]

§ 113.72 Bond condition to pay court costs (condemned goods).

A bond to pay court costs (condemned goods) shall contain the condition listed in this section and shall be a single entry bond.

BOND CONDITION TO PAY COURT COSTS (CONDEMNED GOODS)

If any seized goods belonging to principal are condemned the obligors (principal and surety, jointly and severally) agree to pay all costs of the condemnation proceedings.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 88–72, 53 FR 45902, Nov. 15, 1988]

§ 113.73 Foreign trade zone operator bond conditions.

A bond of a foreign trade zone operator shall contain the conditions listed in this section and shall be a continuous bond.

FOREIGN TRADE ZONE OPERATOR BOND CONDITIONS

If the principal is authorized to operate a foreign trade zone or subzone:

(a) *Receipt, Handling, and Disposition of Merchandise.* The principal agrees to comply with:

(1) The law and Customs Regulations relating to the receipt (including merchandise received and receipted for transport to his zone), admission, status, handling, transfer, and removal of merchandise from the foreign trade zone or subzone, and

(2) The Customs Regulations concerning the maintenance of inventory control and recordkeeping systems covering merchandise in the foreign trade zone or subzone. If the principal defaults and the default involves merchandise other than domestic merchandise for which no permit for admission is required, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to the value of the merchandise involved in the default, or three times the value of the merchandise involved in the default if the merchandise is restricted or prohibited merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation. It is understood and agreed that whether the default involves merchandise is a determination made by Customs, that the amount to be collected under this condition shall be based upon the quantity and value of the merchandise as determined by Customs, and that value as used in these provisions means value as determined under 19 U.S.C. 1401a. If the principal defaults and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default, or such other amount as

may be authorized by law or regulations.

(b) *Agreement to Pay Duties, Taxes, and Charges*. The obligors agree to pay any duties, taxes, and charges found to be due on any merchandise, properly admitted to the foreign trade zone or subzone, which is found to be missing from the zone or cannot be accounted for in the zone, it being expressly understood and agreed that the amount of said duties, taxes, and charges shall be determined solely by Customs.

(c) *Reimbursement and Exoneration of the United States*. The obligors agree to:

(1) Exonerate the United States and its officers from any risk, loss, or expense arising from the principal's operation of the foreign trade zone or subzone;

(2) Pay the compensation and expenses of any Customs officer, as required by law or regulations.

(d) *Payment of Annual Fee*. The principal agrees to pay timely any annual fee or fees as provided in the Customs Regulations. If the principal defaults, the obligors agree to pay liquidated damages equal to the amount of the annual fee due but not paid and an amount equal to one percent of the annual fee for each of the first seven days the annual fee is in arrears, two percent of the annual fee for each of the succeeding seven days the annual fee is in arrears, and three percent of the annual fee for each day thereafter in which the annual fee is in arrears.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 86–16, 51 FR 5063, Feb. 11, 1986; T.D. 88–72, 53 FR 45902, Nov. 15, 1988; T.D. 94–81, 59 FR 51495, Oct. 12, 1994; T.D. 01–26, 66 FR 16854, Mar. 28, 2001]

§ 113.74 Bond conditions to indemnify a complainant under section 337 of Tariff Act of 1930, as amended.

A bond to indemnify a complainant under section 337 of the Tariff Act of 1930, as amended, must contain the conditions listed in appendix B to this part. The bond must be a single entry bond and must be filed in accordance with the provisions set forth in 19 CFR 12.39(b)(2). For the forfeiture or return of this bond, the provisions of 19 CFR 210.50(d) will apply.

[T.D. 00–87, 65 FR 77815, Dec. 13, 2000]

§ 113.75 Bond conditions for deferral of duty on large yachts imported for sale at United States boat shows.

A bond for the deferral of entry completion and duty deposit pursuant to 19 U.S.C. 1484b for a dutiable large yacht imported for sale at a United States boat show must conform to the terms of appendix C to this part. The bond must be filed in accordance with the provisions set forth in § 4.94a of this chapter.

[68 FR 13626, Mar. 20, 2003]

APPENDIX A TO PART 113—AIRPORT CUSTOMS SECURITY AREA BOND

AIRPORT CUSTOMS SECURITY AREA BOND

_____
(name of principal)

of _____

and _____

_____
(name of surety)

of _____

are held and firmly bound unto the United States of America in the sum of _____ dollars ($____), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WITNESS our hands and seals this _____ day of _____, 19_____.

WHEREAS, the principal (including the principal's employees, agents, and contractors) desires access to Customs airports security areas located at _____ Airport during the period of one year beginning on the _____ day of _____, 19_____, and ending on the _____ day of _____, 19_____, both dates inclusive;

Now, Therefore, the Condition of this Obligation is Such That—

The principal agrees to comply with the Customs Regulations applicable to Customs security areas at airports.

If the principal defaults on the condition of this obligation, the principal and surety jointly and severally, agree to pay liquidated damages of $1,000 for each default or such other amount as may be authorized by law or regulation.

Signed, Sealed, and Delivered in the Presence of—

_____

_____
Name

Address

_____

_____

_____

Name

Address

Principal (SEAL)

_____

_____

Name

Address

_____

_____

Name

Address

_____

_____

_____

Name

Address

Surety (SEAL)

_____

_____

Name

Address

[54 FR 10536, Mar. 14, 1989]

APPENDIX B TO PART 113—BOND TO INDEMNIFY COMPLAINANT UNDER SECTION 337, TARIFF ACT OF 1930, AS AMENDED

This appendix contains the bond to indemnify a complainant under section 337 of the Tariff Act of 1930, as amended. The provisions contained in §§12.39(b)(2) and 113.74 of the Customs Regulations (19 CFR Chapter I) and §210.50(d) of the U.S. International Trade Commission Regulations (19 CFR Chapter II) apply.

BOND TO INDEMNIFY COMPLAINANT UNDER SECTION 337, TARIFF ACT OF 1930, AS AMENDED

_____ as principal and _____ as surety, are held and bound to _____, as the complainant in U.S. International Trade Commission case/investigation number _____, of unfair practices or methods of competition in import trade in violation of section 337, Tariff Act of 1930, as amended, in the sum of _____ dollars ($_____), for payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, by these conditions.

Pursuant to the provisions of section 337, Tariff Act of 1930, as amended, the principal and surety recognize that the Commission has, according to the conditions described in its order, excluded from, or authorized, entry into the United States of the following merchandise

_____ under entry number _____, dated _____.

The principal and surety recognize that the Commission has excluded that merchandise from entry until its investigation is completed, or until its decision that there is a violation of section 337 becomes final.

The principal and surety recognize that certain merchandise excluded from entry by the Commission was, or may be, offered for entry into the United States while the Commission's prohibition is in effect.

The principal and surety recognize that the principal desires to obtain a release of that merchandise pending a final determination of the merchandise's admissibility into the United States, as provided under section 337, and, for that purpose, the principal and surety execute this stipulation:

If it is determined, as provided in section 337 of the Tariff Act of 1930, as amended, to exclude that merchandise from the United States, then, on notification from the port director of Customs, the principal is obligated to export or destroy under Customs supervision the merchandise released under this stipulation within 30 days from the date of the port director's notification.

The principal and surety, jointly and severally, agree that if the principal defaults on that obligation, the principal and surety shall pay to the complainant an amount equal to the face value of the bond as may be demanded by him/her under the applicable law and regulations.

Witness our hands and seals this _____ day of _____ (month), _____ (year).

_____ (seal)

Principal

_____ (seal)

Surety

[T.D. 00–87, 65 FR 77815, Dec. 13, 2000; 65 FR 80497, Dec. 21, 2000]

APPENDIX C TO PART 113—BOND FOR DEFERRAL OF DUTY ON LARGE YACHTS IMPORTED FOR SALE AT UNITED STATES BOAT SHOWS

BOND FOR DEFERRAL OF DUTY ON LARGE YACHTS IMPORTED FOR SALE AT UNITED STATES BOAT SHOWS

_____, as principal, and _____, as surety, are held and firmly bound to the UNITED STATES OF AMERICA in the sum of _____ dollars ($_____), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these conditions.

Pursuant to the provisions of 19 U.S.C. 1484b, the principal has imported at the port of _____ a dutiable large yacht (exceeding 79 feet in length, used primarily for recreation or pleasure, and previously sold by a manufacturer or dealer to a consumer) identified as _____ for sale at a boat show in the United States with deferral of entry

completion and duty deposit and has executed this obligation as a condition precedent to that deferral.

A failure to inform Customs in writing of an exportation, or to complete the required entry, within the 6-month bond period will give rise to a claim for liquidated damages unless the principal informs Customs of the exportation or completes the entry within the time limits prescribed in 19 CFR 4.94a. If the principal fails to comply with any condition of this obligation, which includes compliance with any requirement or condition set forth in 19 U.S.C. 1484b or 19 CFR 4.94a, the principal and surety jointly and severally agree to pay to Customs an amount of liquidated damages equal to twice the amount of duty on the large yacht that would otherwise be imposed under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States. For purposes of this paragraph, the term duty includes any duties, taxes, fees and charges imposed by law.

The principal will exonerate and hold harmless the United States and its officers from or on account of any risk, loss, or expense of any kind or description connected with or arising from the failure to store and deliver the large yacht as required, as well as from any loss or damage resulting from fraud or negligence on the part of any officer, agent, or other person employed by the principal.

WITNESS our hands and seals this _____ day of _____ (month), _____ (Year).

_____
(Name) (Address)

_____
_____ [SEAL]
(Principal)

_____
_____ [SEAL]
(Name) (Address)

_____ [SEAL]
(Surety)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the* _____ of the corporation named as principal in the attached bond; that _____, who signed the bond on behalf of the principal, was then _____ of that corporation; that I know his signature, and his signature to the bond is genuine; and that the bond was duly signed, sealed, and attested for and in behalf of the corporation by authority to its governing body.

_____
(CORPORATE SEAL)

(To be used when no power of attorney has been filed with the port director of customs.)

*May be executed by the secretary, assistant secretary, or other officer of the corporation.

[68 FR 13626, Mar. 20, 2003]

PART 114—CARNETS

Sec.
114.0 Scope.

Subpart A—General Provisions

114.1 Definitions.
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Subpart B—Issuing and Guaranteeing Associations

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114.31 Restrictions.
114.32 Samples for taking orders.
114.33 Action against carnet user.
114.34 Cancellation of erroneous charges.

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624.

SOURCE: T.D. 70–134, 35 FR 9261, June 13, 1970, unless otherwise noted.

§ 114.0 Scope.

This part is concerned with the use of international Customs documents known as carnets. It also contains provisions concerning the approval of associations to issue carnets in the United States covering merchandise to be exported and to guarantee carnets issued abroad covering merchandise to be imported. The carnet serves simultaneously as a Customs entry document and as a Customs bond.

Subpart A—General Provisions

§ 114.1 Definitions.

The following are general definitions for the purpose of part 114:

(a) *Commissioner*. ''Commissioner'' means the Commissioner of Customs.

(b) *Issuing association*. ''Issuing association'' means an association approved by the Commissioner for the issue of carnets in the Customs territory of the United States under a Customs Convention or bilateral Agreement to which the United States has acceded.

(c) *Guaranteeing association*. ''Guaranteeing association'' means an association approved by the Commissioner to guarantee the payment of obligations under carnets covering merchandise entering the Customs territory of the United States under a Customs Convention or bilateral Agreement to which the United States has acceded.

(d) *A.T.A. carnet*. ''A.T.A. carnet'' (Admission Temporaire—Temporary Admission) means the document reproduced as the Annex to the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods (TIAS 6631).

(e) [Reserved]

(f) *TIR carnet*. ''TIR carnet'' (Transport International Routier) means the document reproduced as Annex 1 to the Customs Convention on the International Transport of Goods under Cover of TIR Carnets.

(g) *TECRO/AIT Carnet*. ''TECRO/AIT carnet'' means the document issued pursuant to the Bilateral Agreement between the Taipei Economic and Cultural Representative Office (TECRO) and the American Institute in Taiwan (AIT) to cover the temporary admission of goods.

[T.D. 70–134, 35 FR 9261, June 13, 1970, as amended by T.D. 71–70, 36 FR 4490, Mar. 6, 1971; T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 85–180, 50 FR 42517, Oct. 21, 1985; T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

§ 114.2 Customs Conventions and Agreements.

The regulations in this part relate to carnets provided for in the following Customs Conventions and Agreements:

(a) Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods (hereinafter referred to as A.T.A. Convention).

(b) [Reserved]

(c) Customs Convention on the International Transport of Goods Under Cover of TIR Carnets, done at Geneva on November 14, 1975, as well as the 1959 TIR Convention, TIAS 6633.

(d) Agreement Between the Taipei Economic and Cultural Representative Office in the United States and the American Institute in Taiwan on TECRO/AIT Carnet for the Temporary Admission of Goods (hereinafter referred to as the Agreement).

[T.D. 70–134, 35 FR 9261, June 13, 1970, as amended by T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 85–180, 50 FR 42517, Oct. 21, 1985; T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

§ 114.3 Carnets.

(a) *Use*. A carnet issued in conformity with the provisions of a Convention or Agreement identified in § 114.2 and with the regulations in this part shall serve as an entry document within the scope contemplated by the applicable Convention or Agreement and as a bond for the performance of acts in compliance with the provisions of such Convention or Agreement and the Customs statutes and regulations which are involved. Such carnet shall:

(1) Show the period for which it is valid,

(2) Be fully completed in accordance with the provisions of the Convention or Agreement which provides for its issuance, and

(3) Include an English translation whenever the goods covered by a carnet are described in another language.

(b) *Area of validity*. Carnets are valid in the customs territory of the United States which includes only the States, the District of Columbia, and Puerto Rico.

[T.D. 71–70, 36 FR 4490, Mar. 6, 1971, as amended by T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

Subpart B—Issuing and Guaranteeing Associations

§ 114.11 Approval.

(a) *Documents to be furnished*. Before an association may be approved to serve as issuing association or guaranteeing association in the United States with respect to carnets authorized under a Customs Convention or Agreement to which the United States has acceded, such association shall furnish

the Commissioner a written undertaking, in a form satisfactory to the Commissioner, to perform the functions and fulfill the obligations specified in the Convention or Agreement under which carnets are to be issued or guaranteed. Evidence of affiliation with an appropriate international organization shall also be required if affiliation with such an organization is required by the Convention or Agreement under which carnets are to be issued or guaranteed.

(b) *Publication of notice of approval.* Notice of the approval of an issuing association or a guaranteeing association with respect to a Customs Convention or Agreement to which the United States has acceded will be published in the FEDERAL REGISTER by the Commissioner.

[T.D. 70–134, 35 FR 9261, June 13, 1970, as amended by T.D. 71–70, 36 FR 4490, Mar. 6, 1971; T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

§ 114.12 Termination of approval.

(a) *For cause.* The Commissioner may suspend or revoke the approval previously given to any issuing association or guaranteeing association for failure or refusal to comply with the duties, obligations, or requirements set forth in its written undertaking on which the approval was based; in the applicable Customs Convention; or in the customs regulations; or upon termination of the affiliation with an appropriate international organization required by § 114.11(a). Before such suspension or revocation, the Commissioner shall give the association a reasonable opportunity to refute the alleged failure of compliance.

(b) *Withdrawal.* To be relieved of future obligations, an approved guaranteeing association must notify the Commissioner, in writing, not less than 6 months in advance of a specified termination date that it will not guarantee the payment of obligations under carnets accepted by district directors of Customs after the specified date. The receipt of such notice by the Commissioner will in no way affect the responsibility of the guaranteeing association for payment of claims on carnets accepted by district directors before the designated termination date.

(c) *Notice.* Notice of the suspension or revocation of the approval of an issuing association or a guaranteeing association, or of the withdrawal of an approved guaranteeing association, with respect to a Customs Convention to which the United States has acceded will be published in the FEDERAL REGISTER by the Commissioner.

[T.D. 70–134, 35 FR 9261, June 13, 1970, as amended by T.D. 71–70, 36 FR 4490, Mar. 6, 1971]

Subpart C—Processing of Carnets

§ 114.21 Acceptance.

A carnet executed in accordance with § 114.3 shall be accepted provided that when the carnet is presented an association for the guaranteeing of such carnets has been approved in accordance with § 114.11 and such approval has not been terminated as provided for in § 114.12.

§ 114.22 Coverage of carnets.

(a) *A.T.A. carnet.* The A.T.A. carnet is acceptable for goods to be temporarily entered, or temporarily entered and transported, under:

(1) The Customs Convention on the Temporary Importation of Professional Equipment, or

(2) The International Convention to Facilitate the Importation of Commercial Samples and Advertising Material, which includes:

(i) Commercial samples, or

(ii) Motion picture advertising films not exceeding 16 mm., consisting essentially of photographs (with or without sound track) showing the nature or operation of products or equipment whose qualities cannot be adequately demonstrated by samples or catalogs. There shall be presented with each carnet covering motion picture advertising films a statement showing how each of the following requirements is met. The films must:

(A) Relate to products or equipment offered for sale or for hire by a person established in the territory of another contracting party;

(B) Be of a kind suitable for exhibition to the public; and

(C) Be imported in a packet which contains not more than one copy of

each film and which does not form part of a larger consignment of films.

(b) [Reserved]

(c) *TIR carnet*—(1) *Use*. The TIR carnet may be accepted at any port of entry for the transport of merchandise in road vehicles or in containers, even if the containers, without being loaded on road vehicles, are carried by other means of transport for part of the journey between the customs offices of departure and destination. The TIR carnet may also be accepted for the transport of ''heavy or bulky goods'' as defined in Article 1 of the TIR Convention. The TIR carnet covers the transportation of merchandise for customs purposes only. Road vehicles transporting merchandise under cover of a TIR carnet must also comply with all other applicable requirements of Federal and State agencies concerned with the regulations of such vehicles and their personnel.

(2) *Taken on charge*. A TIR carnet is ''taken on charge'' by Customs when it is accepted as a transportation entry and when the shipment covered thereby is receipted for by the bonded carrier (see §§ 18.1, 18.2, and 18.10(a) of this chapter). Until the carnet is ''taken on charge,'' the guaranteeing association shall have no liability to the United States under the carnet.

(d) *TECRO/AIT carnet*—(1) *Use*. The TECRO/AIT carnet is acceptable for the following two categories of goods to be temporarily imported, unless importation is prohibited under the laws and regulations of the United States:

(i) Professional equipment; and

(ii) Commercial samples and advertising material imported for the purpose of being shown or demonstrated with a view to soliciting orders.

(2) *Issue and use*. (i) Issuing associations shall indicate on the cover of the TECRO/AIT carnet the customs territory in which it is valid and the name and address of the guaranteeing association.

(ii) The period fixed for re-exportation of goods imported under cover of a TECRO/AIT carnet shall not in any case exceed the period of validity of that carnet.

(e) *Excess liability*. When the total of duties and taxes on any shipment covered by a carnet exceeds the amount for which the guaranteeing association is liable, the excess constitutes a charge against the carrier's bond.

[T.D. 70–134, 35 FR 9261, June 13, 1970, as amended by T.D. 71–70, 36 FR 4490, Mar. 6, 1971; T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

§ 114.23 Maximum period.

(a) *A.T.A. carnet*. No A.T.A. carnet with a period of validity exceeding 1 year from date of issue shall be accepted. This period of validity cannot be extended.

(b) *TIR carnet*. A TIR carnet may be accepted without limitation as to time provided it is initially ''taken on charge by a customs administration (United States or foreign) within the period of validity shown on its front cover.''

(c) *TECRO/AIT carnet*. A TECRO/AIT carnet shall not be issued with a period of validity exceeding one year from the date of issue. This period of validity cannot be extended and must be shown on the front cover of the carnet.

[T.D. 71–70, 36 FR 4491, Mar. 6, 1971, as amended by T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 85–180, 50 FR 42517, Oct. 21, 1985; T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

§ 114.24 Additions.

When an A.T.A. or TECRO/AIT carnet has been issued, no extra item shall be added to the list of goods enumerated on the reverse of the cover of the carnet or on any continuation sheet annexed thereto.

[T.D. 70–134, 35 FR 9261, June 13, 1970, as amended by T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

§ 114.25 Replacement of carnets.

In the case of destruction, loss, or theft of an A.T.A. or TECRO/AIT carnet while the goods which it covers are in the Customs territory of the United States, the director of the port where such goods were imported may, upon request of the association which issued the carnet abroad, accept a replacement document, the validity of which expires on the same date as that of the carnet which it replaces, provided the port director determines that the description of merchandise in the

replacement document fully corresponds to the description set forth in the importation voucher from the carnet to be replaced.

[T.D. 70–134, 35 FR 9261, June 13, 1970, as amended by T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

§ 114.26 Discharge, nonacceptance, or cancellation of carnets.

(a) *Unconditional discharge*. An A.T.A. or TECRO/AIT carnet shall be discharged unconditionally by the port director when he is satisfied that all merchandise covered thereby is reexported or destroyed. A TIR carnet shall be discharged unconditionally when all merchandise covered thereby has been properly entered, placed in general order, or exported under customs supervision. In all other cases, any discrepancy shall be noted on the appropriate counterfoil, and action shall be taken in accordance with § 10.39 or § 18.6 of this chapter.

(b) *Effect of discharge*. When a port director has discharged a carnet unconditionally by completion of the appropriate counterfoil, no claim may be brought against the guaranteeing association for payment under the carnet unless it can be established that the discharge was obtained improperly or fraudulently or, in the case of an A.T.A. or TECRO/AIT carnet, that there has been a breach of the conditions of temporary importation.

(c) *Nonacceptance or cancellation of TIR carnets*. If a TIR carnet presented to Customs is not accepted, it shall be stamped ''Not Taken on Charge'' (see § 114.22(c)(2)). If merchandise not required to be transported in bond moving under cover of a TIR carnet is not exported, the carnet shall be stamped ''Cancelled.''

[T.D. 71–70, 36 FR 4491, Mar. 6, 1971, as amended by T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

Subpart D—Miscellaneous

§ 114.31 Restrictions.

(a) *Mail importations*. Carnets shall not be accepted for importations by mail.

(b) *Temporary importations*. Merchandise not entitled to temporary importation under bond shall not be imported under cover of an A.T.A. or TECRO/AIT carnet.

(c) *Transportation in bond*. Except as provided in § 18.43 of this chapter, merchandise not entitled to transportation in bond shall not be transported under cover of a TIR carnet.

[T.D. 71–70, 36 FR 4491, Mar. 6, 1971, as amended by T.D. 85–180, 50 FR 42517, Oct. 21, 1985; T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

§ 114.32 Samples for taking orders.

A.T.A. or TECRO/AIT carnets may be accepted for unaccompanied samples and samples imported by a natural person resident in the Customs territory of the United States, as well as for samples imported by a natural person resident in the territory of another contracting party to the A.T.A. Convention or TECRO/AIT Agreement.

[T.D. 70–134, 35 FR 9261, June 13, 1970, as amended by T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

§ 114.33 Action against carnet user.

In the event of fraud, violation, or abuse of the privileges of a Convention or Agreement, action may be taken against the users of carnets for applicable duties and charges or liquidated damages, as the case may be. Penalties to which such persons have thereby rendered themselves liable may also be imposed.

[T.D. 70–134, 35 FR 9261, June 13, 1970, as amended by T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

§ 114.34 Cancellation of erroneous charges.

(a) *TIR carnet*. When it is determined that liquidated damages assessed or paid for any shortage, irregular delivery, or nondelivery of merchandise covered by a TIR carnet did not in fact accrue, the liquidated damages shall be cancelled by the port director and, if paid, refunded, as provided by § 18.8 of this chapter.

(b) *A.T.A. or TECRO/AIT carnet*. When it is determined that liquidated damages assessed or paid for failure to properly reexport or destroy merchandise temporarily imported under cover of an A.T.A. or TECRO/AIT carnet did

not in fact accrue, the liquidated damages shall be cancelled by the port director and, if paid, refunded as provided by § 10.39 of this chapter.

(c) *Determination dependent upon a construction of law.* When the determination of whether or not the charge was erroneously made depends upon a construction of law, the charge shall not be cancelled without the approval of the Commissioner of Customs, unless there is in force a ruling by the Commissioner of Customs decisive of the issue.

[T.D. 74–227, 39 FR 32023, Sept. 4, 1974, as amended by T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 98–10, 63 FR 4168, Jan. 28, 1998; T.D. 00–57, 65 FR 53575, Sept. 5, 2000]

PART 115—CARGO CONTAINER AND ROAD VEHICLE CERTIFICATION PURSUANT TO INTERNATIONAL CUSTOMS CONVENTIONS

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AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 66, 1624; E.O. 12445 of October 17, 1983.

SOURCE: T.D. 86–92, 51 FR 16161, May 1, 1986, unless otherwise noted.

Subpart A—General

§ 115.1 Purpose.

This chapter establishes procedures for certifying containers and road vehicles in conformance with the Customs Convention on Containers (1956) (TIAS 6634), the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (1959) (TIAS 6633), the Customs Convention on the International Transport of

Goods Under Cover of TIR Carnets, November 14, 1975 (TIAS), and the Customs Convention on Containers, 1972 (TIAS), by applying the procedures and technical conditions set forth in the annexes to these conventions.

§ 115.2 Application.

(a) Certification of containers and road vehicles for international transport under Customs seal is voluntary. This chapter does not require certification of containers and road vehicles.

(b) The Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), January 15, 1959 (20 UST 184, TIAS 6633), requires that the approval of road vehicles be made by competent authorities of the country in which the owner or carrier is a resident or is established, and that containers should be either similarly approved, or approved by the competent authority of the country where it is first used for transport under Customs seal. The Customs Convention on Containers, May 18, 1956 (20 UST 301, TIAS 6634), requires that the approval of containers be made by competent authorities of the country in which the owner is a resident or is established or by those of the country where the container is used for the first time for transport under Customs seal. The TIR Convention, 1975, generally provides that a road vehicle, for which approval at a stage after manufacture is desired, shall be approved by the competent authority where the vehicle owner or operator is established or located, or where the vehicle is registered. Such approval under the TIR Convention, 1975, or, for containers, the Customs Convention on Containers, 1972, may be accomplished by the competent authority of the country in which the owner or operator is able to produce the conveyance. The 1975 TIR Convention and the Customs Convention on Containers, 1972, also provide that the Certifying Authority of the country of manufacture, if that country is a contracting party to the Convention, may approve a series of road vehicles or containers presented for design type approval. The procedures for applying for certification are contained in §§ 115.28, 115.38, 115.49, and 115.63 of this part.

§ 115.3 Definitions.

For the purpose of this part:

(a) *Certifying Authority*. ''Certifying Authority'' means a nonprofit firm or association, incorporated or established in the U.S., which the Commissioner finds competent to carry out the functions of this part and which he designates to certify containers and road vehicles for international transport under Customs seal.

(b) *Commissioner*. ''Commissioner'' means the Commissioner of Customs.

(c) *Container*. ''Container'' means an article of transport equipment (lift van, portable tank, or other similar structure).

(1) Fully or partially enclosed to constitute a compartment intended for containing goods;

(2) Of a permanent character and strong enough to be suitable for repeated use;

(3) Specifically designed to facilitate the carriage of goods by one or more modes of transport, without intermediate reloading;

(4) Designed for ready handling, particularly its transfer from one mode of transport to another;

(5) Designed to be easily filled and emptied; and

(6) Having an internal volume of 1 cubic meter (35.3 cubic feet) or more.

(d) *Manufacturer*. ''Manufacturer'' means an organization or person constructing containers or road vehicles for certification in accordance with this chapter.

(e) *Prototype*. ''Prototype'' means a sample unit of a series of identical containers or road vehicles all built, so far as practical, under the same conditions.

(f) *Road vehicle*. ''Road Vehicle'', as defined in Chapter 1, Article 1 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975 (TIAS), means not only any power-driven road vehicle but also any trailer or semi-trailer designed to be coupled to it.

(g) *Customs and TIR/Container Plan*. ''Customs and TIR/Container Plan'' means the designer's drawing of a vehicle (for TIR purposes) or container (for

TIR and Container Convention purposes) that illustrates each requirement in §§ 115.30, 115.40, 115.51, or 15.65, as appropriate to this part.

(h) The definitions in the subject Conventions shall be considered applicable to terms not specifically defined above.

§ 115.4 Conflicting provisions.

The provisions of the most recent TIR/Container Convention shall apply in the event of conflict between it and an earlier TIR/Container Convention covered by these regulations.

Subpart B—Administration

§ 115.6 Designated Certifying Authorities.

(a) The American Bureau of Shipping, 45 Eisenhower Dr., Paramus, New Jersey 07652.

(b) International Cargo Gear Bureau, Inc., 17 Battery Place, New York, New York 10004.

(c) The National Cargo Bureau, Inc., One World Trade Center, Suite 2757, New York, New York 10048.

§ 115.7 Designation of additional Certifying Authorities.

(a) The Commissioner may designate as a Certifying Authority any nonprofit firm or association that he finds competent to carry out the functions of §§ 115.8 through 115.14 of this subpart.

(b) Any designation as Certifying Authority may be terminated by the Commissioner.

§ 115.8 Certifying Authorities responsibilities—road vehicles.

(a) *General.* Road vehicles may be approved individually or by design type.

(b) *Individual approval.* The Certifying Authority to whom a road vehicle is submitted for approval shall inspect such road vehicle produced in accordance with the general rules contained in Annex 3 of the TIR Convention, 1975.

(c) *Design type approval.* The Certifying Authority to whom a road vehicle is submitted for design type approval shall examine the drawings and detailed design specifications submitted with the application for approval. The Certifying Authority shall advise the applicant of any changes that must be made to the proposed design type in order that approval may be granted. The Certifying Authority shall examine one or more vehicles to confirm that such vehicles comply with the technical conditions contained in Annex 2 of the TIR Convention, 1975. The Certifying Authority shall notify the applicant of its decision to grant design type approval, and it shall issue an approval certificate complying with Annexes 3 and 4 of the TIR Convention, 1975.

(d) *Supplementary examinations.* If a road vehicle approved by design type is the subject of an extended production run under one certificate of approval, the Certifying Authority shall confirm by examination of one or more road vehicles during the manufacturing process, or by other means, that such vehicles continue to meet the approved drawings and detailed design specifications and the technical requirements of Annex 2 of the TIR Convention, 1975.

For the purposes of this section, an extended production run shall be considered a continuous run of many units over long periods of time, as well as a new run following the completion of a previous run.

§ 115.9 Certifying Authorities responsibilities—containers.

(a) *General.* Containers may be approved for transport under seal by design type at the manufacturing stage or, otherwise, at a stage subsequent to manufacture.

(b) *Design type approval.* The Certifying Authority to whom a container is submitted for design type approval shall examine the drawings and detailed design specifications submitted with the application for approval. The Certifying Authority shall advise the applicant of any changes that must be made to the proposed design type so that approval may be granted. The Certifying Authority shall examine one or more containers to confirm that such containers comply with the technical requirements of Part 1, Annex 7, TIR Convention, 1975, and Annex 4 of the Customs Convention on Containers, 1972. The Certifying Authority shall issue a certificate authorizing the applicant to affix an approval plate, as

described in Appendix 1 to Part II, Annex 7 of the TIR Convention, 1975, and Annex 5 of the Customs Convention on Containers, 1972, for all containers manufactured in conformity with the specifications of the type of container approved. This certificate shall comply with the model certificate in Appendix 2, Part II, Annex 7 of the TIR Convention, 1975, and Appendix 2 of Annex 5 of the Customs Convention on Containers, 1972.

(c) *After manufacture*. The Certifying Authority to whom containers are submitted for approval after manufacture, shall examine as many containers as necessary to ascertain that they comply with the technical conditions prescribed in Part 1, Annex 7, TIR Convention, 1975, and Annex 5 of the Customs Convention on Containers, 1972. The Certifying Authority shall issue a certificate of approval authorizing the applicant to affix an approval plate to the specific number or series of containers being approved. The certificate shall comply with the model certificate of approval in Appendix 3, Part II, Annex 7, TIR Convention, 1975, and Appendix 3, Annex 5, Customs Convention on Containers, 1972.

(d) *Supplementary examinations*. If a container approved by design type is the subject of an extended production run or several production runs under one certificate of approval, the Certifying Authority shall confirm by examination of one or more containers during the manufacturing process, or by other means, that such containers continue to meet the approved drawings and detailed design specifications and the technical requirements of Annex 7 of the TIR Convention, 1975, and Annex 4 of the Customs Convention on Containers, 1972. For the purposes of this section, an extended production run shall be considered as a continuous run of many units over long periods of time, as well as a new run following completion of a previous run.

§ 115.10 Certificate of approval.

A Certifying Authority shall issue a certificate of approval by design type for a specified number or unlimited series of containers that are approved in accordance with the procedures contained in §§115.29, 115.31, 115.38, and 115.41, and road vehicles that are approved in accordance with the procedures contained in §§115.49, 115.52, 115.63, and 115.66 of this part.

(a) *Road vehicles*. A Certifying Authority shall issue a certificate of approval conforming to the model in Annex 4 of the 1975 TIR Convention for vehicles submitted for individual or design type approval, if satisfied that the vehicles comply with the technical conditions prescribed in Annex 2 of the TIR Convention, 1975.

(b) *Containers*—(1) *Approval after manufacture*. A Certifying Authority shall issue a certificate of approval conforming to the model in Appendix 3, Part II to Annex 7 of the TIR Convention, 1975, and Appendix 3 to Annex 5 of the Customs Convention on Containers, 1972, for containers approved at a stage after manufacture, when it has been ascertained that the containers comply with the technical conditions prescribed in Annex 7 of the TIR Convention, 1975, and Annex 4 of the Customs Convention on Containers, 1972. The certificate shall be valid for the number of containers approved.

(2) *Design type approved*. A Certifying Authority shall issue a single certificate of approval conforming to the model in Appendix 2, Part II to Annex 7 of the TIR Convention, 1975, and Appendix 2 to Annex 5 of the Customs Convention on Containers, 1972, for containers approved by design type when it has been ascertained that the container type complies with the technical conditions prescribed in Annex 7 of the 1975 TIR Convention, and Annex 4 of the Customs Convention on Containers, 1972. The certificate shall be valid for all containers manufactured in conformity with the specifications of the type approved.

(c) *Provisions common to both approval procedures*. The certificate of approval issued pursuant to paragraphs (a) and (b) of this section shall be valid for either the specific number of containers approved, or for an unlimited series of containers of the approved type.

§ 115.11 Establishment of fees.

(a) Each Certifying Authority shall establish and file with the Commissioner a schedule of fees for the performance of the certification procedures under this chapter. The fees shall be based on the costs (including transportation expense) actually incurred by the Certifying Authority. The fees are subject to approval by the Commissioner before their use by the Certifying Authority.

(b) Each Certifying Authority shall make available a schedule of its fees approved by the Commissioner. In addition, the schedules of approved fees for all the Certifying Authorities are available from the Headquarters, U.S. Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

[T.D. 86–92, 51 FR 16161, May 1, 1986, as amended by T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 115.12 Records maintained by Certifying Authority.

(a) Each Certifying Authority shall maintain—

(1) A copy of each individual certificate of approval issued, together with a copy of the plans and the application to which the approval refers, along with any information submitted by the manufacturer and/or owner or operator for the certification of a container or a road vehicle.

(2) A record of each serial number assigned and affixed by the manufacturer to the road vehicles and containers manufactured under a design type approval, and containers approved at a stage after manufacture.

(b) The Commissioner may examine the Certifying Authority's files required by paragraph (a) of this section.

§ 115.13 Records to be furnished Customs.

Each Certifying Authority shall furnish the Headquarters, U.S. Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, unless waived by Customs;

(a) A copy of each issued certificate of approval for containers and road vehicles and a copy of the plans and application to which the approval refers;

(b) A copy of each issued individual approval for a container or road vehicle.

[T.D. 86–92, 51 FR 16161, May 1, 1986, as amended by T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 115.14 Meeting on program.

If determined necessary by Customs, each Certifying Authority's representative for certification functions shall meet, after notice, with the Commissioner to review their administration of the certification program.

§ 115.15 Reports by road vehicle or container manufacturer.

Each manufacturer shall forward to the appropriate Certifying Authority, quarterly or when otherwise requested by that Authority:

(a) The registration number or other identifying information on road vehicles, or serial numbers assigned to containers manufactured under a certificate of approval by design type; and

(b) An attestation that each road vehicle or container to which a serial number was assigned was manufactured in full compliance with the certificate of approval by design type.

§ 115.16 Notification of Certifying Authority by manufacturer.

In order that the Certifying Authority can schedule an appropriate inspection, a manufacturer shall give notification to that Authority before each production run of road vehicles or containers to be built pursuant either to plans approved by the Certifying Authority, or revised plans (approved or unapproved).

§ 115.17 Appeal to Commissioner of Customs.

(a) Any manufacturer, carrier, or owner may, within 30 days after he has been notified by a Certifying Authority of an adverse determination, including any review provided, appeal that determination to the Commissioner.

(b) Any determination which is appealed remains in effect pending a decision by the Commissioner.

§ 115.18 Decision of Commissioner of Customs final.

The decision of the Commissioner on any matter appealed to him is final.

Subpart C—Procedures for Approval of Containers by Design Type

§ 115.25 General.

The Certifying Authority shall, at the request of a manufacturer, evaluate containers for approval by design type during the manufacturing stage.

§ 115.26 Eligibility.

Any manufacturer of containers to be manufactured in a type series from standard design and specifications so that each container has identical characteristics, may apply for approval by design type.

§ 115.27 Where to apply.

A manufacturer may apply for approval of a container by design type to a Certifying Authority of the country in which the container is manufactured if such country is a contracting party to the TIR Convention, 1975, or the Customs Convention on Containers, 1972.

§ 115.28 Application for approval.

Each application by a manufacturer or an owner for certification of a container by design type must include:

(a) Three copies, each no larger than 3 feet by 4 feet, of the customs and TIR/Container plan;

(b) Customs and TIR/Container plan number;

(c) Three copies of the specifications which include the following information:

(1) The name and address of the manufacturer and the owner; and

(2) A description of the container including the—

(i) Type of construction;

(ii) Dimensions;

(iii) Material of construction;

(iv) Coating system used;

(v) Identification marks and numbers; and

(vi) Tare weight;

(d) The location and date for inspection; and

(e) A statement signed by the manufacturer that:

(1) A container of the design type concerned is available for inspection and approval by the Certifying Authority before, during, and after the production run;

(2) Notification will be given to the Certifying Authority of each change in the design before adoption; and

(3) Each container will be marked with:

(i) The metal plate required in § 115.32;

(ii) The identification number or letter of the design type assigned by the manufacturer; and

(iii) The serial number of the container assigned by the manufacturer.

§ 115.29 Plan review.

(a) A manufacturer or owner who wants containers to be approved by design type must submit the plans and specifications for the container to the Certifying Authority.

(b) The Certifying Authority examining the plans and specifications submitted in accordance with paragraph (a) of this section shall:

(1) Approve the plans and specifications in accordance with the requirements of § 115.30 and arrange to inspect a container in accordance with § 115.31; or

(2) Advise the applicant of any necessary changes to be made for compliance with the requirements of § 115.30.

(c) If changes in the design of the container are made during production but after approval of the plans and specifications by the Certifying Authority and furnish it with ''as-built'' drawings of the container so that the plans can be reviewed and one or more containers inspected during the production stage to confirm that they continue to comply with the requirements of § 115.30.

§ 115.30 Technical requirements for containers by design type.

The plans and specifications of a container submitted in accordance with the requirements contained in §115.29, and the one or more containers inspected in accordance with the requirements of § 115.31, must comply with the

requirements of Annex 7 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975 (TIAS), and Annex 4 of the Customs Convention on Containers (Container Convention), December 2, 1972. Copies of Annex 7 and Annex 4 may be obtained from the Headquarters, U.S. Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

[T.D. 86–92, 51 FR 16161, May 1, 1986, as amended by T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 115.31 Examination, inspection, and testing.

(a) Before the issuance of a certificate of approval by design type, the Certifying Authority shall:

(1) Make a physical examination of one or more containers of the production series concerned;

(2) Assure itself as to the adequacy of the manufacturer's system to control quality of materials used, manufacturing methods, and finished containers; and

(3) Require the manufacturer to make available to the Certifying Authority records of material, including affidavits furnished by suppliers.

(b) The Certifying Authority shall conduct such examinations, inspections, and tests of the production run containers as it deems necessary.

§ 115.32 Approval plates.

The manufacturer shall affix, in a clearly visible place on or near one of the doors or other main openings of each container manufactured to the approved design, a metal approval plate measuring at least 20 by 10 centimeters (7.8 by 3.9 inches). The following shall be embossed on or stamped into the surface of the approval plate:

(a) ''Approved for transport under Customs seal.''

(b) ''USA/(number of the certificate of approval)/(last two digits of year of approval).'' (e.g. ''USA/1600/84'' means ''United States of America certificate of approval number 1600, issued in 1984).'' A two digit alpha suffix may be added to the certificate of approval number to identify the Certifying Authority, e.g., USA/1600–AB/85, USA/1600–IB/85.

(c) Identification of the type of container and of the number of the container in the type series.

(d) The serial number assigned to the container by the manufacturer (manufacturer's number).

§ 115.33 Termination of approval.

Any container, the essential features of which are changed, shall no longer be covered by the design type approval. Such a container may be made available to a Certifying Authority for inspection and individual approval in accordance with subpart D of the part. However, repairs in kind do not constitute a change of the essential features.

Subpart D—Procedures for Approval of Containers After Manufacture

§ 115.37 General.

This subpart provides for the approval and certification of containers after manufacture, and for those altered so as to void their design type approval.

§ 115.38 Application.

A written request for approval of a container after manufacture may be made by the owner or operator to a Certifying Authority and must include the following:

(a) Three copies, each no longer than 3 feet by 4 feet, of the Customs and TIR/Container plan;

(b) Customs and TIR/Container plan number;

(c) Three copies of the specifications which include the following information:

(1) Type of container;

(2) Name and business address of applicant;

(3) Identification marks and numbers;

(4) Tare weight;

(5) Nominal overall dimensions in centimeters;

(6) Type of construction and essential particulars of structure (nature of materials, coating system used, parts which are reinforced, whether bolts are

riveted or welded, and similar matters); and

(7) Proposed location and date for inspection of the container.

§ 115.39 Eligibility.

The owner or operator may submit containers to be approved after the manufacturing stage to:

(a) The Certifying Authority of the country of manufacture if such country is a contracting party to the Convention.

(b) The Certifying Authority of the country where the owner or operator is resident or established, when such Certifying Authority has representatives located in the country of manufacture, which is a noncontracting party to the Convention.

(c) The Certifying Authority of the country where a container is used for the first time for transport of merchandise under Customs seal or where it is otherwise physically located.

§ 115.40 Technical requirements for containers.

A container that is submitted for inspection for approval after manufacture, must comply with the requirements of Annex 7 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975 (TIAS) and Annex 4 of the Customs Convention on Containers (Container Convention), December 2, 1972. Copies of Annex 7 and Annex 4 may be obtained from the Headquarters, U.S. Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

[T.D. 86–92, 51 FR 16161, May 1, 1986, as amended by T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 115.41 Certificate of approval for containers approved after manufacture.

The Certifying Authority shall issue an individual certificate of approval for each container that meets the requirements in § 115.40.

§ 115.42 Approval plates.

(a) The owner or operator applicant shall, upon receipt of a certificate of approval from the Certifying Authority, affix an approval plate in the manner specified for containers approved by design type (see § 115.32).

(b) Although an entry is not required in the space provided for type identifiers on an approval plate for containers approved after manufacture, identification number and letters indicating that a series of containers comply with the same specifications may be placed in such space. This may be used to assist in the identification of a series of containers in which a common defect may be discovered subsequent to certification. In such case the approval number on the plate shall be altered by an addition to the second or third element of such number. The specific method of altering the approval number may be established by each Certifying Authority, for containers approved by it, and communicated to the U.S. Customs Service.

(c) Two possible methods of accomplishing this are:

(1) Placing an ''X'' in front of the numeric portion of the middle element of the approval number, e.g., USA/X123–IB/85.

(2) Placing a suffix at the end of the approval number, e.g, USA/123–AB/85–01.

§ 115.43 Termination of approval.

Approval of a container terminates upon a change in the container by a major repair or alteration of any of the essential features required in § 115.40. Repairs by replacement in kind do not constitute a change of the essential features.

Subpart E—Procedures for Approval of Individual Road Vehicles

§ 115.48 General.

This subpart provides for the approval and certification of individual road vehicles that comply with the technical requirements in § 115.51.

§ 115.49 Application.

A written request for approval of an individual road vehicle may be made by the owner, or carrier to a Certifying Authority and must include:

(a) Three copies, each no larger than 3 feet by 4 feet, of the Customs and TIR plan;

(b) Customs and TIR plan number;

(c) Three copies of the specifications which include the following information:

(1) Type of vehicle;

(2) Name and business address of owner or operator;

(3) Name of the manufacturer;

(4) Chassis number;

(5) Engine number (if applicable);

(6) Registration number;

(7) Particulars of construction;

(8) Any photos or diagrams required by the Certifying Authority to facilitate approval; and

(9) A proposed place and date for inspection of the road vehicle.

§ 115.50 Eligibility.

A road vehicle may be submitted for inspection by its owner or operator to a Certifying Authority of the country in which the owner or operator is a resident or is established, or where the vehicle is registered.

§ 115.51 Technical requirements.

A road vehicle that is submitted for inspection for individual approval must comply with the requirements of Annex 2 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975, (TIAS). Copies of Annex 2 may be obtained from the Headquarters, U.S. Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

[T.D. 86–92, 51 FR 16161, May 1, 1986, as amended by T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 115.52 Approval.

The Certifying Authority shall issue a certificate of approval, valid for 2 years, to each road vehicle that complies with the applicable requirements in § 115.51.

§ 115.53 Certificate of approval.

A certificate of approval must be kept on the vehicle as evidence of approval.

§ 115.54 Renewal of certificate.

A certificate of approval may be renewed if the Certifying Authority determines by inspection every 2 years that the vehicle continues to comply with the applicable requirements in § 115.51.

§ 115.55 Termination of approval.

Approval of a road vehicle terminates:

(a) Upon expiration of the certificate of approval; or

(b) Upon a change in the road vehicle by a major repair or alteration of any of the essential features required in § 115.51. Repairs by replacement in kind do not constitute a change of the essential features.

Subpart F—Procedures for Approval of Road Vehicles by Design Type

§ 115.60 General.

This subpart provides for the approval and certification of road vehicles manufactured by design type.

§ 115.61 Eligibility.

Any manufacturer of road vehicles which are being manufactured in a type series from a standard design and specifications, so that each road vehicle has identical characteristics, may apply for an approval by design type.

§ 115.62 Where to apply.

A manufacturer may apply for approval of a road vehicle by design type to a Certifying Authority of the country in which the road vehicle is manufactured, if such country is a contracting party to the TIR Convention, 1975.

§ 115.63 Application for approval.

Each application by a manufacturer for certification of a road vehicle by design type must include:

(a) Three copies, each no larger than 3 feet by 4 feet, of the Customs and TIR plan;

(b) Customs and TIR plan number;

(c) Three copies of the specifications which include the following information:

(1) The name and address of the manufacturer and the owner; and

(2) A description of the road vehicle including the:

(i) Particulars of construction;

(ii) Dimensions;

(iii) Construction materials; and

(iv) Marks and numbers, including chassis, engine, and registration numbers.

(d) A statement signed by the manufacturer that:

(1) It will present vehicles of the type concerned to the Certifying Authority which that Authority may wish to examine;

(2) Permit the Certifying Authority to examine further units at any time during or after the production run;

(3) Notify the Certifying Authority of each change in the design or specifications before adoption;

(4) Mark the road vehicles in a visible place with the identification number or letters of the design type and the serial number of the vehicle in the type series manufacturer's number; and

(5) Keep a record of vehicles manufactured according to the design type.

§ 115.64 Plan review.

(a) A manufacturer or owner who wants road vehicles to be approved by design type must submit the plans and specifications of the road vehicles to the Certifying Authority.

(b) The Certifying Authority that examines the plans and specifications submitted in accordance with paragraph (a) of this section shall:

(1) Approve the plans and specifications in accordance with the requirements of § 115.65 and arrange to inspect a road vehicle in accordance with § 115.66; or

(2) Advise the applicant of any necessary changes to be made for compliance with the requirements of § 115.65.

(c) If changes in design of the road vehicle are made during production but after approval of the plans and specifications by the Certifying Authority, the manufacturer shall immediately notify the Certifying Authority and furnish it with ''as-built'' drawings of the road vehicle so that the plans can be reviewed and one or more road vehicles inspected during the production stage to confirm that they continue to comply with the requirements of § 115.65.

§ 115.65 Technical requirements for road vehicles by design type.

The plans and specifications of a road vehicle that are submitted in accordance with the requirements contained in § 115.64, and the one or more road vehicles that are inspected in accordance with the requirements of § 115.66, must comply with the requirements of Annex 2 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975 (TIAS). Copies of Annex 2 may be obtained from the Headquarters, U.S. Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

[T.D. 86–92, 51 FR 16161, May 1, 1986, as amended by T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 115.66 Examination, inspection, and testing.

(a) Before the issuance of a certificate of approval by design type, the Certifying Authority shall:

(1) Make a physical examination of one or more vehicles of the production series concerned;

(2) Assure itself as to the adequacy of the manufacturer's system to control quality of materials used, manufacturing methods, and finished road vehicles; and

(3) Require the manufacturer to make available to the Certifying Authority records of materials, including affidavits furnished by suppliers.

(b) The Certifying Authority shall conduct such examinations, inspections, and testing of the production run road vehicles as it deems necessary.

§ 115.67 Approval certificate.

The holder of the approval certificate shall, before using the vehicle for the carriage of goods under the cover of a TIR Carnet, fill in as may be required on the approval certificate:

(a) The registration number given to the vehicle (item No. 1); or

(b) In the case of a vehicle not subject to registration, particulars of his name and business address (item No. 8).

(See Annex 4 of the Convention for model of certificate of approval.)

§ 115.68 Termination of approval.

Any road vehicle whose essential features are changed shall no longer be covered by the design type approval. Such a road vehicle may be made available to a Certifying Authority for inspection and individual approval in accordance with subpart E of this part. However, repairs in kind do not constitute a change of the essential features.

PART 118—CENTRALIZED EXAMINATION STATIONS

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AUTHORITY: 19 U.S.C. 66, 1499, 1623, 1624; 22 U.S.C. 401; 31 U.S.C. 5317.

SOURCE: T.D. 93–6, 58 FR 5604, Jan. 22, 1993, unless otherwise noted.

§ 118.0 Scope.

This part sets forth regulations providing for the making of agreements between Customs and persons desiring to operate a centralized examination station (CES). It covers the application process, the responsibilities of the person or entity selected to be a CES operator, the written agreement to operate a CES facility, the port director's discretion to immediately suspend a CES operator's or entity's selection and the written agreement to operate the CES or to propose the permanent revocation of a CES operator's or entity's selection and cancellation of the written agreement for specified conduct, and the appeal procedures to challenge an immediate suspension or proposed revocation and cancellation action. Procedures and requirements for the transfer of merchandise to a CES are set forth in part 151 of this chapter.

[T.D. 93–6, 58 FR 5604, Jan. 22, 1993; 58 FR 6574, Jan. 29, 1993, as amended by T.D. 96–57, 61 FR 39070, July 26, 1996]

Subpart A—General Provisions

§ 118.1 Definition.

A centralized examination station (CES) is a privately operated facility, not in the charge of a Customs officer, at which merchandise is made available to Customs officers for physical examination. A CES may be established in any port or any portion of a port, or any other area under the jurisdiction of a port director. To present outbound cargo for inspection at a CES at a port other than the shipment's designated port of exit, either proof of the shipper's consent to the inspection must be furnished or a complete set of transportation documents must accompany the shipment to evidence that exportation of the goods is imminent and that the goods are committed to export, thereby, making them subject to Customs examination.

[T.D. 93–6, 58 FR 5604, Jan. 22, 1993, as amended by T.D. 98–29, 63 FR 16684, Apr. 6, 1998]

§ 118.2 Establishment of a CES.

When a port director makes a preliminary determination that a new CES should be established, or when the term of an existing CES is about to expire and the port director believes that the need for a CES still exists, he will announce, by written notice posted at the customhouse and by any other written methods he may consider appropriate (such as normal port information distribution channels, trade bulletins or local newspapers), that applications to operate a CES are being

accepted. This notice will include the general criteria together with any local criteria that applicants must meet (see § 118.11 of this part), and will invite the public to submit any relevant written comments on whether a new CES should be established or on whether there is still a need for a CES. Applications will be accepted only in response to the port notice and must be received within 60 calendar days from the date of the notice. Public comments must be received within 30 calendar days from the date of the notice.

§ 118.3 Written agreement.

The applicant tentatively selected to operate a CES must sign a written agreement with Customs before commencing operations. Failure to execute a written agreement with Customs in a timely manner will result in the revocation of that applicant's tentative selection and may result in tentative selection of another applicant or republication of the notice soliciting applications. In addition to the provisions described elsewhere in this part, the agreement will specify the duration of the authority to operate the CES. That duration will be not less than three years nor more than six years. Such agreements cannot be transferred, sold, inherited, or conveyed in any manner. At the expiration of the agreement, an operator wishing to reapply may do so pursuant to this part and his application will be considered de novo.

§ 118.4 Responsibilities of a CES operator.

By signing the agreement and commencing operation of a CES, an operator agrees to:

(a) Maintain the facility designated as the CES in conformity with the security standards as outlined in the approved application;

(b) Provide adequate personnel and equipment to ensure reliable service for the opening, presentation for inspection, and closing of all types of cargo designated for examination by Customs. Such service must be provided on a ''first come-first served'' basis;

(c) Assess service fees as outlined in the fee schedule included in the approved application or as changed under § 118.5 of this part and bill users directly for services rendered;

(d) Assume responsibility for any charges or expenses incurred in connection with the operation of the CES;

(e) Maintain, at his own expense, adequate liability insurance with respect to the property within his control and with respect to persons having access to the CES;

(f) Keep current the list filed with the port director pursuant to § 118.11(f) of this part. Additions to or deletions from the list must be submitted in writing to the port director within 10 calendar days of the commencement or termination of employement;

(g) Maintain a Customs custodial bond in an amount set by the port director. The CES operator will accept and keep safe all merchandise delivered to the CES for examination. The bond will include liability for transporting merchandise to the CES from within the district boundaries (see definition of ''district'' at § 112.1); such liability is assumed by the CES operator when he picks up merchandise for transportation to his facility. The operator also agrees to increase the amount of the bond if deemed appropriate by the port director.

(h) Maintain and make available for Customs examination all records connected with the operation of the CES in accordance with part 162 of this chapter and retain such records for a period of not less than five years from the date of the transaction or examination conducted pursuant to the agreement to operate the CES;

(i) Submit, if requested by Customs, the fingerprints of all employees involved in the CES operation;

(j) Provide office space, parking spaces, appropriate sanitary facilities, and potable water to Customs personnel at no charge or a charge of $1 per year; and

(k) Perform in accordance with any other reasonable requirements imposed by the port director.

(l) Provide transportation for merchandise to the CES from within the district boundaries (see definition of ''district'' at § 112.1). This responsibility is optional. If the CES operator chooses to provide transportation, he shall receipt for the merchandise when

he picks it up and assume liability for the merchandise at that time.

[T.D. 93–6, 58 FR 5604, Jan. 22, 1993, as amended by T.D. 94–81, 59 FR 51495, Oct. 12, 1994; T.D. 95–77, 60 FR 50020, Sept. 27, 1995; T.D. 98–29, 63 FR 16684, Apr. 6, 1998]

§ 118.5 Procedures for changes to a fee schedule.

Whenever a CES operator intends to increase, add to or otherwise change the service fees set forth in the fee schedule referred to in § 118.4(c) of this part, the operator shall provide 90 calendar days advance written notice to the port director of such proposed fee schedule change and shall include in the notice a justification for any increased or additional fee. Following receipt of this written notice, the port director will advise the public of the proposed fee schedule change and invite comments thereon under the public notice and comment procedures set forth in § 118.2 of this part. After a review of the proposed fee schedule change and any public comments thereon, and based on the principle of comparability set forth in § 118.11(c) of this part, the port director will decide whether to approve the change, will notify the CES operator in writing of his decision, and will notify the public of any approved fee schedule change by the same methods that were used to provide the public with notice of the proposed change. A CES operator shall remain bound by the existing fee schedule and shall not implement any fee schedule change prior to receipt of written approval of the change from the port director.

Subpart B—Application To Establish a CES

§ 118.11 Contents of application.

Each application to operate a CES shall consist of the following information, any application not providing all of the specified information will not be considered, and the responses to paragraphs (b), (c), (d), (g) and (h) of this section shall constitute the criteria used to judge the application:

(a) The name and address of the facility to be operated as the CES, the names of all principals or corporate officers, and the name and telephone number of an individual to be contacted for further information;

(b) A description of the CES's accessibility within the port or other location, and a floor plan of the facility actually dedicated to the CES operation showing bay doors, office space, exterior features, security features, and staging and work space. Where a significant capital expenditure would be required in order for an existing facility to meet security or other physical or equipment requirements necessary for the CES operation, the applicant may request in the application time to conform the facility to such requirements. The agreement referred to in § 118.3 of this part shall not be executed, in any event, until the facility is conformed to meet the requirements;

(c) A schedule of fees clearly showing what the applicant will charge for each type of service. Subject to any special costs incurred by the applicant such as facility modifications to meet specific cargo handling or storage requirements or to meet Customs security standards, the fees set forth in the schedule shall be comparable to fees charged for similar services in the area to be served by the CES;

(d) A detailed list of equipment showing that the applicant can make a diverse variety of cargo available for examination in an efficient and timely manner;

(e) A copy of an approved custodial bond on Customs Form 301. If the applicant does not possess such a bond, a completed Customs Form 301 must be included with the application for approval as a prerequisite to selection;

(f) A list of all employees involved in the CES operation setting forth their names, dates of birth, and social security numbers. (Providing social security numbers is voluntary; however, failure to provide the number may hinder the investigation process.);

(g) Any information showing the applicant's experience in international cargo operations and knowledge of Customs procedures and regulations; and

(h) Any other information to address any local criteria that the port director considers essential to the selection process based on port conditions.

[T.D. 93–6, 58 FR 5604, Jan. 22, 1993; 58 FR 6574, Jan. 29, 1993, as amended by T.D. 98–29, 63 FR 16684, Apr. 6, 1998]

§ 118.12 Action on application.

Following submission of all applications in accordance with §§118.2 and 118.11 of this part, the port director will advise the public of the applications received and invite comments thereon under the public notice and comment procedures set forth in § 118.2; with regard to each application, the notice will set forth the name of the applicant, the address of the facility proposed to be operated as the CES, the proposed fee schedule, the list of equipment at the facility, and the number of employees to be involved in the CES operation. The port director, based on a review of all applications under the criteria set forth in § 118.11 and any public comments submitted under § 118.2 or this section, shall determine whether a CES operator should be selected and, if a CES operator is to be selected, shall select the applicant that will best meet the examination needs of Customs and facilitate the movement of merchandise.

[T.D. 93–6, 58 FR 5604, Jan. 22, 1993, as amended by T.D. 99–64, 64 FR 43266, Aug. 10, 1999]

§ 118.13 Notification of selection or nonselection.

The applicant selected to operate a CES will be notified in writing by the port director of his tentative selection. The selection shall become final upon execution of the written agreement between Customs and the applicant under § 118.3 of this part, and the port director will advise the public of the final selection and of the date on which the CES will commence operation under the agreement in accordance with the notice procedures set forth in § 118.2 of this part. Each applicant not selected to be a CES operator will be so notified in writing and with a statement of the reason of nonselection.

Subpart C—Termination of a CES

§ 118.21 Temporary suspension; permanent revocation of selection and cancellation of agreement to operate a CES.

The port director may immediately suspend or propose permanent revocation and cancellation of CES operations for cause as provided in this section.

(a) *Immediate suspension*. The port director may immediately suspend, for a temporary period of time or until revocation and cancellation proceedings are concluded pursuant to § 118.23, a CES operator's or entity's selection and the written agreement to operate the CES if:

(1) The selection and written agreement were obtained through fraud or the misstatement of a material fact; or

(2) The CES operator or an officer of a corporation which is a CES operator or a person the port director determines is exercising substantial ownership or control over such operator or officer is indicted for, convicted of, or has committed acts, which would constitute a felony, or a misdemeanor involving theft or a theft-connected crime. In the absence of an indictment or conviction, the port director must have probable cause to believe the proscribed acts occurred.

(b) *Proposed revocation and cancellation*. The port director may propose to revoke the selection as operator and cancel the agreement to operate a CES if:

(1) The CES operator refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation relative to the operation of a CES, or fails to operate in accordance with the terms of his agreement or to comply with any of the provisions of § 118.4 of this part;

(2) The CES operator fails to retain merchandise which has been designated for examination;

(3) The CES operator does not provide secure facilities or properly safeguard merchandise within the CES;

(4) The CES operator fails to furnish a current list of names, addresses and other information required by § 118.4 of this part; or

(5) The custodial bond required by § 118.4 of this part is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time.

(6) The CES operator or an officer of a corporation which is a CES operator or a person the port director determines is exercising substantial ownership or control over such operator or officer is indicted for, convicted of, or has committed acts, which would constitute any of the offenses listed under paragraph (a) of this section. Where adverse action is initiated by the port director pursuant to paragraph (a) of this section and continued under this paragraph, the suspension of CES activities remains in effect through the appeal procedures provided under § 118.23.

(c) *Circumstance of change in employment not a bar to adverse action.* Any change in the employment status of a corporate officer (for example, discharge, resignation, demotion, or promotion) prior to indictment or conviction or after committing any acts which would constitute the culpable behavior described under paragraph (a) of this section, will not preclude application of this section, but may be taken into account by the port director in exercising discretion to take adverse action. If the person whose employment status changed remains in a substantial ownership, control, or beneficial relationship with the CES operator, this factor will also be considered in exercising discretion under this section.

[T.D. 93–6, 58 FR 5604, Jan. 22, 1993; 58 FR 6574, Jan. 29, 1993, as amended by T.D. 96–57, 61 FR 39071, July 26, 1996]

§ 118.22 Notice of immediate suspension or proposed revocation and cancellation action.

Adverse action pursuant to the provisions of § 118.21(a) or (b) is initiated when the port director serves written notice on the operator or entity selected to operate the CES. The notice shall be in the form of a statement specifically setting forth the grounds for the adverse action and shall inform the operator of the appeal procedures under § 118.23 of this part.

[T.D. 96–57, 61 FR 39071, July 26, 1996]

§ 118.23 Appeal to the Assistant Commissioner; procedure; status of CES operations.

(a) *Appeal to the Assistant Commissioner.* Appeal of a port director's decision under § 118.21(a) or (b) must be filed with the Assistant Commissioner, Office of Field Operations, within 10 calendar days of receipt of the written notice of the adverse action. The appeal shall be filed in duplicate and shall set forth the CES operator's or entity's responses to the grounds specified by the port director in his written notice letter for the adverse action initiated. The Assistant Commissioner, Office of Field Operations, or his designee, shall render a written decision to the CES operator or entity, stating the reasons for the decision, by letter mailed within 30 working days following receipt of the appeal, unless the period for decision is extended with due notification to the CES operator or entity.

(b) *Status of CES operations during appeal.* During this appeal period, an immediate suspension of a CES operator's or entity's selection and written agreement pursuant to § 118.21(a) of this part shall remain in effect. A proposed revocation of a CES operator's or entity's selection and cancellation of the written agreement pursuant to § 118.21(b)(1) through (5) of this part shall not take effect unless the appeal process under this paragraph has been concluded with a decision adverse to the operator.

(c) *Effect of suspension or revocation.* Once a suspension or revocation action takes effect, the CES operator must cease CES operations. However, when CES operations are suspended or revoked and cancelled by Customs, it is the CES operator's responsibility to ensure that merchandise already at the CES is properly consigned to another location for inspection, as directed by the importer and approved by the port director.

[T.D. 96–57, 61 FR 39071, July 26, 1996]

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AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

Section 122.49a also issued under 19 U.S.C. 1431 and 49 U.S.C. 44909(c).

Section 122.49b also issued under 49 U.S.C. 44909(c)(3).

SOURCE: T.D. 88–12, 53 FR 9292, Mar. 22, 1988, unless otherwise noted.

§ 122.0 Scope.

The regulations in this part relate to the entry and clearance of aircraft, and the transportation of persons and cargo by aircraft, and are applicable to all air commerce. They do not apply to Guam, Midway, American Samoa, Wake, Kingman Reef, Johnston Island, and other insular possessions of the U.S. not specified herein. They do apply to the U.S. Virgin Islands as stated in subpart N (§§ 122.141 through 122.144), and Cuba as stated in subpart O (§§ 122.151 through 122.158).

Subpart A—General Definitions and Provisions

§ 122.1 General definitions.

The following definitions apply in this part, unless otherwise stated:

(a) *Aircraft*. An ''aircraft'' is any device now known, or hereafter invented, used or designed for navigation or flight in the air. It does not include hovercraft.

(b) *Aircraft commander*. An ''aircraft commander'' is any person serving on an aircraft who is in charge or has command of its operation and navigation.

(c) *Agent*. An ''agent'' is any person who is authorized to act for or in place of:

(1) An owner or operator of a scheduled airline by written authority; or

(2) An owner or operator of a nonscheduled airline, by power of attorney.

The authority to act shall be in writing and satisfactory to the port director.

(d) *Commercial aircraft*. A ''commercial aircraft'' is any aircraft transporting passengers and/or cargo for some payment or other consideration, including money or services rendered.

(e) *International airport*. An ''international airport'' is any airport designated by:

(1) The Secretary of the Treasury or the Commissioner of Customs as a port of entry for aircraft arriving in the U.S. from any place outside thereof and for the merchandise carried on such aircraft;

(2) The Attorney General as a port of entry for aliens arriving on such aircraft; and

(3) The Secretary of Health and Human Services as a place for quarantine inspection.

(f) *Landing rights airport*. A ''landing rights airport'' is any airport, other than an international airport or user fee airport, at which flights from a foreign area are given permission by Customs to land.

(g) *Preclearance*. ''Preclearance'' is the examination and inspection of air travelers and their baggage, at the request of an airline, at foreign places where Customs personnel are stationed for that purpose. Preclearance may be used only for air travelers and their baggage, not for merchandise.

(h) *Private aircraft*. A ''private aircraft'' is any aircraft engaged in a personal or business flight to or from the U.S. which is not:

(1) Carrying passengers and/or cargo for commercial purposes;

(2) Leaving the U.S. carrying neither passengers nor cargo in order to lade passengers and/or cargo in a foreign area for commercial purposes; or

(3) Returning to the U.S. carrying neither passengers nor cargo in ballast after leaving with passengers and/or cargo for commercial purposes;

(i) *Public aircraft*. A ''public aircraft'', is any aircraft owned by, or under the complete control and management of the U.S. government or any of its agencies, or any aircraft owned by or under the complete control and management of any foreign government which exempts public aircraft of the U.S. from arrival, entry and clearance requirements similar to those provided in subpart C of this part, but not including any government owned aircraft engaged in carrying persons or property for commercial purposes. This definition applies if the aircraft is:

(1) Manned entirely by members of the armed forces or civil service of such government, or by both;

(2) Transporting only property of such government, or passengers traveling on official business of such government; or

(3) Carrying neither passengers nor cargo.

(j) *Residue cargo*. ''Residue cargo'' is any cargo on board an aircraft arriving in the U.S. from a foreign area if the:

(1) Final delivery airport in the U.S. is not the port of arrival; or

(2) Cargo remains on board the aircraft and travels from port to port in the U.S., for final delivery in a foreign area.

(k) *Scheduled airline*. A ''scheduled airline'' is any individual, partnership, corporation or association:

(1) Engaged in air transportation under regular schedules to, over, away from, or within the U.S.; and

(2) Holding a Foreign Air Carrier Permit or a Certificate of Public Convenience and Necessity, issued by the Department of Transportation pursuant to 14 CFR parts 201 and 213.

(l) *United States*. Except when used in another context, ''U.S.'' means the territory of the several States, the District of Columbia, and Puerto Rico, including the territorial waters and overlying airspace.

(m) *User fee airport*. A ''user fee airport'' is an airport so designated by Customs. Flights from a foreign area may be granted permission to land at a user fee airport rather than at an international airport or a landing rights airport. An informational listing of user fee airports is contained in § 122.15.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 88–16, 53 FR 10371, Mar. 31, 1988; T.D. 92–90, 57 FR 43397, Sept. 21, 1992; T.D. 93–66, 58 FR 44130, Aug. 19, 1993]

§ 122.2 Other Customs laws and regulations.

Except as otherwise provided for in this chapter, and insofar as such laws and regulations are applicable, aircraft arriving or having arrived from or departing for any foreign port or place, and the persons and merchandise, including baggage, carried thereon, shall be subject to the laws and regulations applicable to vessels to the extent that such laws and regulations are administered or enforced by Customs, as provided in 19 U.S.C. 1644 and 1644a.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 98–74, 63 FR 51288, Sept. 25, 1998]

§ 122.3 Availability of forms.

The forms mentioned in this part may be purchased from the director of port of entry. A small quantity of each form is set aside by port directors for free distribution and official use.

§ 122.4 English language required.

A translation in the English language shall be attached to the original and each copy of any form or document written or printed in a foreign language.

§ 122.5 Reproduction of Customs forms.

(a) *Specifications*. Subject to approval by Customs, the forms mentioned in this part may be printed by private parties if the specified size, wording arrangement, style and size of type, and quality of paper are used.

(b) *Exceptions*. Port directors may accept privately printed copies of the General Declaration (Customs Form 7507) and air cargo manifest (Customs Form 7509) which are different from the official forms. The privately printed forms shall include all information required on the official forms. The differences allowed are:

(1) *General Declaration*. Customs Form 7507 may be printed in several languages, so long as the form includes an English version. The instructions on the reverse side of the official form may be omitted.

(2) *Air cargo manifest*. Customs Form 7509 may be changed to allow for additional information used by the airline.

Subpart B—Classes of Airports

§ 122.11 Designation as international airport.

(a) *Procedure*. International airports, as defined in § 122.1(e), will be designated after due investigation to establish that sufficient need exists in any port to justify such designation and to determine the airport best suited for such purpose. In each case, a specific airport will be chosen. International airports will be publicly owned, unless circumstances require otherwise

(b) *Withdrawal of designation*. The designation as an international airport may be withdrawn for any of the following reasons:

(1) The amount of business clearing through the airport does not justify maintenance of inspection equipment and personnel;

(2) Proper facilities are not provided or maintained by the airport;

(3) The rules and regulations of the Federal Government are not followed; or

(4) Some other location would be more useful.

(c) *Providing office space to the Federal Government*. Each international airport

shall provide, without cost to the Federal Government, proper office and other space for the sole use of Federal officials working at the airport. A suitable paved loading area shall be supplied by each airport at a place convenient to the office space. The loading area shall be kept for the use of aircraft entering or clearing through the airport.

§ 122.12 Operation of international airports.

(a) *Entry, clearance and charges.* International airports are open to all aircraft for entry and clearance at no charge by Customs. However, charges may be assessed by the airport for commercial or private use of the airport.

(b) *Servicing of aircraft.* When an aircraft enters or clears through an international airport, it shall be promptly serviced by airport personnel solely on the basis of order of arrival or readiness for departure. Servicing charges imposed by the airport operators shall not be greater than the schedule of charges in effect at the airport in question.

(c) *FAA rules; denial of permission to land. Federal Aviation Administration rules.* International airports shall follow and enforce any requirements for airport operations, including airport rules, that are set out by the Federal Aviation Administration in 14 CFR part 91. In addition, except in the case of an emergency or forced landing (see § 122.35), permission to land at an international airport may be denied if advance electronic information for incoming foreign cargo aboard the aircraft has not been received as provided in § 122.48a.

(d) *Additional requirements.* Additional requirements may be put into effect at a particular airport as the needs of the Customs port served by the airport demand.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by CBP Dec. 03–32, 68 FR 68170, Dec. 5, 2003]

§ 122.13 List of international airports.

The following is a list of international airports of entry designated by the Secretary of the Treasury.

Location and Name

Albany, N.Y.—Albany County Airport
Baudette, Minn.—Baudette International Airport
Bellingham, Wash.—Bellingham International Airport
Brownsville, Tex.—Brownsville International Airport
Burlington, Vt.—Burlington International Airport
Calexico, Calif.—Calexico International Airport
Caribou, Maine—Caribou Municipal Airport
Chicago, Ill.—Midway Airport
Cleveland, Ohio—Cleveland Hopkins International Airport
Cut Bank, Mont.—Cut Bank Airport
Del Rio, Tex.—Del Rio International Airport
Detroit, Mich.—Detroit City Airport
Detroit, Mich.—Detroit Metropolitan Wayne County Airport
Douglas, Ariz.—Bisbee-Douglas International Airport
Duluth, Minn.—Duluth International Airport
Duluth, Minn.—Sky Harbor Airport
El Paso, Tex.—El Paso International Airport
Fort Lauderdale, Fla.—Fort Lauderdale-Hollywood International Airport
Friday Harbor, Wash.—Friday Harbor Seaplane Base
Grand Forks, N. Dak.—Grand Forks International Airport
Great Falls, Mont.—Great Falls International Airport
Havre, Mont.—Havre City-County Airport
Houlton, Maine —Houlton International Airport
International Falls, Minn.—Falls International Airport
Juneau, Alaska—Juneau Municipal Airport
Juneau, Alaska—Juneau Harbor Seaplane Base
Ketchikan, Alaska—Ketchikan Harbor Seaplane Base
Key West, Fla.—Key West International Airport
Laredo, Tex.—Laredo International Airport
Massena, N.Y.—Richards Field
Maverick, Tex.—Maverick County Airport
McAllen, Tex.—Miller International Airport
Miami, Fla.—Chalk Seaplane Base
Miami, Fla.—Miami International Airport
Minot, N.Dak.—Minot International Airport
Nogales, Ariz.—Nogales International Airport
Ogdensburg, N.Y.—Ogdensburg Harbor
Ogdensburg, N.Y.—Ogdensburg International Airport
Oroville, Wash.—Dorothy Scott Airport
Oroville, Wash.—Dorothy Scott Seaplane Base
Pembina, N.Dak.—Pembina Municipal Airport
Port Huron, Mich.—St. Clair County International Airport
Port Townsend, Wash.—Jefferson County International Airport

Ranier, Minn.—Ranier Internatioal Seaplane Base
Rochester, N.Y.—Rochester-Monroe County Airport
Rouses Point, N.Y. —Rouses Point Seaplane Base
San Diego, Calif.—San Diego International Airport (Lindbergh Field)
Sandusky, Ohio—Griffing-Sandusky Airport
Sault Ste. Marie, Mich.—Sault Ste. Marie City-County Airport
Seattle, Wash.—King County International Airport
Seattle, Wash.—Lake Union Air Service (Seaplanes)
Tampa, Fla.—Tampa International Airport
Tucson, Ariz.—Tucson International Airport
Watertown, N.Y.—Watertown New York International Airport
West Palm Beach, Fla.—Palm Beach International Airport
Williston, N. Dak.—Sloulin Field International Airport
Wrangell, Alaska—Wrangell Seaplane Base
Yuma, Ariz.—Yuma International Airport

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 96–44, 61 FR 25778, May 23, 1996; T.D. 99–40, 64 FR 18566, Apr. 15, 1999]

§ 122.14 Landing rights airport.

(a) *Permission to land*. Permission to land at a landing rights airport may be given as follows:

(1) *Scheduled flight*. The scheduled aircraft of a scheduled airline may be allowed to land at a landing rights airport. Permission is given by the director of the port, or his representative, at the port nearest to which first landing is made.

(2) *Other aircraft*. All other aircraft may be allowed to land at a landing rights airport by the director of the port of entry or station nearest the first place of landing.

(3) *Additional flights, charters or changes in schedule*—(i) *Scheduled aircraft*. If a new carrier plans to set up a new flight schedule, or an established carrier makes changes in its approved schedule, landing rights may be granted by the port director.

(ii) *Additional or charter flight*. If a carrier or charter operator wants to begin operating or to add flights, application shall be made to the port director for landing rights. All requests shall be made not less than 48 hours before the intended time of arrival, except in emergencies. If the request is oral, it shall be put in writing before or at the time of arrival.

(4) *Emergency or forced landing*. Permission to land is not required for an emergency or forced landing (see § 122.35).

(b) *Notice to Federal agencies*. If an aircraft is given permission to land at a landing rights airport, the Customs officer who granted the landing rights shall notify the Public Health Service, the Immigration and Naturalization Service, the Animal and Plant Health Inspection Service, and any other interested Federal agency at once.

(c) *Payment of expenses*. In the case of an arrival at a location outside the limits of a port of entry, the owner, operator or person in charge of the aircraft shall pay any added charges for inspecting the aircraft, passengers, employees and merchandise when landing rights are given (see § § 24.17 and 24.22(e) of this chapter).

(d) *Denial or withdrawal of landing rights*. Permission to land at a landing rights airport may be denied or withdrawn for any of the following reasons:

(1) Appropriate and/or sufficient Federal Government personnel are not available;

(2) Proper inspectional facilities or equipment are not available at, or maintained by, the requested airport;

(3) The entity requesting services has failed to abide by appropriate instructions of a Customs officer;

(4) Advance cargo information has not been received as provided in § 122.48a;

(5) Other reasonable grounds exist to believe that Federal rules and regulations pertaining to safety, including cargo safety and security, and Customs, or other inspectional activities have not been followed; or

(6) The granting of the requested landing rights would not be in the best interests of the Government.

(e) *Appeal of denial or withdrawal*. In the event landing rights are denied or withdrawn by the port director, a written appeal of the decision may be made to the Assistant Commissioner, Office of Field Operations, Headquarters.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988. Redesignated and amended by T.D. 92–90, 57 FR 43397, Sept. 21, 1992; T.D. 95–77, 60 FR 50020, Sept. 27, 1995; T.D. 99–27, 64 FR 13675, Mar. 22, 1999; CBP Dec. 03–32, 68 FR 68170, Dec. 5, 2003]

§ 122.15 User fee airports.

(a) *Permission to land.* The procedures for obtaining permission to land at a user fee airport are the same procedures as those set forth in § 122.14 for landing rights airports.

(b) *List of user fee airports.* The following is a list of user fee airports designated by the Commissioner of Customs in accordance with 19 U.S.C. 58b. The list is subject to change without notice. Information concerning service at any user fee airport can be obtained by calling the airport or its authority directly.

Location	Name
Addison, Texas	Addison Airport.
Blountville, Tennessee.	Tri-City Regional Airport.
Broomfield, Colorado.	Jefferson County Airport.
Daytona Beach, Florida.	Daytona Beach International Airport.
Decatur, Indiana	Decatur Airport.
Dublin, Virginia	New River Valley Airport.
Edinburg, Texas	Edinburg International Airport.
Egg Harbor Township, New Jersey.	Atlantic City International Airport.
Englewood, Colorado.	Centennial Airport.
Fort Wayne, Indiana	Baer Field Airport.
Fort Worth, Texas	Fort Worth Alliance Airport.
Johnson City, New York.	Binghamton Regional Airport.
Lexington, Kentucky	Blue Grass Airport.
Manchester, New Hampshire.	Manchester Airport.
McKinney, Texas	McKinney Municipal Airport.
Medford, Oregon	Rogue Valley International Airport.
Melbourne, Florida	Melbourne Airport.
Mesa, Arizona	Williams Gateway Airport.
Midland, Texas	Midland International Airport.
Morristown, New Jersey.	Morristown Municipal Airport.
Moses Lake, Washington.	Port of Moses Lake.
Myrtle Beach, South Carolina.	Myrtle Beach International Airport.
Ocala, Florida	Ocala International Airport.
Palm Springs, California.	Palm Springs International Airport.
Rochester, Minnesota.	Rochester Airport.
Roswell, New Mexico.	Rowell Air Industrial Center.
San Bernardino, California.	San Bernardino International Airport.
Sarasota, Florida	Sarasota/Bradenton International Airport.
Scottsdale, Arizona	Scottsdale Airport.
Terre Haute, Indiana.	Hulman Regional Airport.
Victorville, California	Southern California Logistics Airport.
Waterford, Michigan	Oakland International Airport.
Waukegan, Illinois	Waukegan Regional Airport.
West Chicago, Illinois.	Dupage County Airport.
West Trenton, New Jersey.	Trenton Mercer Airport.
Wheeling, Illinois	Palwaukee Airport.
Wilmington, Ohio	Wilmington Airport.
Ypsilanti, Michigan	Willow Run Airport.

(c) *Withdrawal of designation.* The designation as a user fee airport shall be withdrawn under either of the following circumstances:

(1) If either Customs or the airport authority gives 120 days written notice of termination to the other party; or

(2) If any amounts due to be paid to Customs are not paid on a timely basis.

[T.D. 92–90, 57 FR 43397, Sept. 21, 1992, as amended by T.D. 93–32, 58 FR 25933, Apr. 29, 1993; T.D. 95–2, 59 FR 67622, Dec. 30, 1994; T.D. 95 –62, 60 FR 41804, Aug. 14, 1995; T.D. 96–67, 61 FR 49059, Sept. 18, 1996; T.D. 97–64, 62 FR 37133, July 11, 1997; T.D. 99–9, 64 FR 7502, Feb. 16, 1999; T.D. 00–34, 65 FR 31265, May 17, 2000; T.D. 01–69, 66 FR 49275, Sept. 27, 2001; T.D. 01–70, 66 FR 50104, Oct. 2, 2001; T.D. 02–27, 67 FR 35723, May 21, 2002; CBP Dec. 03–09, 68 FR 42589, July 18, 2003; CBP Dec. 03–22, 68 FR 50698, Aug. 22, 2003]

Subpart C—Private Aircraft

§ 122.21 Application.

This subpart applies to all private aircraft as defined in § 122.1(h). No other provisions of this part apply to private aircraft, except where stated in this subpart.

§ 122.22 Notice of arrival.

When arriving in the U.S. from a foreign area, all private aircraft not covered by § 122.23 shall give advance notice of arrival as required in § 122.31.

§ 122.23 Private aircraft arriving from areas south of the U.S.

(a) *Definitions.* (1) For the purpose of this section, ''private aircraft'' means all aircraft except:

(i) Public aircraft;

(ii) Those aircraft operated on a regularly published schedule, pursuant to a certificate of public convenience and necessity or foreign aircraft permit issued by the Department of Transportation, authorizing interstate, overseas air transportation; and

(iii) Those aircraft with a seating capacity of more than 30 passenges or a maximum payload capacity of more than 7,500 pounds which are engaged in air transportation for compensation or

hire on demand. (See 49 U.S.C. App. 1372 and 14 CFR part 298).

(2) The term ''place'' as used in this section means anywhere outside of the inner boundary of the Atlantic (Coastal) Air Defense Identification Zone (ADIZ) south of 30 degrees north latitude, anywhere outside of the inner boundary of the Gulf of Mexico (Coastal) ADIZ, or anywhere outside of the inner boundary of the Pacific (Coastal) ADIZ south of 33 degrees north latitude.

(b) *Advance report of penetration of U.S. airspace*. All private aircraft arriving in the Continental U.S. via the U.S./Mexican border or the Pacific Coast from a foreign place in the Western Hemisphere south of 33 degrees north latitude, or from the Gulf of Mexico and Atlantic Coasts from a place in the Western Hemisphere south of 30 degrees north latitude, from any place in Mexico, from the U.S. Virgin Islands, or (notwithstanding the definition of ''United States'' in §122.1(1)) from Puerto Rico, (which if from Puerto Rico, are conducting flight under visual flight rules (VFR)), shall furnish a notice of intended arrival to Customs at the nearest designated airport to point of crossing listed in §122.24(b), for the first landing in the U.S. The notice must be furnished at least 1 hour before crossing the U.S. coastline or border. The notice may be furnished directly to Customs by telephone, radio, or other means, or may be furnishd through the Federal Aviation Administration to Customs. The requirement to furnish a notice of intended arrival shall not apply to private aircraft departing from Puerto Rico and conducting flight under instrument flight rules (IFR) until crossing the U.S. coastline or proceeding north of 30 degrees north latitude.

(c) *Contents of notice*. The advance notice of arrival shall include the following:

(1) Aircraft registration number;

(2) Name of aircraft commander;

(3) Number of U.S. citizen passengers;

(4) Number of alien passengers;

(5) Place of last departure;

(6) Estimated time and location of crossing U.S. border/coastline;

(7) Estimated time of arrival;

(8) Name of intended U.S. airport of first landing, as listed in §122.24, unless an exemption has been granted under §122.25, or the aircraft has not landed in foreign territory or is arriving directly from Puerto Rico, or the aircraft was inspected by Customs officers in the U.S. Virgin Islands.

§122.24 Landing requirements.

(a) *In general*. Private aircraft arriving in the U.S. from a foreign area shall follow the landing requirements set out in §§122.23 and 122.36.

(b) *Special requirements*. Private aircraft required to furnish a notice of intended arrival in compliance with §122.23 shall land for Customs processing at the nearest designated airport to the border or coastline crossing point as listed in this paragraph unless exempted from this requirement in accordance with §122.25. In addition to the requirements of this section, private aircraft commanders must comply with all other landing and notice of arrival requirements. This requirement shall not apply to private aircraft which have not landed in foreign territory or are arriving directly from Puerto Rico or if the aircraft was inspected by Customs officers in the U.S. Virgin Islands.

Location	Name
Beaumont, Tex	Jefferson County Airport.
Brownsville, Tex	Brownsville International Airport.
Calexico, Calif	Calexico International Airport.
Corpus Christi, Tex.	Corpus Christi International Airport.
Del Rio, Tex	Del Rio International Airport.
Douglas, Ariz	Bisbee-Douglas International Airport.
Douglas, Ariz	Douglas Municipal Airport.
Eagle Pass, Tex	Eagle Pass Municipal Airport.
El Paso, Tex	El Paso International Airport.
Fort Lauderdale, Fla.	Fort Lauderdale Executive Airport.
Fort Lauderdale, Fla.	Fort Lauderdale-Hollywood International Airport.
Fort Pierce, Fla	St. Lucie County Airport.
Houston, Tex	William P. Hobby Airport.
Key West, Fla	Key West International Airport.
Laredo, Tex	Laredo International Airport.
McAllen, Tex	Miller International Airport.
Miami, Fla	Miami International Airport.
Miami, Fla	Opa-Locka Airport.
Miami, Fla	Tamiami Airport.
Midland, TX	Midland International Airport.
New Orleans, La	New Orleans International Airport (Moissant Field).
New Orleans, La	New Orleans Lakefront Airport.
Nogales, Ariz	Nogales International Airport.
Presidio, Tex	Presidio-Lely International Airport.
San Diego, Calif	Brown Field.
Santa Teresa, N. Mex.	Santa Teresa Airport.

Location	Name
Tampa, Fla	Tampa International Airport.
Tucson, Ariz	Tucson International Airport.
West Palm Beach, Fla.	Palm Beach International Airport.
Wilmington, NC	New Hanover County Airport
Yuma, Ariz	Yuma International Airport.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by 89–2, Dec. 21, 1988; T.D. 89–2, 53 FR 51272, Dec. 21, 1988; T.D. 89–44, 54 FR 14214, Apr. 10, 1989; T.D. 93–67, 58 FR 44444, Aug. 23, 1993; T.D. 94–34, 59 FR 16122, Apr. 6, 1994; T.D. 97–35, 62 FR 24815, May 7, 1997]

§ 122.25 Exemption from special landing requirements.

(a) *Request.* Any company or individual that has operational control over an aircraft required to give advance notice of arrival under § 122.23 may request an exemption from the landing requirements in § 122.24. Single overflight exemptions may be granted to entities involved in air ambulance type operations when emergency situations arise and in cases involving the non-emergency transport of persons seeking medical treatment in the U.S. All approvals of requests for overflight exemptions and the granting of authority to be exempted from the landing requirements are at the discretion of the port director. Exemptions may allow aircraft to land at any airport in the U.S. staffed by Customs. Aircraft traveling under an exemption shall continue to follow advance notice and general landing rights requirements.

(b) *Procedure.* An exemption request shall be made to the port director at the airport at which the majority of Customs overflight processing is desired by the applicant. Except for air ambulance operations and other flights involving the non-emergency transport of persons seeking medical treatment in the U.S., the requests shall be signed by an officer of the company or by the requesting individual and be notarized or witnessed by a Customs officer. The requests shall be submitted:

(1) At least 30 days before the anticipated first arrival, if the request is for an exemption covering a number of flights over a period of one year, or

(2) At least 15 days before the anticipated arrival, if the request is for a single flight, or

(3) In cases involving air ambulance operations when emergency situations arise and other flights involving the non-emergency transport of persons seeking medical treatment in the U.S., if time permits, at least 24 hours prior to departure. If this cannot be accomplished, Customs will allow receipt of the overflight exemption application up to departure time. In cases of extreme medical emergency, Customs will accept overflight exemption requests in flight through a Federal Aviation Administration Flight Service Station.

(c) *Content of request.* All requests for exemption from special landing requirements, with the exception of those for air ambulance operations and other flights involving the non-emergency transport of persons seeking medical treatment in the U.S., shall include the following information. Requests for exemptions for air ambulance operations and other flights involving the non-emergency transport of persons for medical treatment in the U.S. shall include the following information except for paragraphs (c)(5) and (c)(6) of this section:

(1) Aircraft registration number(s) and manufacturer's serial number(s) for all aircraft owned or operated by the applicant that will be utilizing the overflight exemption;

(2) Identification information for each aircraft including class, manufacturer, type, number, color scheme, and type of engine (e.g., turbojet, turbofan, turboprop, reciprocating, helicopter, etc.);

(3) A statement that the aircraft is equipped with a functioning mode C (altitude reporting) transponder which will be in use during overflight, that the overflights will be made in accord with instrument flight rules (IFR), and that the overflights will be made at altitudes above 12,500 feet mean sea level (unless otherwise instructed by Federal Aviation Administration controllers);

(4) Name and address of the applicant operating the aircraft, if the applicant is a business entity, the address of the headquarters of the business (include state of incorporation if applicable), and the names, addresses, Social Security numbers (if available), and dates

of birth of the company officer or individual signing the application. If the aircraft is operated under a lease, include the name, address, Social Security number (if available), and date of birth of the owner if an individual, or the address of the headquarters of the business (include state of incorporation if applicable), and the names, addresses, Social Security numbers, and dates of birth of the officers of the business;

(5) Individual, signed applications from each usual or anticipated pilot or crewmember for all aircraft for which an overflight exemption is sought stating name, address, Social Security number (if available), Federal Aviation Administration certificate number (if applicable), and place and date of birth;

(6) A statement from the individual signing the application that the pilot(s) and crewmember(s) responding to paragraph (c)(5) of this section are those intended to conduct overflights, and that to the best of the individual's knowledge, the information supplied in response to paragraph (c)(5) of this section is accurate;

(7) Names, addresses, Social Security numbers (if applicable), and dates of birth for all usual or anticipated passengers. An approved passenger must be on board to utilize the overflight exemptions.

NOTE: Where the Social Security number is requested, furnishing of the SSN is voluntary. The authority to collect the SSN is 19 U.S.C. 66, 1433, 1459 and 1624. The primary purpose for requesting the SSN is to assist in ascertaining the identity of the individual so as to assure that only law-abiding persons will be granted permission to land at interior airports in the U.S. without first landing at one of the airports designated in §122.24. The SSN will be made available to Customs personnel on a need-to-know basis. Failure to provide the SSN may result in a delay in processing of the application;

(8) Description of the usual or anticipated baggage or cargo if known, or the actual baggage or cargo;

(9) Description of the applicant's usual business activity;

(10) Name(s) of the airport(s) of intended first landing in the U.S. Actual overflights will only be permitted to specific approved airports;

(11) Foreign place or places from which flight(s) will usually originate; and

(12) Reasons for request for overflight exemption.

(d) *Procedure following exemption*. (1) If a private aircraft is granted an exemption from the landing requirements as provided in this section, the aircraft commander shall notify Customs at least 60 minutes before:

(i) Crossing into the U.S. over a point on the Pacific Coast north of 33 degrees north latitude; or

(ii) Crossing into the U.S. over a point of the Gulf of Mexico or Atlantic Coast north of 30 degrees north latitude; or

(iii) Crossing into the U.S. over the Southwestern land border (defined as the U.S.-Mexican border between Brownsville, Texas, and San Diego, California). Southwestern land border crossings must be made while flying in Federal Aviation Administration published airways.

(2) The notice shall be given to a designated airport specified in §122.24. The notice may be furnished directly to Customs by telephone, radio or other means, or may be furnished through the Federal Aviation Administration to Customs. If notice is furnished pursuant to this paragraph, notice pursuant to §§122.23 and 122.24 is unnecessary.

(3) All overflights must be conducted pursuant to an instrument flight plan filed with the Federal Aviation Administration or equivalent foreign aviation authority prior to the commencement of the overflight.

(4) The owner or aircraft commander of a private aircraft granted an exemption from the landing requirements must:

(i) Notify Customs of a change of Federal Aviation Administration or other (foreign) registration number for the aircraft;

(ii) Notify Customs of the sale, theft, modification or destruction of the aircraft;

(iii) Notify Customs of changes of usual or anticipated pilots or crewmembers as specified in paragraph (c)(5) of this section. Every pilot and crewmember participating in an overflight must have prior Customs approval either through initial application and approval, or through a supplemental application submitted by the

new pilot or crewmember and approved by Customs before commencement of the pilot's or crewmember's first overflight.

(iv) Request permission from Customs to conduct an overflight to an airport not listed in the initial overflight application as specified in paragraph (c)(10) of this section. The request must be directed to the port director who approved the initial request for an overflight exemption.

(v) Retain copies of the initial request for an overflight exemption, all supplemental applications from pilots or crewmembers, and all requests for additional landing privileges as well as a copy of the letter from Customs approving each of these requests. The copies must be carried on board any aircraft during the conduct of an overflight.

(5) The notification specified in paragraph (d)(4) of this section must be given to Customs within 5 working days of the change, sale, theft, modification, or destruction, or before a flight for which there is an exemption, whichever occurs earlier.

(e) *Inspection of aircraft having or requesting overflight exemption.* Applicants for overflight exemptions must agree to make the subject aircraft available for inspection by Customs to determine if the aircraft is capable of meeting Customs requirements for the proper conduct of an overflight. Inspections may be conducted during the review of an initial application or at any time during the term of an overflight exemption.

[T.D. 89–24, 53 FR 5429, Feb. 3, 1989, as amended by T.D. 89–24, 53 FR 6884 and 6988, Feb. 15, 1989]

§ 122.26 Entry and clearance.

Private aircraft, as defined in § 122.1(h), are not required to formally enter or to obtain formal clearance upon departure. However, entry and clearance requirements do apply to air charter and air taxi operators.

§ 122.27 Documents required.

(a) *Crewmembers and passengers.* Crewmembers and passengers on a private aircraft arriving in the U.S. shall make baggage declarations as set forth in part 148 of this chapter. An oral declaration of articles acquired in foreign areas shall be made, unless a written declaration on Customs Form 6059–B is found necessary by inspecting officers.

(b) *Cargo.* (1) On arrival, cargo and unaccompanied baggage not carried for hire aboard a private aircraft may be listed on a baggage declaration on Customs Form 6059–B, and shall be entered. If the cargo or unaccompanied baggage is not listed on a baggage declaration, it shall be entered in the same manner as cargo carried for hire into the U.S.

(2) On departure, when a private aircraft leaves the U.S. carrying cargo not for hire, the Bureau of Census (15 CFR part 30) and the Export Administration Regulations (15 CFR parts 730 through 774) and any other applicable export laws shall be followed. A foreign landing certificate or certified copy of a foreign Customs entry is required as proof of exportation if the cargo includes:

(i) Merchandise valued at more than $500.00; or

(ii) More than one case of alcoholic beverages withdrawn from a Customs bonded warehouse or otherwise in bond for direct exportation by private aircraft.

A foreign landing certificate, when required, shall be produced within six months from the date of exportation and shall be signed by a revenue officer of the foreign country to which the merchandise is exported, unless it is shown that the country has no Customs administration, in which case the certificate may be signed by the consignee or by the vessel's agent at the place of landing.

(c) *Pilot certificate/license, certificate of registration*—(1) *Pilot certificate/license.* A commander of a private aircraft arriving in the U.S. must present for inspection a valid pilot certificate/license, medical certificate, authorization, or license held by that person, when presentation for inspection is requested by a Customs officer.

(2) *Certificate of registration.* A valid certificate of registration for private aircraft which are U.S.-registered must also be presented upon arrival in the U.S., when presentation for inspection is requested by a Customs officer. A so-called ''pink slip'' is a duplicate copy

of the Aircraft Registration Application (FAA Form AC 8050–1), and does not constitute a valid certificate of registration authorizing travel internationally.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 91–61, 56 FR 32086, July 15, 1991; CBP Dec. 04–28, 69 FR 52599, Aug. 27, 2004]

§ 122.28 Private aircraft taken abroad by U.S. residents.

An aircraft belonging to a resident of the U.S. which is taken to a foreign area for non-commercial purposes and then returned to the U.S. by the resident shall be admitted under the conditions and procedures set forth in § 148.32 of this chapter. Repairs made abroad, and accessories purchased abroad shall be included in the baggage declaration as required by § 148.32(c), and may be subject to entry and payment of duty as provided in § 148.32.

§ 122.29 Arrival fee and overtime services.

Private aircraft may be subject to the payment of an arrival fee for services provided as set forth in § 24.22 of this chapter. For the procedures to be followed in requesting overtime services in connection with the arrival of private aircraft, see § 24.16 of this chapter.

[T.D. 93–85, 58 FR 54286, Oct. 21, 1993]

§ 122.30 Other Customs laws and regulations.

Sections 122.2 and 122.161 apply to private aircraft.

Subpart D—Landing Requirements

§ 122.31 Notice of arrival.

(a) *Application*. Except as provided in paragraph (b) of this section, all aircraft entering the U.S. from a foreign area shall give advance notice of arrival. When a private aircraft, as defined in § 122.23(a) of this part, enters the U.S. from a foreign area in the Western hemisphere south of the U.S., advance notice shall be given as provided in § 122.23. Aircraft arriving from Cuba shall follow the procedures set forth in subpart O of this part.

(b) *Exceptions for scheduled aircraft of a scheduled airline*. Advance notice is not required for aircraft of a scheduled airline arriving under a regular schedule. The regular schedule shall have been filed with the port director for the airport where the first landing is made.

(c) *Giving notice of arrival*—(1) *Procedure*. The commander of an aircraft covered by this section shall give the advance notice of arrival. Notice shall be given to the port director at the place of first landing, either:

(i) Directly by radio, telephone, or other method; or

(ii) Through Federal Aviation Administration flight notification procedure (see International Flight Information Manual, Federal Aviation Administration).

(2) *Reliable facilities*. When reliable means for giving notice are not available (for example, when departure is from a remote place) a landing shall be made at a place where notice can be sent prior to coming into the U.S.

(d) *Contents of notice*. The advance notice of arrival shall include the following information:

(1) Type of aircraft and registration number;

(2) Name of aircraft commander;

(3) Place of last foreign departure;

(4) International airport of intended landing or other place at which landing has been authorized by Customs;

(5) Number of alien passengers;

(6) Number of citizen passengers; and

(7) Estimated time of arrival.

(e) *Time of notice*. Notice of arrival shall be furnished far enough in advance to allow inspecting officers to reach the place of first landing of the aircraft.

(f) *Notice of other Federal agencies*. When advance notice is received, the port director shall inform any other concerned Federal agency.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 95–77, 60 FR 50020, Sept. 27, 1995]

§ 122.32 Aircraft required to land.

Any aircraft coming into the U.S., including Puerto Rico, from an area outside the U.S., is required to land, unless exempted by the Federal Aviation Administration.

§ 122.33 Place of first landing.

(a) The first landing of an aircraft entering the United States from a foreign area will be:

(1) At a designated international airport (see § 122.13), provided that permission to land has not been denied pursuant to § 122.12(c);

(2) At a landing rights airport if permission to land has been granted (see § 122.14); or

(3) At a designated user fee airport if permission to land has been granted (see § 122.15).

(b) Permission to land at a landing rights airport or user fee airport is not required for an emergency or forced landing (see § 122.35).

[T.D. 92–90, 57 FR 43397, Sept. 21, 1992, as amended by CBP Dec. 03–32, 68 FR 68170, Dec. 5, 2003]

§ 122.35 Emergency or forced landing.

(a) *Application*. This section applies to emergency or forced landings made by aircraft when necessary for safety or the preservation of life or health, when such aircraft are:

(1) Travelling from airport to airport in the U.S. under a permit to proceed (see §§ 122.52, 122.54 and 122.83(d)), or a Customs Form 7509 (see § 122.113); or

(2) Coming into the U.S. from a foreign area.

(b) *Notice*. When an emergency or forced landing is made, notice shall be given:

(1) To the Customs Service at the intended place of first landing, nearest international airport, or nearest port of entry, as soon as possible;

(2) By the aircraft commander, other person in charge, or aircraft owner, who shall make a full report of the flight and the emergency or forced landing.

(c) *Passengers and crewmembers*. The aircraft commander or other person in charge shall keep all passengers and crewmembers in a separate place at the landing area until Customs officers arrive. Passengers and crewmembers may be removed if necessary for safety, or for the purpose of contacting Customs.

(d) *Merchandise and baggage*. The aircraft commander or other person in charge shall keep all merchandise and baggage together and unopened at the landing area until Customs officers arrive. The merchandise and baggage may be removed for safety or to protect property.

(e) *Mail*. Mail may be removed from the aircraft, but shall be delivered at once to an officer or employee of the Postal Service.

§ 122.36 Responsibility of aircraft commander.

If an aircraft lands in the U.S. and Customs officers have not arrived, the aircraft commander shall hold the aircraft, and any merchandise or baggage on the aircraft for inspection. Passengers and crewmembers shall be kept in a separate place until Customs officers authorize their departure.

§ 122.37 Precleared aircraft.

(a) *Application*. This section applies when aircraft carrying crew, passengers and baggage, or merchandise which has been precleared pursuant to § 148.22 of this chapter at a location listed in § 101.5 of this chapter and makes an unscheduled or unintended landing at an airport in the U.S.

(b) *Notice*. The aircraft commander or agent shall give written notice to the Customs office at:

(1) The intended place of unlading; and

(2) The place of preclearance.

(c) *Time of notice*. Notice shall be given within 7 days of the unscheduled or unintended landing unless other arrangements have been made in advance between the carrier and the port director.

§ 122.38 Permit and special license to unlade and lade.

(a) *Applicability*. Before any passengers, baggage, or merchandise may be unladen or laden aboard on arrival or departure of an aircraft subject to these regulations, a permit and/or special license to unlade or lade shall be obtained from Customs.

(1) *Permit to unlade or lade*. A permit is required to obtain Customs supervision of unlading and lading during official Customs duty hours.

(2) *Special license to unlade or lade*. A special license is required to obtain Customs supervision of unlading and lading at any time not within official

Customs duty hours (generally, during overtime hours, Sundays or holidays).

(b) *Authorization required.* A permit or special license shall be required for each arrival and departure unless a term permit or special license has been granted. No permit or special license shall be issued unless the carrier complies with the terminal facilities and employee list requirements of § 4.30 of this chapter.

(c) *Term permit or special license.* A term permit or special license may be issued covering all arrivals and departures during a period of up to one year, providing local arrangements have been made to notify Customs before services are needed. The notice shall specify the kinds of services requested, and the exact times they will be needed. No term permit or special license shall be issued, and any term permit or special license already issued shall be revoked, unless the carrier complies with the terminal facilities and employee list requirements of § 4.30 of this chapter. In addition, a term permit or special license to unlade or lade already issued will not be applicable to any inbound or outbound flight, with respect to which Customs and Border Protection (CBP) has not received the advance electronic cargo information required, respectively, under § 122.48a or 192.14(b)(1)(ii) of this chapter (see paragraph (g) of this section).

(d) *Procedures.* The application for a permit and special license to unlade or lade shall be made by the owner, operator, or agent for an aircraft on Customs Form 3171, and shall be submitted to the port director for the airport where the unlading and lading will take place. The application shall be accompanied by a bond on Customs Form 301, containing the bond conditions set forth in subpart G of part 113 of this chapter, or a cash deposit, unless this requirement is waived under paragraph (e) of this section.

(e) *Waiver of bond.* To insure prompt and orderly clearance of the aircraft, passengers, baggage, or merchandise, the port director may waive the requirement under paragraph (d) of this section that either a bond or a cash deposit be made, if he is convinced the revenue is protected and that all Customs requirements are satisfied.

(f) *Automatic renewal of term permit or special license.* Automatic renewal of a term permit or special license may be requested by the owner, operator, or agent for an aircraft when a bond on Customs Form 301 containing the appropriate bond conditions set forth in subpart G of part 113 of this chapter is on file. The request shall be for successive annual periods which conform to the automatic renewal periods of the bond. An application will be approved by the port director unless specific reasons exist for denial. If a request for automatic renewal is not approved, the port director shall notify the requestor, and shall state the reasons for the denial. To apply for automatic renewal, item 10 on Customs Form 3171 shall be changed by adding the following words after the period of time indicated: ''And automatic annual renewal thereof for so long as the bond is renewed and remains in effect.''

(g) *Advance receipt of electronic cargo information.* The CBP will not issue a permit to unlade or lade cargo upon arrival or departure of an aircraft, and a term permit or special license already issued will not be applicable to any inbound or outbound flight, with respect to which CBP has not received the advance electronic cargo information required, respectively, under § 122.48a or 192.14 of this chapter. In cases in which CBP does not receive complete cargo information in the time and manner and in the electronic format required by § 122.48a or 192.14 of this chapter, as applicable, CBP may delay issuance of a permit or special license to unlade or lade cargo, and a term permit or special license to unlade or lade already issued may not apply, until all required information is received. The CBP may also decline to issue a permit or special license to unlade or lade, and a term permit or special license already issued may not apply, with respect to the specific cargo for which advance information is not timely received electronically, as specified in § 122.48a or 192.14(b)(1)(ii) of this chapter.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 94–2, 58 FR 68526, Dec. 28, 1993; CBP Dec. 03–32, 68 FR 68170, Dec. 5, 2003]

Subpart E—Aircraft Entry and Entry Documents

§ 122.41 Aircraft required to enter.

All aircraft coming into the United States from a foreign area must make entry under this subpart except:

(a) Public and private aircraft;

(b) Aircraft chartered by, and transporting only cargo that is the property of, the U.S. Department of Defense (DoD), where the DoD-chartered aircraft is manned entirely by the civilian crew of the air carrier under contract to DoD; and

(c) Aircraft traveling from airport to airport in the U.S. under subpart I, relating to residue cargo procedures.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by CBP Dec. 03–32, 68 FR 68170, Dec. 5, 2003]

§ 122.42 Aircraft entry.

(a) *By whom.* Entry shall be made by the aircraft commander or an agent.

(b) *Place of entry*—(1) *First landing at international airport.* Entry shall be made at the international airport at which first landing is made.

(2) *First landing at another airport.* If the first landing is not at an international airport pursuant to §§ 122.34 or 122.35, the aircraft commander or agent shall make entry at the nearest international airport or port of entry, unless some other place is allowed for the purpose.

(c) *Delivery of forms.* When the aircraft arrives, the aircraft commander or agent shall deliver any required forms to the Customs officer at the place of entry at once.

(d) *Exception to entry requirement.* Except for flights to Cuba (provided for in subpart O of this part), an aircraft of a scheduled airline which stops only for refueling at the first place or arrival in the U.S. shall not be required to enter provided:

(1) That such aircraft departs within 24 hours after arrival;

(2) No cargo, crew, or passengers are off-loaded; and

(3) Landing rights at that airport as either a regular or alternate landing place shall have been previously secured.

§ 122.43 General declaration.

(a) *When required.* A general declaration, Customs Form 7507, shall be filed for all aircraft required to enter under § 122.41 (Aircraft required to enter).

(b) *Exception.* Aircraft arriving directly from Canada on a flight beginning in Canada and ending in the U.S. need not file a general declaration to enter. Instead, an air cargo manifest (see § 122.48) may be filed in place of the general declaration, regardless of whether cargo is on board. The air cargo manifest shall state the following:

I certify to the best of my knowledge and belief that this manifest contains an exact and true account of all cargo on board this aircraft.

Signature _____

(Aircraft Commander or Agent)

(c) *Form.* The general declaration shall be on Customs Form 7507 or on a privately printed form prepared under § 122.5. The form shall contain all required information, unless the information is given in some other manner under subpart E of this part.

§ 122.44 Crew baggage declaration.

If an aircraft enters the U.S. from a foreign area, aircraft crewmembers shall file a crew baggage declaration as provided in subpart G, part 148 of this chapter.

§ 122.45 Crew list.

(a) *When required.* A crew list shall be filed by all aircraft required to enter under § 122.41.

(b) *Exception.* No crew list is required for aircraft arriving directly from Canada on a flight beginning in Canada and ending in the U.S. Instead, the total number of crewmembers may be shown on the general declaration.

(c) *Form.* The crew list shall show the full name (last name, first name, middle initial) of each crewmember, either:

(1) On the general declaration in the column headed ''Total Number of Crew''; or

(2) On a separate, clearly marked document.

(d) *Crewmembers returning as passengers.* Crewmembers of any aircraft returning to the U.S. as passengers on a commercial aircraft from a trip on

which they were employed as crewmembers shall be listed on the aircraft general declaration or crew list.

§ 122.46 Crew purchase list.

(a) *When required.* A crew purchase list shall be filed with the general declaration for any aircraft required to enter under § 122.41.

(b) *Exception.* A crew purchase list is not required for aircraft arriving directly from Canada on a flight beginning in Canada and ending in the U.S. If a written crew declaration is required for the aircraft under subpart G of part 148 of this chapter (Crewmember Declarations and Exemptions), it shall be attached to the air cargo manifest, along with the number of any written crew declarations.

(c) *Form.* If a crewmember enters articles for which a written crew declaration is not required (see subpart G, part 148 of this chapter), the articles shall be listed next to the crewmember's name on the general declaration, or on the attached crew purchase list. Articles listed on a written crew declaration need not be listed on the crew purchase list if:

(1) The crew declaration is attached to the general declaration, or to the crew list which in turn is attached to the general declaration; and

(2) The statement ''Crew purchases as per attached crew declaration'' appears on the general declaration or crew list.

§ 122.47 Stores list.

(a) *When required.* A stores list shall be filed for all aircraft required to enter under § 122.41.

(b) *Form.* The aircraft stores shall be listed on the cargo manifest or on a separate list. If the stores are listed on a separate list, the list must be attached to the cargo manifest. The statement ''Stores List Attached'' must appear on the cargo manifest.

(c) *Contents*—(1) *Required listing.* The stores list shall include all of the following:

(i) Alcoholic beverages, cigars, cigarettes and narcotic drugs, whether domestic or foreign;

(ii) Bonded merchandise arriving as stores;

(iii) Foreign merchandise arriving as stores; and

(iv) Equipment which must be licensed by the Secretary of State (see § 122.48(b)).

(2) *Other articles.* In the case of aircraft of scheduled airlines, other domestic supplies and equipment (if not subject to license) and fuel may be dropped from the stores list if the statement ''Domestic supplies and equipment and fuel for immediate flight only, except as noted'' appears on the cargo manifest or on the separate stores list. The stores list shall be attached to the cargo manifest.

(d) *Other statutes.* Section 446, Tariff Act of 1930, as amended (19 U.S.C. 1446), which covers supplies and stores kept on board vessels, applies to aircraft arriving in the U.S. from any foreign area.

§ 122.48 Air cargo manifest.

(a) *When required.* Except as provided in paragraphs (d) and (e) of this section, an air cargo manifest need not be filed or retained aboard the aircraft for any aircraft required to enter under § 122.41. However, an air cargo manifest for all cargo on board must otherwise be available for production upon demand. The general declaration must be filed as provided in § 122.43.

(b) *Exception.* A cargo manifest is not required for merchandise, baggage and stores arriving from and departing for a foreign country on the same through flight. Any cargo manifest already on board may be inspected. All articles on board which must be licensed by the Secretary of State shall be listed on the cargo manifest. Company mail shall be listed on the cargo manifest.

(c) *Form.* The air cargo manifest, Customs Form 7509, must contain all required information regarding all cargo on board the aircraft, except that a more complete description of the cargo shipped may be provided by attaching to the manifest copies of the air waybills covering the cargo on board, including, if a consolidated shipment, any house air waybills. When copies of air waybills are attached, the statement ''Cargo as per air waybills attached'' must appear on the manifest. The manifest must reference an 11-digit air waybill number for each air waybill it covers. The air waybill number must not be used by the issuer for

another air waybill for a period of one year after issuance.

(d) *Unaccompanied baggage*. Unaccompanied baggage arriving in the U.S. under a check number from any foreign country by air and presented timely to Customs may be authorized for delivery by the carrier after inspection and examination without preparation of an entry, declaration, or being manifested as cargo. Such baggage must be found to be free of duty or tax under any provision of Chapter 98, HTSUS (19 U.S.C. 1202), and cannot be restricted or prohibited. Unaccompanied checked baggage not presented timely to Customs or presented timely and found by Customs to be dutiable, restricted, or prohibited may be subject to seizure. Such unaccompanied checked baggage shall be added to the cargo list in columns under the following headings:

Check No.	Description	Where from	Destination	Name of examining officer	Disposition

The two columns, headed ''Name of examining officer'' and ''Disposition,'' are provided on the cargo manifest for the use of Customs officers. Unaccompained unchecked baggage arriving as air express or freight shall be manifested as other air express or freight.

(e) *Accompanied baggage in transit*. This section applies when accompanied baggage enters into the U.S. in one aircraft and leaves the U.S. in another aircraft. When passengers do not have access to their baggage while in transit through the U.S., the baggage is considered cargo and shall be listed on Customs Form 7509, Air Cargo Manifest.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 89–1, 53 FR 51255, Dec. 21, 1988; T.D. 02–51, 67 FR 55721, Aug. 30, 2002; CBP Dec. 03–32, 68 FR 68170, Dec. 5, 2003]

§ 122.48a Electronic information for air cargo required in advance of arrival.

(a) *General requirement*. Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), and subject to paragraph (e) of this section, for any inbound aircraft required to enter under § 122.41, that will have commercial cargo aboard, Customs and Border Protection (CBP) must electronically receive from the inbound air carrier and, if applicable, an approved party as specified in paragraph (c)(1) of this section, certain information concerning the incoming cargo, as enumerated, respectively, in paragraphs (d)(1) and (d)(2) of this section. The CBP must receive such information no later than the time frame prescribed in paragraph (b) of this section. The advance electronic transmission of the required cargo information to CBP must be effected through a CBP-approved electronic data interchange system.

(1) *Cargo remaining aboard aircraft; cargo to be entered under bond*. Air cargo arriving from and departing for a foreign country on the same through flight and cargo that is unladen from the arriving aircraft and entered, in bond, for exportation, or for transportation and exportation (see subpart J of this part), are subject to the advance electronic information filing requirement under paragraph (a) of this section.

(2) *Diplomatic Pouches and Diplomatic Cargo*. When goods comprising a diplomatic or consular bag (including cargo shipments, containers, and the like identified as Diplomatic Pouch) that belong to the United States or to a foreign government are shipped under an air waybill, such cargo is subject to the advance reporting requirements, but the description of the shipment as Diplomatic Pouch will be sufficient detail for description. Shipments identified as Diplomatic Cargo, such as office supplies or unaccompanied household goods, are subject to the advance reporting requirements of paragraph (a) of this section.

(b) *Time frame for presenting data*. (1) *Nearby foreign areas*. In the case of aircraft under paragraph (a) of this section that depart for the United States from any foreign port or place in North America, including locations in Mexico, Central America, South America (from north of the Equator only), the Caribbean, and Bermuda, CBP must receive the required cargo information no later than the time of the departure of the aircraft for the United States

(the trigger time is no later than the time that wheels are up on the aircraft, and the aircraft is en route directly to the United States).

(2) *Other foreign areas.* In the case of aircraft under paragraph (a) of this section that depart for the United States from any foreign area other than that specified in paragraph (b)(1) of this section, CBP must receive the required cargo information no later than 4 hours prior to the arrival of the aircraft in the United States.

(c) *Party electing to file advance electronic cargo data.* (1) *Other filer.* In addition to incoming air carriers for whom participation is mandatory, one of the following parties meeting the qualifications of paragraph (c)(2) of this section, may elect to transmit to CBP the electronic data for incoming cargo that is listed in paragraph (d)(2) of this section:

(i) An Automated Broker Interface (ABI) filer (importer or its Customs broker) as identified by its ABI filer code;

(ii) A Container Freight Station/deconsolidator as identified by its FIRMS (Facilities Information and Resources Management System) code;

(iii) An Express Consignment Carrier Facility as identified by its FIRMS code; or,

(iv) An air carrier as identified by its carrier IATA (International Air Transport Association) code, that arranged to have the incoming air carrier transport the cargo to the United States.

(2) *Eligibility.* To be qualified to file cargo information electronically, a party identified in paragraph (c)(1) of this section must establish the communication protocol required by CBP for properly presenting cargo information through the approved data interchange system. Also, other than a broker or an importer (see § 113.62(j)(2) of this chapter), the party must possess a Customs international carrier bond containing all the necessary provisions of § 113.64 of this chapter.

(3) *Nonparticipation by other party.* If another party as specified in paragraph (c)(1) of this section does not participate in advance electronic cargo information filing, the party that arranges for and/or delivers the cargo shipment to the incoming carrier must fully disclose and present to the carrier the cargo information listed in paragraph (d)(2) of this section; and the incoming carrier, on behalf of the party, must present this information electronically to CBP under paragraph (a) of this section.

(4) *Required information in possession of third party.* Any other entity in possession of required cargo data that is not the incoming air carrier or a party described in paragraph (c)(1) of this section must fully disclose and present the required data for the inbound air cargo to either the air carrier or other electronic filer, as applicable, which must present such data to CBP.

(5) *Party receiving information believed to be accurate.* Where the party electronically presenting the cargo information required in paragraph (d) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present the information on the basis of what that party reasonably believes to be true.

(d) *Non-consolidated/consolidated shipments.* For non-consolidated shipments, the incoming air carrier must transmit to CBP all of the information for the air waybill record, as enumerated in paragraph (d)(1) of this section. For consolidated shipments: the incoming air carrier must transmit to CBP the information listed in paragraph (d)(1) of this section that is applicable to the master air waybill; and the air carrier must transmit cargo information for all associated house air waybills as enumerated in paragraph (d)(2) of this section, unless another party as described in paragraph (c)(1) of this section electronically transmits this information directly to CBP.

(1) *Cargo information from air carrier.* The incoming air carrier must present to CBP the following data elements for inbound air cargo (an ''M'' next to any listed data element indicates that the data element is mandatory in all cases; a ''C'' next to the listed data element

indicates that the data element is conditional and must be transmitted to CBP only if the particular information pertains to the inbound cargo):

(i) Air waybill number (M) (The air waybill number is the International Air Transport Association (IATA) standard 11-digit number);

(ii) Trip/flight number (M);

(iii) Carrier/ICAO (International Civil Aviation Organization) code (M) (The approved electronic data interchange system supports both 3- and 2-character ICAO codes, provided that the final digit of the 2-character code is not a numeric value);

(iv) Airport of arrival (M) (The 3-alpha character ICAO code corresponding to the first airport of arrival in the Customs territory of the United States (for example, Chicago O'Hare = ORD; Los Angeles International Airport = LAX));

(v) Airport of origin (M) (The 3-alpha character ICAO code corresponding to the airport from which a shipment began its transportation by air to the United States (for example, if a shipment began its transportation from Hong Kong (HKG), and it transits through Narita, Japan (NRT), en route to the United States, the airport of origin is HKG, not NRT));

(vi) Scheduled date of arrival (M);

(vii) Total quantity based on the smallest external packing unit (M) (for example, 2 pallets containing 50 pieces each would be considered as 100, not 2);

(viii) Total weight (M) (may be expressed in either pounds or kilograms);

(ix) Precise cargo description (M) (for consolidated shipments, the word ''Consolidation'' is a sufficient description for the master air waybill record; for non-consolidated shipments, a precise cargo description or the 6-digit Harmonized Tariff Schedule (HTS) number must be provided (generic descriptions, specifically those such as ''FAK'' (''freight of all kinds''), ''general cargo'', and ''STC'' (''said to contain'') are not acceptable));

(x) Shipper name and address (M) (for consolidated shipments, the identity of the consolidator, express consignment or other carrier, is sufficient for the master air waybill record; for non-consolidated shipments, the name of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of a carrier, freight forwarder or consolidator is not acceptable);

(xi) Consignee name and address (M) (for consolidated shipments, the identity of the container station, express consignment or other carrier is sufficient for the master air waybill record; for non-consolidated shipments, the name and address of the party to whom the cargo will be delivered is required, with the exception of ''FROB'' (Foreign Cargo Remaining On Board); this party need not be located at the arrival or destination port);

(xii) Consolidation identifier (C);

(xiii) Split shipment indicator (C) (see paragraph (d)(3) of this section for the specific data elements that must be presented to CBP in the case of a split shipment);

(xiv) Permit to proceed information (C) (this element includes the permit-to-proceed destination airport (the 3-alpha character ICAO code corresponding to the permit-to-proceed destination airport); and the scheduled date of arrival at the permit-to-proceed destination airport);

(xv) Identifier of other party which is to submit additional air waybill information (C);

(xvi) In-bond information (C) (this data element includes the destination airport; the international/domestic identifier (the in-bond type indicator); the in-bond control number, if there is one (C); and the onward carrier identifier, if applicable (C)); and

(xvii) Local transfer facility (C) (this facility is a Container Freight Station as identified by its FIRMS code, or the warehouse of another air carrier as identified by its carrier code).

(2) *Cargo information from carrier or other filer*. The incoming air carrier must present the following additional information to CBP for the incoming cargo, unless another party as specified in paragraph (c)(1) of this section elects to present this information directly to CBP. Information for all house air waybills under a single master air waybill consolidation must be presented electronically to CBP by the same party. (An ''M'' next to any listed

data element indicates that the data element is mandatory in all cases; a ''C'' next to any listed data element indicates that the data element is conditional and must be transmitted to CBP only if the particular information pertains to the inbound cargo):

(i) The master air waybill number and the associated house air waybill number (M) (the house air waybill number may be up to 12 alphanumeric characters (each alphanumeric character that is indicated on the paper house air waybill document must be included in the electronic transmission; alpha characters may not be eliminated));

(ii) Foreign airport of origin (M) (The 3-alpha character ICAO code corresponding to the airport from which a shipment began its transportation by air to the United States (for example, if a shipment began its transportation from Hong Kong (HKG), and it transits through Narita, Japan (NRT), en route to the United States, the airport of origin is HKG, not NRT));

(iii) Cargo description (M) (a precise description of the cargo or the 6-digit Harmonized Tariff Schedule (HTS) number must be provided);

(iv) Total quantity based on the smallest external packing unit (M) (for example, 2 pallets containing 50 pieces each would be considered as 100, not 2);

(v) Total weight of cargo (M) (may be expressed in either pounds or kilograms);

(vi) Shipper name and address (M) (the name of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of a carrier, freight forwarder or consolidator is not acceptable);

(vii) Consignee name and address (M) (the name and address of the party to whom the cargo will be delivered in the United States, with the exception of ''FROB'' (Foreign Cargo Remaining On Board); this party need not be located at the arrival or destination port); and

(viii) In-bond information (C) (this data element includes the destination airport; the international/domestic identifier (the in-bond type indicator); the in-bond control number, if there is one (C); and the onward carrier identifier, if applicable (C)).

(3) *Additional cargo information from air carrier; split shipment.* When the incoming air carrier elects to transport cargo covered under a single consolidated air waybill on more than one aircraft as a split shipment (see § 141.57 of this chapter), the carrier must report the following additional information for each house air waybill covered under the consolidation (An ''M'' next to any listed data element indicates that the data element is mandatory in all cases; a ''C'' next to any listed data element indicates that the data element is conditional and must be transmitted to CBP only if the particular information pertains to the inbound cargo):

(i) The master and house air waybill number (M) (The master air waybill number is the IATA standard 11-digit number; the house air waybill number may be up to 12 alphanumeric characters (each alphanumeric number that is indicated on the paper house air waybill must be included in the electronic transmission; alpha characters may not be eliminated));

(ii) The trip/flight number (M);

(iii) The carrier/ICAO code (M) (The approved electronic data interchange system supports both 3- and 2-character ICAO codes, provided that the final digit of the 2-character code is not a numeric value);

(iv) The airport of arrival (M) (The 3-alpha character ICAO code corresponding to the first airport of arrival in the Customs territory of the United States (for example, Chicago O'Hare = ORD; Los Angeles International Airport = LAX));

(v) The airport of origin (M) (The 3-alpha character ICAO code corresponding to the airport from which a shipment began its transportation by air to the United States (for example, if a shipment began its transportation from Hong Kong (HKG), and it transits through Narita, Japan (NRT), en route to the United States, the airport of origin is HKG, not NRT));

(vi) Scheduled date of arrival (M);

(vii) The total quantity of the cargo covered by the house air waybill based on the smallest external packing unit (M) (For example, 2 pallets containing

50 pieces each would be considered as 100, not 2);

(viii) The total weight of the cargo covered by the house air waybill (M) (May be expressed in either pounds or kilograms);

(ix) Description (M) (This description should mirror the precise level of cargo description information that is furnished to the incoming carrier by the other electronic filer, if applicable (see paragraph (c)(1) of this section));

(x) Permit-to-proceed information (C) (This element includes the permit-to-proceed destination airport (the 3-alpha character ICAO code corresponding to the permit-to-proceed destination airport); and the scheduled date of arrival at the permit-to-proceed destination airport);

(xi) Boarded quantity (C) (The quantity of the cargo covered by the house air waybill (see paragraph (d)(3)(vii) of this section) that is included in the incoming portion of the split shipment); and

(xii) Boarded weight (C) (The weight of the cargo covered by the house air waybill (see paragraph (d)(3)(viii) of this section) that is included in the incoming portion of the split shipment).

(e) *Compliance date of this section.* (1) *General.* Subject to paragraph (e)(2) of this section, all affected air carriers, and other parties as specified in paragraph (c)(1) of this section that elect to participate in advance automated cargo information filing, must comply with the requirements of this section on and after March 4, 2004.

(2) *Delay in compliance date of section.* The CBP may delay the general compliance date set forth in paragraph (e)(1) of this section in the event that any necessary modifications to the approved electronic data interchange system are not yet in place. Also, CBP may delay the general compliance date of this section at a given port until CBP has afforded any necessary training to CBP personnel at that port. In addition, CBP may delay implementation if further time is required to complete certification testing of new participants. Any such delay would be the subject of an announcement in the FEDERAL REGISTER.

[CBP Dec. 03–32, 68 FR 68170, Dec. 5, 2003]

§ 122.49 Correction of air cargo manifest or air waybill.

(a) *Shortages*—(1) *Reporting.* Shortages (merchandise listed on the manifest or air waybill but not found) shall be reported to the port director by the aircraft commander or agent. The report shall be made:

(i) On a Customs Form 5931, filled out and signed by the importer and the importing or bonded carrier; or

(ii) On a Customs Form 5931, filled out and signed by the importer alone under § 158.3 of this chapter; or

(iii) On a copy of the cargo manifest, which shall be marked ''Shortage Declaration,'' and must list the merchandise involved and the reasons for the shortage.

(2) *Time to file.* Shortages shall be reported within the time set out in part 158 of this chapter, or within 30 days of aircraft entry.

(3) *Evidence.* The aircraft commander or agent shall supply proof of the claim that:

(i) Shortage merchandise was not imported, or was properly disposed of; or

(ii) That corrective action was taken. This proof shall be kept in the carrier file for one year from the date of aircraft entry.

(b) *Overages*—(1) *Reporting.* Overages (merchandise found but not listed on the manifest or air waybill) shall be reported to the port director by the aircraft commander or agent. The report shall be made:

(i) On a Customs Form 5931; or

(ii) On a separate copy of the cargo manifest which is marked ''Post Entry'' and lists the overage merchandise and the reason for the overage.

(2) *Time to file.* Overages shall be reported within 30 days of aircraft entry.

(3) *Evidence.* Satisfactory proof of the reasons for the overage shall be kept on file by the carrier for one year from the date of the report.

(c) *Statement on cargo manifest.* If the air cargo manifest is used to report shortages or overages, the Shortages Declaration or Post Entry must include the signed statement of the aircraft commander or agent as follows:

I declare to the best of my knowledge and belief that the discrepancy described herein occurred for the reason stated. I also certify that evidence to support the explanation of

the discrepancy will be retained in the carrier's files for a period of at least one year and will be made available to Customs on demand.

Signature _____
(Aircraft Commander or Agent)

(d) *Notice by port director*. The port director shall immediately notify the aircraft commander or agent of any shortages or overages that were not reported by the aircraft commander or agent. Notice shall be given by sending a copy of Customs Form 5931 to the aircraft commander or agent, or in any other appropriate way. The aircraft commander or agent shall make a satisfactory reply within 30 days of entry of the aircraft or receipt of the notice, whichever is later.

(e) *Correction not required*. A correction in the manifest or air waybill is not required if:

(1) The port director is satisfied that the difference between the quantity of bulk merchandise listed on the manifest or air waybill, and the quantity unladen, is the usual difference caused by absorption or loss of moisture, temperature, faulty weighing at the airport, or other such reason; and

(2) The marks or numbers on merchandise packages are different from the marks or numbers listed on the cargo manifest for those packages if the quantity and description of the merchandise is given correctly.

(f) *Statutes applicable*. If an aircraft arrives in the U.S. from a foreign area with merchandise and unaccompanied baggage for which a manifest or air waybill must be filed, section 584 (concerning manifest violations), Tariff Act of 1930, as amended (19 U.S.C. 1584, applies.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 98–74, 63 FR 51288, Sept. 25, 1998]

§ 122.49a Passenger and crew manifests.

(a) *General requirement*. Each air carrier, foreign and domestic, operating a passenger flight in foreign air transportation to the United States, including flights where the passengers and crew have already been pre-inspected or precleared at the foreign location for admission to the United States, must transmit to Customs a passenger manifest and a crew manifest containing the information set forth in paragraph (c) of this section, as required by 49 U.S.C. 44909(c)(1). The electronic transmission of manifest information must be effected through an electronic data interchange system approved by Customs. This information must be transmitted to the U.S. Customs Data Center, Customs Headquarters.

(b) *Passenger and crew manifests separately transmitted; advance receipt by Customs*. For each flight subject to paragraph (a) of this section, the air carrier must separately transmit to Customs the passenger manifest and the crew manifest. The crew manifest must be received in advance of departure from the last foreign port or place. The passenger manifest must be received by Customs no later than 15 minutes after the flight has departed from the last foreign port or place (after the wheels are up on the aircraft and the aircraft is en route directly to the United States).

(c) *Information required*—(1) *Airline and flight information*. For each passenger manifest and crew manifest relating to a flight falling within the scope of paragraph (a) of this section, the following airline and flight information must be electronically transmitted to Customs: the airline IATA (International Air Transport Authority) code; the flight number (followed by the alpha character ''C'' in the case of the crew manifest for the flight); the departure location IATA code; the U.S. arrival location(s) IATA code(s); the date of flight arrival in the United States; and whether each passenger and crew member on the flight is destined for the U.S. or in transit through the U.S.

(2) *Identifying information for each passenger or crew member*. In the manner prescribed in paragraph (c)(3) of this section, for each passenger manifest and crew manifest, as applicable, that relates to a flight falling within the scope of paragraph (a) of this section, the following information that identifies each passenger and crew member on the flight must be electronically transmitted to Customs: The full name of each passenger and crew member; the date of birth and citizenship of each passenger and crew member; the

gender of each passenger and crew member; the passport number and country of issuance of the passport of each passenger and crew member if a passport is required for travel; and the United States visa travel document number (located in the machine-readable zone of the visa document) or resident alien card number of each passenger and crew member, as applicable (49 U.S.C. 44909(c)(2)(A)–(E)).

(3) *Use of travel document to obtain data.* Air carriers are to provide the data elements set out in paragraph (c)(2) of this section that describe each passenger and crew member on a flight subject to paragraph (a) of this section by transmitting to Customs one, and only one, travel document per passenger or crew member, selected in the following order of preference: U.S. Alien Registration Card; U.S. Border Crossing Card; U.S. non-immigrant visa; U.S. Refugee Travel Document or Re-Entry Permit; U.S. Passport; or non-U.S. passport. Customs timely receipt of the electronic transmission of the preferred travel document pertaining to a passenger or crew member for a covered flight will be considered as constituting full compliance with the informational requirements of 49 U.S.C. 44909(c)(2)(A)–(E), subject to paragraph (c)(5) of this section.

(4) *Additional information required; travel itinerary of each passenger and crew member.* In addition, for each passenger manifest and crew manifest, as applicable, that relates to a flight falling within the scope of paragraph (a) of this section, air carriers are required to transmit for each passenger and crew member, the foreign airport where they began their air transportation to the United States. Also, for passengers and crew members destined for the United States, the air carrier must designate the airport in the United States where the passenger will be processed through Customs and Immigration formalities. Likewise, for passengers and crew members that are transiting through the United States and not clearing Customs and Immigration formalities, the air carrier bringing them into the United States must transmit the foreign airport of ultimate destination.

(5) *Receipt of all required data elements.* Air carriers will be required to transmit any informational elements required by paragraph (c) of this section which are not contained in the transmitted travel documents by a date that will be announced in the FEDERAL REGISTER.

(d) *Carrier responsibility for comparing information collected with travel document.* The carrier collecting the information described in paragraph (c)(2) of this section is responsible for comparing this information with the related travel document under paragraph (c)(3) of this section, in order to ensure that the information is correct, that the document appears to be valid for travel to the United States, and that the passenger or crew member, as applicable, is the person to whom the travel document was issued.

(e) *Sharing of manifest information with other Federal agencies.* Information contained in passenger and crew manifests for flights subject to paragraph (a) of this section (49 U.S.C. 44909(c)(1)) that is received by Customs electronically may, upon request, be shared with other Federal agencies for the purpose of protecting national security (49 U.S.C. 44909(c)(5)).

[T.D. 02–01, 66 FR 67484, Dec. 31, 2001, as amended by T.D. 02–33, 67 FR 42712, June 25, 2002]

§ 122.49b Passenger Name Record (PNR) information.

(a) *General requirement.* Each air carrier, foreign and domestic, operating a passenger flight in foreign air transportation to or from the United States, including flights to the United States where the passengers have already been pre-inspected or pre-cleared at the foreign location for admission to the U.S., must, upon request, provide Customs with electronic access to certain Passenger Name Record (PNR) information, as defined and described in paragraph (b) of this section. In order to readily provide Customs with such access to requested PNR information, each air carrier must ensure that its electronic reservation/departure control systems correctly interface with the U.S. Customs Data Center, Customs Headquarters, as prescribed in paragraph (c)(1) of this section.

(b) *PNR information defined; PNR information that Customs may request*—(1) *PNR information defined.* Passenger Name Record (PNR) information refers to reservation information contained in an air carrier's electronic reservation system and/or departure control system that sets forth the identity and travel plans of each passenger or group of passengers included under the same reservation record with respect to any flight covered by paragraph (a) of this section.

(2) *PNR data that Customs may request.* The air carrier, upon request, must provide Customs with electronic access to any and all PNR data elements relating to the identity and travel plans of a passenger concerning any flight under paragraph (a) of this section, to the extent that the carrier in fact possesses the requested data elements in its reservation system and/or departure control system. There is no requirement that the carrier collect any PNR information under this paragraph, that the carrier does not otherwise collect on its own and maintain in its electronic reservation/departure control systems.

(c) *Required carrier system interface with Customs Data Center to facilitate Customs retrieval of requested PNR data.* (1) *Carrier requirements for interface with Customs.* Within the time specified in paragraph (c)(2) of this section, each air carrier must fully and effectively interface its electronic reservation/departure control systems with the U.S. Customs Data Center, Customs Headquarters, in order to facilitate Customs ability to retrieve needed Passenger Name Record data from these electronic systems. To effect this interface between the air carrier's electronic reservation/departure control systems and the Customs Data Center, the carrier must:

(i) Provide Customs with an electronic connection to its reservation system and/or departure control system. (This connection can be provided directly to the Customs Data Center, Customs Headquarters, or through a third party vendor that has such a connection to Customs.);

(ii) Provide Customs with the necessary airline reservation/departure control systems' commands that will enable Customs to:

(A) Connect to the carrier's reservation/departure control systems;

(B) Obtain the carrier's schedules of flights;

(C) Obtain the carrier's passenger flight lists; and

(D) Obtain data for all passengers listed for a specific flight; and

(iii) Provide technical assistance to Customs as required for the continued full and effective interface of the carrier's electronic reservation/departure control systems with the Customs Data Center, in order to ensure the proper response from the carrier's systems to requests for data that are made by Customs.

(2) *Time within which carrier must interface with Customs Data Center to facilitate Customs access to requested PNR data.* Any air carrier which has not taken steps to fully and effectively interface its electronic reservation/departure control systems with the Customs Data Center must do so, as prescribed in paragraphs (c)(1)(i)–(c)(1)(iii) of this section, within 30 days from the date that Customs contacts the carrier and requests that the carrier effect such an interface. After being contacted by Customs, if an air carrier determines it needs more than 30 days to properly interface its automated database with the Customs Data Center, it may apply in writing to the Assistant Commissioner, Office of Field Operations (OFO) for an extension. Following receipt of the application, the Assistant Commissioner, OFO, may, in writing, allow the carrier an extension of this period for good cause shown. The Assistant Commissioner's decision as to whether and/or to what extent to grant such an extension is within the sole discretion of the Assistant Commissioner and is final.

(d) *Sharing of PNR information with other Federal agencies.* Passenger Name Record information as described in paragraph (b)(2) of this section that is made available to Customs electronically may, upon request, be shared with other Federal agencies for the purpose of protecting national security (49 U.S.C. 44909(c)(5)). Customs may

also share such data as otherwise authorized by law.

[T.D. 02–33, 67 FR 42712, June 25, 2002]

§ 122.50 General order merchandise.

(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 unlading until the fifteenth calendar day after landing. No later than 20 calendar days after landing, the pilot or owner of the aircraft 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 pilot or owner of the aircraft 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 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. 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. The arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (*see* § 19.9 of this chapter). Any unentered merchandise or baggage shall remain the responsibility of the carrier, pilot, or person in charge of the importing aircraft, 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 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 fails to timely relinquish custody of the merchandise to a Customs-approved bonded General Order warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) If the bonded warehouse operator fails to take possession of unentered 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). If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (*see* § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (*see* §§ 113.63(c)(3) and 113.64(b) of this chapter).

(f) In ports where there is no bonded warehouse authorized to accept general order merchandise, or if merchandise requires specialized storage facilities that 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.

(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 aircraft arrived, to be held there at the risk and expense of the consignee.

[T.D. 98–74, 63 FR 51288, Sept. 25, 1998, as amended by T.D. 02–65, 67 FR 68033, Nov. 8, 2002]

Subpart F—International Traffic Permit

§ 122.51 Aircraft of domestic origin registered in the U.S.

After Customs inspection of the aircraft, passengers, baggage and merchandise at the entry airport, commercial aircraft of domestic origin registered in the U.S. may be allowed to proceed to other airports in the U.S. without permit.

§ 122.52 Aircraft of foreign origin registered in the U.S.

(a) *Application.* This section applies to commercial aircraft (as defined in § 122.1(d)) of foreign origin registered in the U.S. and arriving in the U.S. from a foreign area.

(b) *Aircraft entered as an imported article.* If an aircraft covered by this section is entered as an imported article, and any applicable duty for the aircraft has been paid on a prior arrival, it may be allowed to proceed as other than an imported article. In this instance, the aircraft commander must file a declaration that states the:

(1) Port where entry was made;

(2) Date duty, if any, was paid; and

(3) Number of the entry.

(c) *Aircraft not entered as imported article*—(1) *Treatment as other than an imported article.* A commercial aircraft covered by this section which has not been entered as an imported article may travel from airport to airport in the U.S. without payment of duty. Each commercial aircraft shall proceed under a permit on Customs Form 7507 or 7509, as provided in § 122.54. Treatment of the aircraft as other than an imported article shall continue for so long as the aircraft:

(i) Is used only for commercial purposes between the U.S. and foreign areas; and

(ii) Will leave the U.S. for a foreign destination in commercial use or carrying neither passengers nor cargo.

(2) *Treatment as an imported article.* Any aircraft covered by this section

which was not entered as an imported article shall make entry if it:

(i) Is withdrawn from commercial use between the U.S. and foreign areas; or

(ii) Is used in the U.S. in a way not reasonably related to efficient commercial use of the aircraft between the U.S. and foreign areas.

(3) *Aircraft damage and duty payment*—(i) *Substantial damage to commercial aircraft.* If an accident causes substantial damage to a commercial aircraft, no entry or duty payment is required for any part of the wreckage.

(ii) *Less than substantial damage and export.* If an accident does not cause substantial damage to a commercial aircraft, salvageable parts of the wrecked aircraft may be exported. In this circumstance, the aircraft, as a whole or in part, is not considered to be withdrawn from commerical use and is not subject to entry or to duty as imported merchandise.

(iii) *Less than substantial damage and no export.* If an accident does not cause substantial damage to a commercial aircraft and the wrecked aircraft or any salvageable part of it is not exported, then:

(A) Entry is required to be made for the damaged aircraft or any salvageable part of it; and

(B) A duty payment, if applicable, based on the condition of the aircraft following the accident, is required.

§ 122.53 Aircraft of foreign registry chartered or leased to U.S. air carriers.

Aircraft of foreign registry leased or chartered to a U.S. air carrier, while being operated by the U.S. air carrier under the provisions of the Federal Aviation Administration regulations (14 CFR 121.153), shall be treated as U.S. registered aircraft for purposes of this subpart.

§ 122.54 Aircraft of foreign registry.

(a) *Application.* For any commercial aircraft of foreign registry arriving in the U.S., the aircraft commander or agent shall file for an international traffic permit when the aircraft;

(1) Is not an imported article; and

(2) Is ferried (proceeds carrying neither passengers nor cargo) from the airport of first arrival to one or more airports in the U.S. (For permit to proceed with residue cargo, passengers, or crewmembers for discharge in the U.S., see subpart I of this part).

(b) *International traffic permit.* The international traffic permit shall be filed on Customs Form 7507 by the carrier or its agent. Customs Form 7509 may be used if the aircraft arrives directly from Canada on a flight beginning in Canada and ending in the U.S. Either form shall show the following information and must be approved by the appropriate Customs officer:

(1) Type of aircraft;

(2) Nationality and registration number of aircraft;

(3) Name and country of aircraft manufacturer;

(4) Name of aircraft commander;

(5) Country from which aircraft arrived;

(6) Name and location of airport where international traffic permit is issued;

(7) Date international traffic permit is issued;

(8) Name and location of airport to which aircraft is proceeding;

(9) Purpose of stay in the U.S.;

(10) Signature of Customs officer giving permit.

(c) *Permit on board.* The international traffic permit shall be kept on board the aircraft while in the U.S.

(d) *Intermediate airports.* For each airport at which the aircraft lands, the Customs officer, or airport manager if there is no Customs officer present, shall note the following information on the permit:

(1) Name and location of the airport;

(2) Date and arrival time;

(3) Purpose of the visit;

(4) Name and location of the next airport to be visited; and

(5) Date and time of departure.

(e) *Final airport.* The international traffic permit shall be given to the Customs officer in charge at the airport of final clearance for a foreign destination. Before clearance is given, the Customs officer shall make sure that the aircraft was properly inspected by Customs in the U.S.

(f) *Port of issue.* The international traffic permit shall be returned after final clearance to the director of the

port where the permit was issued, to be kept on file.

(g) *Enforcement*. Once the permit to proceed has been issued for an aircraft, the director of the port of issue must receive notice that the aircraft has made final clearance. If notice is not received within 60 days, the port director shall report the matter to the Customs agent in charge of the area for investigation.

Subpart G—Clearance of Aircraft and Permission To Depart

§ 122.61 Aircraft required to clear.

(a) All aircraft, except public and private aircraft, leaving the U.S. for a foreign area are required to clear if:

(1) Carrying passengers and/or merchandise for hire; or

(2) Taking aboard or discharging passengers and/or merchandise for hire in a foreign area.

(b) Any aircraft used by members of air travel clubs are required to clear, and foreign aircraft traveling under a permit to proceed shall also clear.

§ 122.62 Aircraft not otherwise required to clear.

(a) *Bureau of the Census*. Under Bureau of the Census Regulations (15 CFR part 30), aircraft not required to clear by § 122.61 shall obtain permission to depart if carrying merchandise from the U.S. to Puerto Rico or from Puerto Rico to the U.S.

(b) *Bureau of Industry and Security*. Aircraft leaving the U.S. for a foreign area must be cleared by Customs if a validated license from the Bureau of Industry and Security (Department of Commerce) is required for the aircraft under the Export Administration Regulations (15 CFR parts 730 through 774). Aircraft are not required to clear if the Secretary of Commerce issues a permit allowing departure without clearance.

(c) *Department of State*. Aircraft not covered by Export Administration Regulations are subject to the Department of State export licensing authority as set out in 22 CFR parts 121 and 123. Such aircraft may depart from the U.S. only with the proper Department of State license.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 93–61, 58 FR 41425, Aug. 4, 1993; CBP Dec. 04–28, 69 FR 52599, Aug. 27, 2004; 69 FR 54179, Sept. 2, 2004]

§ 122.63 Scheduled airlines.

The aircraft commander or agent shall request clearance or permission to depart for aircraft of scheduled airlines covered by this subpart.

(a) *Clearance at other than airport of final departure*. Aircraft may clear at each airport where merchandise and/or passengers are taken on board for transport outside of the U.S. The clearance applies only to the merchandise and passengers boarding at each place. Clearance shall be requested at the Customs port of entry (regardless of whether it is an international airport) nearest to the place where merchandise and/or passengers are taken on board.

(b) *Clearance at final departure airport*. Clearance or permission to depart may be requested at the Customs port of entry (regardless of whether it is an international airport) nearest the last departure airport.

§ 122.64 Other aircraft.

Clearance or permission to depart shall be requested by the aircraft commander or agent for aircraft covered by this subpart other than those of scheduled airlines. The request must be made to the director of the port of entry (regardless of whether it is an international airport) nearest the final departure airport.

§ 122.65 Failure to depart.

Once an aircraft has been cleared or given permission to depart it must depart within 72 hours. The aircraft commander or agent shall report promptly to the port director if departure is delayed beyond or cancelled within 72 hours after the aircraft received clearance or permission to depart.

§ 122.66 Clearance or permission to depart denied.

If advance electronic air cargo information is not received as provided in § 192.14 of this chapter, Customs and Border Protection may deny clearance

or permission for the aircraft to depart from the United States.

[CBP Dec. 03–32, 68 FR 68173, Dec. 5, 2003]

Subpart H—Documents Required for Clearance and Permission to Depart

§ 122.71 Aircraft departing with no commercial export cargo.

(a) *Application*. This section applies to aircraft departing for foreign territory with no export cargo, but not to those aircraft which are themselves being exported.

(1) Such aircraft may clear by telephone in advance with the director of the port of departure if departing empty or carrying only:

(i) Passengers for hire; or

(ii) Non-commercial cargo for which Shipper's Export Declarations are not required.

(2) If not cleared by telephone, an air cargo manifest containing the following statement, signed by the aircraft commander or agent, shall be submitted to Customs:

I declare to the best of my knowledge and belief that there is no cargo on board this aircraft.

Signature _____
(Aircraft Commander or Agent)

(b) *Timeliness*. The request for telephone clearance must be received by the Customs officer in charge with sufficient time remaining before departure to ensure that Customs may undertake any necessary examination of the aircraft and cargo.

(c) *Documentation*. If clearance is granted by telephone, the aircraft commander is not required to file the documents required by this subpart.

§ 122.72 Aircraft departing with commercial export cargo.

If an aircraft with export cargo leaves the U.S. for any foreign area, a general declaration, if required, an air cargo manifest and any required Shipper's Export Declarations, shall be filed in accordance with this subpart for all cargo on the aircraft, and for the aircraft itself if exported as merchandise. See § 122.79 for special requirements regarding shipments to U.S. possessions.

§ 122.73 General declaration and air cargo manifest.

(a) *General declaration*—(1) *Form*. The general declaration shall be on Customs Form 7507 and shall show all information required.

(2) *Preparation and filing*. The aircraft commander or agent shall file two copies of the general declaration with Customs at the departure airport.

(3) *Exception*. A general declaration shall not be required if the air cargo manifest, Customs Form 7509, contains the statement shown in paragraph (b) of this section.

(b) *Air cargo manifest*—(1) *Form*. The air cargo manifest shall be on Customs Form 7509, and shall show all information required. If a general declaration is not presented, the following statement, signed by the aircraft commander or agent, shall appear on the form:

I declare that all statements contained in this manifest, including the account of the cargo on board this aircraft, are complete, exact, and true to the best of my knowledge.

Signature _____
(Aircraft Commander or Agent)

(2) *Preparation and filing*. The aircraft commander or agent shall file two copies of the air cargo manifest with the Customs at the departure airport. Three copies of the air cargo manifest shall be filed if the aircraft is covered by § 122.77(b). The air cargo manifest must be filed in:

(i) Complete form, with all required Shipper's Export Declarations (see § 122.75); or

(ii) Incomplete form (pro forma) under § 122.74.

§ 122.74 Incomplete (pro forma) manifest.

(a) *Application*—(1) *Shipments to foreign countries*. Except for aircraft bound for foreign locations referred to in paragraph (b) of this section, clearance, or permission to depart may be given to an aircraft bound for a foreign location by the Customs at the departure airport before a complete manifest or all required Shipper's Export Declarations have been filed, if a proper bond is filed on Customs Form 301, containing the bond conditions set forth in subpart G of part 113 of this chapter.

(2) *Shipments to Puerto Rico.* As provided in § 122.79(b), any required air cargo manifest or Shipper's Export Declarations for direct flights between the U.S. and Puerto Rico shall be filed with the appropriate Customs officer upon arrival in Puerto Rico. If any required manifest or Shipper's Export Declarations are not filed with the appropriate Customs officer within one business day after arrival in Puerto Rico, a proper bond shall be filed at that time on Customs Form 301, containing the bond conditions set forth in subpart G of part 113 of this chapter.

(b) *Exceptions.* An incomplete manifest will not be accepted:

(1) During any time covered by a proclamation of the President that a state of war exists between foreign nations; or

(2) If the aircraft is departing on a flight from the U.S. directly or indirectly to a foreign country listed in § 4.75 of this chapter.

In both cases, a complete air cargo manifest and all required Shipper's Export Declarations shall be filed with the port director before the aircraft will be cleared.

(c) *Filing under bond.* An incomplete set of documents may be filed only when accompanied by the proper bond. Under the bond, a complete set of documents shall be filed within whichever of the following time periods is appropriate:

(1) *Shipments to foreign countries.* All required Shipper's Export Declarations and a complete air cargo manifest shall be filed by the airline not later than the fourth business day after clearance (when clearance is required) or departure (when clearance is not required) of the aircraft.

(2) *Shipments to and from Puerto Rico.* For shipments from the U.S. to Puerto Rico, the complete manifest (when required) and all required Shipper's Export Declarations shall be filed not later than the seventh business day after arrival into Puerto Rico. For shipments from Puerto Rico to the U.S., the complete manifest (when required) and all required Shipper's Export Declarations shall be filed not later than the seventh business day after departure from Puerto Rico.

(3) *Shipments to U.S. possessions.* For shipments between the U.S. or Puerto Rico and possessions of the U.S., a complete manifest and all required Shipper's Export Declarations shall be filed by the airline not later than the seventh business day after departure. See § 122.79.

(d) *Declaration required.* A declaration shall be made on the incomplete manifest that:

(1) All required documents will be filed within the 4-day bond period; or

(2) All required documents will be filed within the 7-day bond period.

Once all documents have been filed, a statement as required by § 122.75(b) shall be made.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 93–61, 58 FR 41425, Aug. 4, 1993]

§ 122.75 Complete manifest.

(a) *Contents.* A complete air cargo manifest shall list all cargo laden, and show for each item the air waybill number, or marks and numbers on packages and the type of goods carried. If an item does not require a Shipper's Export Declaration, it shall be noted on the air cargo manifest.

(1) *Shipments on an air waybill.* A copy of each air waybill on which shipments are listed may be attached to the air cargo manifest, and the number of the air waybill may be listed on the air cargo manifest. The statement ''Cargo as per Air Waybill Attached'' must appear on the air cargo manifest if this is done.

(2) *Direct departure.* This subsection applies only to direct departures of shipments requiring a Shipper's Export Declaration. A copy of each declaration may be attached to the air cargo manifest, and the number of each declaration shall be listed on the air cargo manifest in the column for air waybill numbers. The statement ''Cargo as per Export Declarations Attached'' must appear on the manifest if this is done.

(b) *Statement required.* (1) When all required documents are ready for filing, the following statement must appear on the air cargo manifest, or on the general declaration form if an air cargo manifest is not required:

Attached Shipper's Export Declarations represent a full and complete enumeration and description of the cargo carried in this flight except that listed on the cargo manifest.

(2) If an incomplete set of documents has been filed and is later completed, the following statement shall accompany the Shipper's Export Declarations and any required air cargo manifests:

Attached Shipper's Export Declarations represent a full and complete enumeration and description of the cargo carried on aircraft No. _____, Flight No. _____ cleared direct for _____, on _____ except cargo listed on any cargo manifest required to be filed for such flight.

Airline _____

Authorized Agent _____

§ 122.76 Shipper's Export Declarations and inspection certificates.

(a) *Shipper's Export Declarations*—(1) *Other than shipments to Puerto Rico*. For shipments other than to Puerto Rico, at the time of clearance, the aircraft commander or agent shall file with the port director of the departure airport any Shipper's Export Declarations required by the Bureau of the Census (see 15 CFR part 30).

(2) *Shipments to Puerto Rico*. For flights carrying shipments to Puerto Rico from the U.S., the aircraft commander or agent shall file any Shipper's Export Declarations required by the Bureau of the Census (see 15 CFR part 30) upon arrival in Puerto Rico with the port director there.

(b) *Inspection certificates*. The aircraft commander or authorized agent shall deliver a proper export inspection certificate issued by the Veterinary Service, Animal and Plant Inspection Service, Department of Agriculture (9 CFR part 91), to the Customs officer in charge at the time of departure of any aircraft carrying horses, mules, asses, cattle, sheep, swine, or goats.

[T.D. 93–61, 58 FR 41426, Aug. 4, 1993]

§ 122.77 Clearance certificate.

(a) *Aircraft departing from the U.S.* One copy of the air cargo manifest shall be used as a clearance certificate when endorsed by the port director to show that clearance is granted.

(b) *Scheduled aircraft*. If a scheduled aircraft clears at an airport which is not the airport at or nearest the place of final take-off from the U.S., two copies of the air cargo manifest shall be filed. One copy shall be used as a clearance certificate when endorsed by the director of the port where clearance is obtained, and the second copy shall be attached to the first for use at subsequent U.S. ports.

§ 122.78 Entry or withdrawal for exportation or for transportation and exportation.

If a shipment is exported under an entry or withdrawal for exportation, or for transportation and exportation, the air cargo manifest, the air waybill, or the consignment note attached to the manifest shall clearly show the following information for each entry or withdrawal:

(a) Number;

(b) Date; and

(c) Class of entry or withdrawal, as follows:

(1) Transportation and exportation;

(2) Withdrawal for transportation and exportation;

(3) Immediate exportation;

(4) Withdrawal for exportation; or

(5) Withdrawal for transportation.

The name of the port where the entry or withdrawal was filed, if not the port where the merchandise is laden for exportation, shall also appear on the air cargo manifest.

§ 122.79 Shipments to U.S. possessions.

(a) *Other than Puerto Rico*. An air cargo manifest shall be filed for aircraft transporting cargo between the U.S. and U.S. possessions. Shipper's Export Declarations are not required for shipments from the U.S. or Puerto Rico to the U.S. possessions, except to the U.S. Virgin Islands or from a U.S. possession and destined to the U.S., Puerto Rico, or another U.S. possession.

(b) *Puerto Rico*. When an aircraft carries merchandise on a direct flight from the U.S. to Puerto Rico, any required air cargo manifest or Shipper's Export Declarations shall be filed with the appropriate port director at Puerto Rico.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 93–61, 58 FR 41426, Aug. 4, 1993]

§ 122.80 Verification of statement.

Customs officers may verify any of the statements required under this subpart by examining the shipping records of the airline involved.

Subpart I—Procedures for Residue Cargo and Stopover Passengers

§ 122.81 Application.

(a) *Aircraft arriving with cargo*. Aircraft arriving in the U.S. from a foreign area with cargo shown on the manifest to be traveling to other airports in the U.S. or to foreign areas may proceed under the provisions of this subpart.

(b) *Aircraft arriving with no cargo*. Aircraft arriving in the U.S. from a foreign area with no cargo on board, and requesting immediate examination and release, may proceed if a bond on Customs Form 301, containing the bond conditions set forth in subpart G of part 113 of this chapter, has been filed and covers the aircraft.

§ 122.82 Bond requirements.

A bond on Customs Form 301, containing the bond provisions set forth in subpart G of part 113 of this chapter, shall be filed before an aircraft is given a permit to proceed with residue cargo under this subpart. The bond shall be filed in the correct amount with the director of the entry airport.

§ 122.83 Forms required.

(a) *Traveling general declaration and manifest*. When applying for examination and release from an airport or place of entry in the U.S., the aircraft commander or agent shall file a traveling general declaration and manifest. The traveling general declaration and manifest is one certified copy of the original inward general declaration, and each air cargo manifest required when the aircraft entered. This includes air waybills that were part of the manifest.

(b) *Attachments to traveling general declaration and manifest*—(1) *Crew purchase and stores list*. The crew purchase and stores list, if required when the aircraft enters under §§ 122.46 and 122.47, shall be attached to the traveling general declaration and manifest.

(2) *Crew purchases not listed on a crew purchase list*. A crew member's declaration shall be attached to the traveling general declaration and manifest if:

(i) Crew purchases are listed on a crew declaration, Customs Form 5129, instead of on the crew purchase list, under § 122.46(c)(2); and

(ii) The crew member has not left the aircraft with his or her purchase at the first entry port.

The crew member's declaration must be attached at the port where the articles listed on the declaration receive clearance.

(c) *Abstract general declaration and manifest*. The abstract general declaration and manifest shall consist of one copy of the general declaration, and one copy of each manifest (including air waybills) covering residue cargo:

(1) Not yet examined and released by Customs or any other Federal agency; and

(2) To be discharged at another domestic or foreign airport.

An abstract general declaration and manifest need not be filed at the last domestic port of discharge.

(d) *Permit to proceed*. A permit to proceed from one domestic airport to another shall be filed by the aircraft commander or agent with the Customs officer in charge at the clearance airport. The permit to proceed shall include a declaration by the aircraft commander or agent, which shall be signed on entry at the next domestic airport. The permit to proceed and declaration shall state substantially the following:

PERMIT TO PROCEED FROM ONE AIRPORT TO ANOTHER

Airport of Departure _____

Date _____

Permission is hereby given aircraft _____ to proceed to _____

(Next Domestic Airport)

The aircraft which has arrived from and is destined to the places shown in the general declaration, is proceeding to such places of destination to discharge residue cargo, passengers, or crew members and their purchases, as listed in the attached manifest. Bond was given at the airport of arrival for the cargo retained on board. Items of cargo manifested for delivery at this airport appear to have been landed.

Number of crew members not cleared by Customs _____.

Number of passengers not cleared by Customs _____.

Number of pages of the traveling manifest _____.

_____

(Customs Officer and Title)

DECLARATION ON ENTRY OF AIRCRAFT AT FOLLOWING AIRPORT

Airport of Arrival _____

Date _____

I, _____, commander or authorized agent of the aircraft identified in this document, declare and guarantee that there were not, when such aircraft departed from the airport of _____, nor have been since, nor now are, any more or other goods, wares, or merchandise on board than was stated in the attached manifests.

_____

(Signature and Title)

The permit to proceed and declaration must be stamped, mimeographed or printed on:

(1) The abstract general declaration;

(2) The traveling general declaration when an abstract general declaration is not required; or

(3) A separate sheet of paper.

(e) *Permit to proceed for nonscheduled aircraft*. For each permit to proceed issued to a nonscheduled aircraft carrying residue cargo the transit air cargo manifest procedures shall be followed. When the aircraft arrives at the final port, the aircraft commander shall deliver the permit to proceed to Customs.

(f) *Use of form*. When all of the documents required by this section are in order, the permit to proceed shall be dated and signed by the Customs officer in charge at the clearance airport. One copy of the permit to proceed shall be delivered to the aircraft commander or agent with the other required documents, for filing at the next international airport.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988; T.D. 00–22, 65 FR 16518, Mar. 29, 2000]

§ 122.84 Intermediate airport.

(a) *Application*. The provisions of this section apply at any U.S. airport to which an aircraft proceeds with residue cargo, and passengers, or crewmembers and their purchases not cleared by Customs. They do not apply to aircraft arriving at the last domestic port of discharge.

(b) *Entry*. When an aircraft arrives at the next airport, the aircraft commander or agent shall make entry by filing the:

(1) Abstract general declaration and manifest;

(2) Traveling general declaration and manifest; and

(3) Permit to proceed.

The *Declaration on Entry of Aircraft at Following Airport*, found on the permit to proceed, shall be properly signed before filing for entry.

(c) *Crew declarations*. The declarations and entries, Customs Form 5129, of any crewmembers who leave the aircraft with their purchases at the intermediate airport shall be detached from the traveling general manifest. The declaration and entries are to be detached by the Customs officer in charge and are kept at the airport.

(d) *Departure*. When the aircraft leaves an intermediate airport carrying residue cargo, and passengers or crewmembers and their purchases are not yet cleared by Customs or another interested Federal agency, the procedure is the same as at the first arrival airport. All documents required by this section, except those detached under paragraph (c) of this section, shall be returned to the aircraft commander or agent for filing at the next entry airport.

§ 122.85 Final airport.

When an aircraft enters at the last domestic airport of discharge, the traveling general declaration and manifest shall be filed with Customs and kept at the airport. No abstract general declaration and manifest is required.

§ 122.86 Substitution of aircraft.

(a) *Application*. The residue cargo procedure applies when an airline must substitute aircraft to reach a destination due to weather conditions or operational factors which prevent an aircraft on arrival of the flight at the first port from continuing inbound to interior ports scheduled for that flight.

(b) *Clearance and entry*. Clearance and entry of substitute aircraft is required as provided in this subpart for other aircraft.

(c) *Identification*. An identification of all substitute aircraft shall be clearly

made on all clearance and entry documents.

(d) *Transporting cargo*—(1) *Forwarding*. The carrier may forward all cargo which arrived on one aircraft by transferring it to another aircraft of the same airline to complete the inbound flight. The transfer shall be done under Customs supervision.

(2) *Conditions*. All of the residue cargo from more than one inbound flight of an airline may be laden on one substitute aircraft of the airline. The substitute aircraft shall finish the inbound transport of the residue cargo.

§ 122.87 Other requirements.

Section 4.85 of this chapter, relating to vessels with residue cargo for domestic ports, applies to aircraft residue cargo, except as stated in this subpart.

§ 122.88 Aircraft carrying domestic (stopover) passengers.

Airlines that commingle domestic (stopover) passengers (that is, passengers who have already cleared Customs at their port of arrival and are continuing on another aircraft to a second U.S. destination) with international passengers who are continuing on the flight to their port of arrival and have not yet cleared Customs, must comply with certain requirements before being issued a permit to proceed. The carriers requirements are as follows:

(a) The domestic (stopover) passengers must be transported on U.S.-registered aircraft, or foreign-registered aircraft of the same foreign airline that brought them into the U.S.

(b) A $2.00 charge must be paid for each revenue producing domestic (stopover) passenger reinspected in the U.S. (see § 24.12 of this chapter).

(c) Arrangements must be made for the checked baggage of all passengers requiring inspection on the previously described flights to be off-loaded and made available for examination in the Federal inspection area at the destination port (intermediate or final) where an inspection is to take place.

(d) All stopover passengers shall be notified in writing, prior to boarding, that they will be subject to full reinspection by Customs. This written notification shall contain the following language: ''Notice to all boarding passengers: You are boarding an aircraft on which passengers will be arriving in the U.S. from foreign destinations. These passengers have not yet cleared U.S. Customs. Accordingly, you will be subject to a full reinspection by Customs at your final U.S. port of entry.''

(e) Domestic (stopover) passengers shall be provided a Customs declaration identified by the words ''Domestic Flight''. The domestic (stopover) passenger is only required to complete items 1–4 on that declaration.

(f) The carrier shall present to Customs, as otherwise required by law, the permit to proceed and/or the general declaration, clearly stating the number of domestic (stopover) passengers to be reinspected upon arrival at the destination port (intermediate or final) where an inspection of passengers is to take place.

Subpart J—Transportation in Bond and Merchandise in Transit

§ 122.91 Application.

This subpart applies to the transportation in bond of merchandise arriving in the U.S. by aircraft and entered:

(a) For immediate transportation to another airport without appraisement; or

(b) For transportation through the U.S. and later exportation by aircraft.

§ 122.92 Procedure at port of origin.

(a) *Forms required*—(1) *Customs Form 7512 or other document*. Customs Form 7512 or other Customs approved documents, such as an air waybill (see paragraph (a)(3) of this section), shall be used for both entry and manifest. Three copies of the form or other document are required to be filed with Customs at the port of origin for merchandise for immediate transportation without appraisement. Four copies of the form or other document are required when merchandise for transportation and exportation is entered. (See also, §§ 18.11 and 18.20(a) of this chapter). Each copy shall be signed by the carrier or its authorized agent.

(2) *Air Waybill*. An air waybill may be used for both entry and manifest. Three copies of the air waybill are required unless the port director deems

additional copies necessary. Photocopies of the original air waybill are acceptable. Either preprinted stock air waybills or electronically generated air waybills may be used. The air waybill must:

(i) Contain the information required of a universal air waybill as recognized and accepted by the International Air Transport Association (IATA), be legible and in the English language;

(ii) Display a unique 11-digit number, the first three digits being the air carrier's identification code;

(iii) Display the number of packages based on the smallest external packaging unit (*e.g.*, 14 packages is acceptable, 1 pallet is unacceptable);

(iv) Display the name of the final port of destination in the U.S. or the name of the ultimate country of destination of the cargo indicated by available air carrier shipping documents. The ultimate destination must be shown even though the air transportation may be scheduled to terminate in a country prior to the cargo's final destination;

(v) Be modified to contain the following information which should appear in a block or attachment in the upper right-hand corner as in this example. The numbers 1–8 correspond to the descriptions that follow; the numbers do not have to appear on the AWB:

(1) _____
Origin
(2) _____
Entry Type
(3) _____
Destination
(4) _____
Importing Carrier/Flight Number/Arrival Date
(5) _____
Bonded Carrier/Exporter
(6) _____
Date
(7) _____
Signature of Carrier's Agent (or Exporter)
(8) _____
Customs Officer Date

The item numbers correspond to the following information:

Item 1—Origin— The numeric port code as listed in Schedule D of the Harmonized Tariff Schedules of the United States, or the port where the in-bond entry is presented.

Item 2—Entry type— The appropriate in-bond code number such as I.T./61 for Immediate Transportation, T&E/62 for Transportation and Exportation, and I.E./63 for Immediate Exportation.

Item 3—Destination— The numeric port code for the intended port of destination for entry or exportation.

Item 4—Importing Carrier/Flight Number/Arrival Date— This information serves to identify the shipment in terms of the inward foreign manifest of the importing carrier. The ''Arrival Date'' is the date of arrival of the importing conveyance in the U.S. The information must be supplied in all instances.

Item 5—Bonded Carrier/Exporter— The bonded carrier or exporter who will be liable for the proper movement, handling, and safekeeping of the merchandise once the in-bond movement is authorized by Customs. If this information is not supplied, the in-bond movement will be carried out under the bond of the importing carrier. (See Item 7 for further information on transfer of liability.)

Item 6—Date— The date of the in-bond entry preparation. Since an in-bond entry can be prepared before the date of entry presentation and/or acceptance, and prior to the actual arrival of the importing conveyance, this date should only be used for duty assessment purposes when the date in Item 8 is left blank. If a date is not present, the date of in-bond preparation will be deemed to be the date of arrival.

Item 7—Signature of Carrier's Agent (or Exporter)— This signature of the authorized agent of the bonded carrier or exporter identified previously (See Item 5) constitutes acceptance of the liability for the in-bond shipment by the party signing. A signature is required except when the in-bond movement is under the bond of the importing carrier. If unsigned, the submission to Customs of an AWB requesting such a movement is evidence of the acceptance of liability if the AWB is approved by Customs.

Item 8—Customs Officer/Date— Signature of the Customs officer who authorizes the initiation of the in-bond movement and the date of such authorization. Customs will check to make sure

merchandise is released only to a bonded carrier. The date is used to start the time limit for completion of the in-bond movement and for consumption entry purposes in accord with § 141.69(b) of this chapter. Customs authorization procedures which use a perforation device are acceptable in lieu of the appropriate Customs signature. The port director will determine whether a signature will be required in this block prior to the time that the cargo is allowed to move.

(b) *Delivery of Customs form to carrier*—(1) *Merchandise entered for immediate transportation without appraisement.* When merchandise is entered for immediate transportation without appraisement, two copies of Customs Form 7512 or other Customs approved document shall be delivered to the carrier.

(2) *Merchandise entered for transportation and exportation.* When merchandise is entered for transportation and exportation, one copy of Customs For 7512 and any other Customs approved document shall be delivered to the carrier.

(3) *After delivery.* After delivery, the forms or other document shall accompany the merchandise to the port of destination or exportation.

(c) *Receipt and supervision.* The agent of a bonded air carrier shall give a receipt for any merchandise delivered to it for transportation in bond, and no supervision of the lading of the merchandise on the transporting aircraft shall be required.

(d) *Split shipment*—(1) *Departure within 24 hours.* Merchandise covered by a single entry and manifest (Customs Form 7512 or other Customs approved document) may be sent to the destination airport on one or more aircraft. A separate manifest for each aircraft is not required if the whole shipment is sent within a single 24-hour period.

(2) *Departure not within 24 hours.* If any part of a shipment is sent more than 24 hours after the first part was sent, the entry and manifest copy which accompanies the first shipment shall state that the rest of the shipment will follow by separate aircraft. A single manifest shall be prepared for each part of the shipment sent by separate aircraft. The manifest shall be used as notice of each arrival at the destination airport.

(e) *Transhipment.* Merchandise sent under bond may be transferred at an intermediate airport to one or more aircraft of the same airline. This may be done without Customs supervision and notice of the transfer is not required. If merchandise covered by one entry and manifest is transferred to more than one aircraft, paragraph (d) of this section applies.

(f) *Sealing not required.* The sealing of aircraft, aircraft compartments carrying bonded merchandise, or the cording and sealing of bonded packages carried by the aircraft, is not required.

(g) *Warning labels.* The carrier shall supply and attach the warning label, as described in § 18.4(e) of this chapter, to each bonded package.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 92–82, 57 FR 38276, Aug. 24, 1992; T.D. 00–22, 65 FR 16518, Mar. 29, 2000]

§ 122.93 Procedure at destination or exportation airport.

(a) *Delivery to port director.* When a bonded shipment arrives at the destination or exportation airport, the aircraft commander or agent shall deliver one copy of the entry and manifest (Customs Form 7512 or other Customs approved document) covering the shipment to the port director of that airport as notice of arrival. If the shipment was sent by separate aircraft more than 24 hours after the first part of the shipment was sent, then a manifest for each part of the shipment shall be delivered to the port director.

(b) *Delivery to consignee.* When the merchandise is sent under an entry for immediate transportation without appraisal, one copy of the manifest covering the merchandise shall be delivered by the carrier to the consignee. This copy is used to make entry, and may also be used as a carrier certificate as provided in § 141.11(a)(4) of this chapter.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988; T.D. 00–22, 65 FR 16518, Mar. 29, 2000]

§ 122.94 Certificate of lading for exportation.

(a) *Required filing.* This section applies to merchandise entered for transportation and exportation by aircraft.

A certificate of lading for exportation and a Customs Form 7512 or other Customs approved document (see § 122.93 of this subpart) shall be filed when the merchandise reaches the final departure airport. The form shall be filled out and signed at the place where aircraft clearance for the merchandise is given.

(b) *Clearance not at place of final departure.* If an aircraft is cleared at a place other than the place of final departure from the U.S., the aircraft commander or its authorized agent shall:

(1) Promptly report arrival of any bonded merchandise for export to the Customs officer in charge at that place; and

(2) Submit to the Customs officer in charge the certificate received at the place the merchandise was taken on board. The clearance certificate is kept by the Customs officer in charge until departure.

This procedure shall be followed at each place of landing before final departure.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988; T.D. 00–22, 65 FR 15618, Mar. 29, 2000]

§ 122.95 Other provisions.

Part 18 of this chapter (Transportation in Bond and Merchandise in Transit) applies to the transportation of merchandise under this subpart unless stated otherwise.

Subpart K—Accompanied Baggage in Transit

§ 122.101 Entry of accompanied baggage.

Passengers who enter the U.S. on one aircraft and depart to a foreign area on another aircraft with accompanying baggage shall either:

(a) Submit their baggage to Customs for inspection; or

(b) Arrange with the importing carrier for the baggage to be processed under regular in-transit procedures.

When passengers choose not to have access to their baggage while in the U.S., the baggage shall be listed on the Air Cargo Manifest as provided in § 122.48.

§ 122.102 Inspection of baggage in transit.

(a) General baggage in transit may be inspected upon arrival, while in transit, and upon exportation. Carriers shall present in-transit baggage for inspection at any time found necessary by the port director.

(b) In-transit baggage shall be presented to a Customs officer for inspection and clearance before the baggage can be delivered to a passenger while in the U.S.

Subpart L—Transit Air Cargo Manifest (TACM) Procedures

§ 122.111 Application.

Cargo (including manifested baggage) which arrives and is transported under Customs control in, through, or from, the U.S. may be transported in bond under this subpart. If cargo is not transported under this subpart, it shall be transported under other provisions of this chapter. (See subparts I and J of this part, and parts 18 and 123 of this chapter.)

§ 122.112 Definitions.

The following definitions apply in this subpart:

(a) *Transit air cargo.* ''Transit air cargo'' is cargo, including manifested baggage, transported under the requirements of this subpart.

(b) *Port of arrival.* The ''port of arrival'' is the port in the U.S. where imported cargo must be documented for further transportation under this subpart.

(c) *Transfer or transferred.* ''Transfer or transferred'' means the change of documentation of cargo to transit air cargo for transportation. The terms also include the physical movement of the cargo from one carrier to another, and thereafter by air or surface movement to the port of destination.

(d) *Transit air cargo manifest.* ''Transit air cargo manifest'' is used in this subpart as the shortened title for the transportation entry and transit air cargo manifest.

§ 122.113 Form for transit air cargo manifest procedures.

A manifest on Customs Form 7509 is required for transit air cargo, as provided in § 122.48(c) of this part. The words ''Transportation Entry and Transit Air Cargo Manifest'' shall be printed, stamped or marked on the form and on all copies of the form required for transit air cargo movement.

§ 122.114 Contents.

(a) *Form duplicates original manifest.* Each transit air cargo manifest shall be a duplicate of the sheet presented as part of the cargo manifest for the aircraft on which the cargo arrived in the U.S.

(b) *Shipments shown on manifest*—(1) *Country of exportation.* Each transit air cargo manifest sheet may list:

(i) Only air cargo shipments from one exporting country, with the name of the country shown in the heading; or

(ii) Air cargo shipments from several exporting countries, with the name of the exporting country shown in the ''Nature of Goods'' column.

(2) *Shipment to same port.* Each transit air manifest sheet may list only those shipments manifested by way of the port of arrival for:

(i) The same Customs port of destination;

(ii) The same Customs port for later exportation; or

(iii) Direct exportation from the port of arrival.

(c) *Information required.* Each air cargo manifest sheet shall show:

(1) The foreign port of lading;

(2) The date the aircraft arrived at the port of arrival;

(3) Each U.S. port where Customs services will be necessary due to transit air cargo procedures; and

(4) The final port of destination in the U.S., or the foreign country of destination, for each shipment. The foreign country destination shown on the manifest must be the final destination, as shown by airline shipping documents, even though airline transport may be scheduled to end before the shipment arrives at the final destination.

(d) *Corrections.* If corrections in the route shown on the original manifest for the cargo are required at the port of arrival to make a manifest sheet workable as a transit air cargo manifest, the director of the port of arrival may allow the corrections.

§ 122.115 Labeling of cargo.

A warning label, as required by § 18.4(e) of this chapter, shall be attached to all transit air cargo not directly exported from the port of arrival before the cargo leaves the port of arrival.

§ 122.116 Identification of manifest sheets.

When the original cargo manifest for the aircraft on which the cargo arrives is presented by the aircraft commander or its authorized agent at the port of arrival, a manifest number will be given to the aircraft entry documents by Customs. The number given shall be used by the airline to identify all copies of the transit air cargo manifest. All copies of the manifest shall be correctly numbered before cargo will be released from the port of arrival as transit air cargo.

§ 122.117 Requirements for transit air cargo transport.

(a) *Transportation*—(1) *Port to port.* Transit air cargo may be carried to another port only when a receipt is given, as provided in paragraph (b) of this section. The receipt may be given only to an airline which:

(i) Is a common carrier for the transportation of bonded merchandise; and

(ii) Has the required Customs bond on file.

(2) *Exportation from port of arrival.* Transit air cargo may be exported from the port of arrival only if covered by a bond on Customs Form 301, containing the bond conditions set forth in subpart G of part 113 of this chapter, as provided in § 18.25 of this chapter.

(b) *Receipt*—(1) *Requirements.* When air cargo is to move from the port of arrival as transit air cargo, a receipt shall be given. The receipt shall be made by the airline responsible for transport or export within the general order period (see § 122.50).

(2) *Contents.* The receipt shall appear on each copy of the transit air cargo manifest, clearly signed and dated if required, in the following form:

Received the cargo listed herein for delivery to Customs at the port of destination or exportation shown above, or for direct exportation.

Name of carrier (or exporter)

Attorney or agent of carrier (or exporter)

Date

(c) *Responsibility for transit air cargo*—(1) *Direct exportation*. The responsibility of the airline exporting transit air cargo for direct exportation begins when a receipt, as provided in paragraph (b) of this section, is presented to Customs.

(2) *Other than direct exportation*. When the transit air cargo is not for direct exportation, the responsibility of the airline receiving the cargo begins when a receipt, as provided in paragraph (b) of this section, is presented to Customs.

(3) *Carting*. When carting is used to deliver transit air cargo to receiving airlines, the importing airline is responsible for the cargo under its own bond until a receipt is filed by the receiving airline. This does not apply when the carting is done under part 112 of this chapter, at the expense of the parties involved.

(4) *Importing airlines*. An importing airline which has qualified as a carrier of bonded merchandise, whether registered in the U.S. or a foreign area, may:

(i) Give a receipt for the air cargo;

(ii) File an appropriate bond; and

(iii) Deliver the cargo to an authorized domestic carrier for in-bond transportation from the port of arrival. The importing carrier's bond covers the transportation.

(d) *Split shipments*. A receipt shall be given by one airline for all of the cargo shipments listed on one transit air cargo manifest sheet. Cargo shipments so listed shall be transported from the port of arrival on one aircraft or carrier unless the use of more than one aircraft or carrier would be allowed:

(1) By § 122.92(d) under a single combined entry and manifest;

(2) By § 122.118(d); or

(3) By § 122.119(e), permitting the use of a surface carrier for transport.

Otherwise, all shipments on the transit air cargo manifest shall be separately documented and transported under the regular procedures for transportation of merchandise in bond (See subpart J).

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 98–74, 63 FR 51289, Sept. 25, 1998]

§ 122.118 Exportation from port of arrival.

(a) *Application*. Transit air cargo may be transferred for exportation from any port of arrival under this section. The port director may require any supervision necessary to enforce the regulations of other Federal agencies.

(b) *Time*. Transit air cargo shall be exported from the port of arrival within 10 days from the date the exporting airline receives the cargo. After the 10-day period, the individual cargo shipments must be made the subject of individual entries, as appropriate.

(c) *Transit air cargo manifest copies*. Three copies of the transit air cargo manifest shall be filed with Customs.

(1) *Review copy*. The importing airline shall file a copy of each transit air cargo manifest sheet covering any cargo shipment that will be transferred for direct exportation. This filing shall be made as soon as the exporting airline has been chosen. The exporting airline need not give receipt on the review copy for the cargo to be transferred, but the name of the exporting airline shall be placed on the copy.

(2) *Exportation copy*. The exportation copy shall be filed by the exporting airline when clearance documents are presented to Customs.

(3) *Clearance copy*. The clearance copy shall be filed with the exporting aircraft's clearance documents.

The exportation and clearance copies shall show the exporting airline's receipt for the cargo, aircraft number, flight number, and the date.

(d) *Direct export on different aircraft*. Transit air cargo shipments which are listed on one aircraft transit air cargo manifest sheet may be directly exported on different aircraft of the exporting airline. If this occurs, two additional copies of the transit air cargo manifest shall be filed for each shipment or group of shipments transported in other aircraft. Each copy of

the transit air cargo manifest shall be clearly marked to show which shipment or shipments listed are covered by the manifest copy.

(e) *Direct export by another airline.* If shipments listed on one transit air cargo manifest sheet are not exported from the same port on the same airline, separate export entries on Customs Form 7512, as required by § 18.25 of this chapter, shall be filed.

(f) *Post entered air cargo.* Air cargo not listed on the manifest (i.e., overages) which has been post entered under § 122.49(b) may be exported from the port of origin under this subpart. If this occurs, four copies of the air cargo manifest, Customs Form 7509, marked ''Post Entry'', shall be provided. All requirements of § 122.44(b) shall be followed in using this procedure.

(g) *Review.* The review copy of the transit air cargo manifest sheets must be reviewed by Customs as required for the carrier manifest copy in § 122.120(g). The reviewing officer shall take the proper action if a license is necessary for any cargo. The exporting airline shall be notified that any transit air cargo which is not covered by the required license must be placed under constructive Customs custody in a special area of the airline's terminal until the license is obtained.

§ 122.119 Transportation to another U.S. port.

(a) *Application.* Air cargo shipments may be transferred for transportation as transit air cargo from the port of arrival to another port in the U.S. under this section. The director of the port of arrival may require Customs supervision of the transfer.

(b) *Time.* Transit air cargo traveling to a final port of destination in the U.S. shall be delivered to Customs at its destination within 15 days from the date the receiving airline gives the receipt for the cargo at the port of arrival.

(c) *Transit air cargo manifest copies.* Four copies of the transit air cargo manifest, including a carrier manifest copy, shall be filed by the airline giving a receipt for moving the cargo shipments to their destination. The permit copy is used and kept by Customs at the port of arrival.

(d) *Failure to deliver on time*—(1) *Procedure.* If transit air cargo does not arrive at the destination port on time, the director of the port of arrival shall take action as provided in §§ 18.6 and 18.8 of this chapter. The amount of duty and tax shall be decided at the port of arrival on the basis of information:

(i) On the permit copy kept at the port of arrival; and

(ii) Obtained from the carriers as necessary.

The director of the port of arrival shall notify the airline that presented a receipt for the cargo that there has been a failure to deliver.

(2) *Responsibility of airline.* When the airline that presented a receipt for the cargo receives notice of discrepancies, the airline shall answer within 90 days of the date of such notice to the director of the port of arrival. The answer shall provide any information or documents related to the value and description of the cargo involved that the receipting airline and the importing airline can produce.

(e) *Surface movement to port of destination.* If an aircraft arrives at the port of arrival with cargo to be carried as transit air cargo, the cargo may be transferred to another carrier for surface movement to the port of destination. The transfer is allowed under the following conditions:

(1) The bond of the party receiving the cargo for surface movement must cover the transfer and surface movement;

(2) The description of the cargo on the transit air cargo manifest must be complete;

(3) The entire shipment listed in the transit air cargo manifest must be shipped from the port of arrival to the port of destination by the same surface carrier; and

(4) The requirements of § 122.114(b) must be followed.

[T.D. 88–12, 54 FR 9292, Mar. 22, 1988; T.D. 00–22, 65 FR 16518, Mar. 29, 2000]

§ 122.120 Transportation to another port for exportation.

(a) *Application.* Air cargo may be transferred as transit air cargo at the

port of arrival for transportation to another port in the U.S. and later exportation under this section.

(b) *Supervision*—(1) *From port of arrival to exportation port.* The director of the port of arrival shall order any supervision found necessary for the transfer of transit air cargo for transportation to another port for export.

(2) *At exportation port.* Customs shall be notified far enough in advance to be able to make any required supervision of the lading of cargo, and to enforce any other Federal agency requirements, when transit air cargo is ready for lading on the exporting aircraft.

(c) *Time.* Transit air cargo covered by this section shall be delivered to Customs at the port of exportation within 15 days from the date of receipt by the forwarding airline.

(d) *Transit air cargo manifest copies.* Five copies of the transit air cargo manifest shall be filed with Customs.

(1) *Port of arrival.* Two copies of the transit air cargo manifest, marked separately as ''permit'' and ''control'' copies, shall be filed with Customs at the port of arrival. Filing shall be made when the arriving aircraft enters, or before the general order period ends, by the airline which presents a receipt to transport the cargo from the port of arrival to the port of destination.

(2) *Port of exportation.* Three copies of the transit air cargo manifest shall be filed at the port of exportation.

(i) *Carrier manifest copy.* The carrier manifest copy shall be attached to the listing of cargo shipments and submitted when the cargo arrives at the exportation port.

(ii) *Exportation and clearance copies.* Two copies, marked separately as ''exportation'' and ''clearance'' copies, shall be filed with Customs at the exportation port.

(e) *Delivery to exporting airline.* When the transit air cargo arrives at the exportation port, it may be delivered directly to the exporting carrier, together with the exportation and clearance copies. The name of the exporting carrier shall be clearly noted on the carrier manifest copy, which shall then be delivered to Customs.

(f) *Storage by exporting airline.* The exporting carrier shall keep all cargo listed on the transit air cargo manifest in one storage space. This storage space shall be separate from the area in which special shipments which require a license under paragraph (g) of this section are stored.

(g) *Export license*—(1) *Review.* A Customs officer shall review the carrier manifest copy of the transit air cargo manifest to make sure that the export licensing requirements of other Federal agencies have been followed.

(2) *Information inadequate.* If the manifest information is not enough for Customs to determine that a license or other requirement applies, then the transit air cargo shall be checked by examination, or by inspection of the air waybills or attached invoices.

(3) *When license or other requirement applies.* The exporting airline shall be notified at once if Customs finds that the shipment cannot be exported without a license or other approval. The shipment shall then be put under constructive Customs custody in a special area set aside for the shipment in the exporting airline's cargo terminal.

(h) *Filing of exportation and clearance copies*—(1) *Information.* When filed with Customs, the exportation and clearance copies of the transit air cargo manifest shall each show:

(i) The aircraft number;

(ii) The aircraft flight number; and

(iii) The date.

(2) *Filing.* The exporting airline shall file the exportation and clearance copies before the aircraft that carries the transit air cargo departs. The clearance copies shall be grouped together and not mixed in with other outward manifest sheets. The exportation copies shall be grouped together, and kept separate from the outward clearance documents.

(i) *Cargo not laden at same airport by same airline.* If all the cargo listed on one transit air cargo manifest sheet is not laden for exportation from the same U.S. airport by the same airline, then separate entries on Customs Form 7512 are required for each cargo shipment listed:

(1) For transportation and exportation under subpart J of this part; or

(2) For direct exportation under § 18.25 of this chapter.

(j) *Cargo laden on more than one aircraft of same airline.* When any cargo

shipment listed on the same transit air cargo manifest must be exported on more than one aircraft of the same airline, § 122.118(d) applies.

(k) *Failure to deliver*. If all or part of the cargo listed on the transit air cargo manifest is not accounted for with an exportation copy within 40 days, the director of the port of arrival shall take action as provided in § 122.119(d).

[T.D. 88–12, 53 FR 9292, Mar. 25, 1988, as amended by T.D. 98–74, 63 FR 51289, Sept. 25, 1998; T.D. 00–22, 65 FR 16518, Mar. 29, 2000]

Subpart M—Aircraft Liquor Kits

§ 122.131 Application.

(a) *Liquor and tobacco*. Subpart M applies to:

(1) Duty-free and tax-free liquor and tobacco; and

(2) Duty-paid and tax-paid liquor and tobacco which has been placed in the same liquor kit as duty-free and tax-free liquor and tobacco.

(b) *Aircraft*. Subpart M applies to all commercial aircraft on domestic or foreign flights operating into, from and between U.S. airports, which are carrying:

(1) Duty-free and tax-free liquor and tobacco withdrawn from bond under section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309); or

(2) Other liquor or tobacco on which duty or taxes have not been paid.

This includes any aircraft carrying duty-free and tax-free liquor under 19 U.S.C. 1309, or other Federal law, although the aircraft is not required to enter, clear or report arrival.

§ 122.132 Sealing of aircraft liquor kits.

(a) *Sealing required*. Aircraft liquor kits shall be sealed on board the aircraft by crewmembers before the aircraft lands in the U.S. The liquor kits shall be kept under seal while on the ground unless taken to an authorized airline in-bond liquor storeroom.

(b) *Exception*. When an aircraft is traveling between airports in the U.S., in a trade for which duty-free and tax-free liquor is used during flight, sealing the liquor kits on board during transporting stopovers is not required if:

(1) The liquor kits are kept on board the aircraft; and

(2) The port director finds that sealing is not required for revenue protection.

(c) *Seals to be used*. Aircraft liquor kits shall be sealed with serially numbered, Customs approved seals. The airline shall use seals supplied by an approved manufacturer, as provided in part 24 of this chapter. A small number of seals may be obtained from the port director.

(d) *Removing seals*. When sealed liquor kits are on the ground, the Customs seals may be broken only by:

(1) A Customs officer; or

(2) Authorized airline personnel, in an authorized airline in-bond liquor storeroom.

(e) *Resealing*. When a Customs officer breaks the seal of a liquor kit to check the contents, the action shall be recorded on the liquor kit stores list, and the liquor kit must be resealed with an approved seal.

§ 122.133 Stores list required on arrival.

(a) *When required, contents*. Three copies of an incoming stores list shall be prepared for each liquor kit on board before an aircraft lands. The incoming stores list shall state for each type of liquor and bottle size:

(1) Number of full bottles;

(2) Number of partially filled bottles; and

(3) Total number of bottles.

If the carrier chooses not to state the type of liquor for each size bottle, any duty or taxes assessed for any shortage shall be set at the highest rate available for the alcoholic beverages in the kit.

(b) *Disposition of stores list copies*. One copy of the incoming stores list shall be placed in the liquor kit before it is sealed. The remaining two copies shall be used as follows:

(1) One copy shall be filed with the inward cargo manifest; and

(2) One copy shall be kept for filing with the outward cargo manifest if the liquor kit was laden for export.

(c) *For aircraft not required to enter and/or clear*. If an aircraft is not required to enter and/or clear:

(1) One copy shall be given to the Customs officer upon arrival; and

(2) One copy shall be kept to be given to the Customs officer before departure of the aircraft.

(d) *When stores list not prepared.* When a complete stores list is not prepared before landing, liquor kits must be sealed on board, and the seal number shall be recorded on the stores list. When the aircraft lands, the liquor shall be taken at once to the Customs office and the stores list shall be completed by crew members under Customs supervision.

§ 122.134 When airline does not have in-bond liquor storeroom.

(a) *Handling of liquor kits.* An aircraft may land at an airport where the airline involved does not have an authorized in-bond liquor storeroom. When this occurs, the liquor kits, under any supervision found necessary by the port director, may be:

(1) Kept on board the aircraft;

(2) Removed and replaced upon the aircraft; or

(3) Removed and replaced aboard another aircraft.

(b) *Sealing of kits.* Aircraft liquor kits covered by this section shall remain sealed until departure. Customs officers may remove the seal to check the contents of the liquor kits, but shall reseal the kits as provided in § 122.132(e).

(c) *Restocking.* Additional amounts of duty-free and tax-free liquor and tobacco obtained in the U.S. shall be laden in a separate container on any aircraft covered by this section. The lading shall be done under any supervision the port director finds necessary. The additional liquor and tobacco shall be shown on separate outward stores lists.

§ 122.135 When airline has in-bond liquor storeroom.

(a) *Restocking.* Liquor kits on board an aircraft landing at an airport where the airline involved has an authorized in-bond liquor storeroom may be removed and restocked in the storeroom.

(b) *Inventory record.* Each authorized airline in-bond liquor storeroom shall keep an inventory record in a form that satisfies the port director. The inventory record shall account for the receipt and use of all aircraft liquor and tobacco stores on which duty and/or tax has not been paid.

(c) *Airline employees.* Any airline which has an authorized in-bond liquor store room at an airport shall give the port director:

(1) A list of names of all airline employees authorized to break Customs seals on liquor kits in the in-bond liquor storeroom; and

(2) Signature samples of the authorized employees.

(d) *Opening of aircraft liquor kits.* Aircraft liquor kits received in an authorized storeroom shall be opened only by authorized airline employees, or by Customs officers.

(e) *Contents of liquor kits.* The employees who break the seals on aircraft liquor kits shall check the contents at once. The employees shall immediately report to the port director any:

(1) Evidence of seal tampering;

(2) Difference between the seal numbers on the liquor kits and those recorded on the stores list; and

(3) Differences in quantity as shown on the stores list.

(f) *Handling the liquor kits*—(1) *Partial bottles.* Partial bottles of liquor may be removed from incoming liquor kits and kept in the in-bond liquor storeroom to be destroyed or combined with other partial bottles. This may be done only under Customs supervision. The costs of Customs supervision shall be paid by the airline.

(2) *Exportation.* The contents of incoming liquor kits may be commingled to restock outbound liquor kits. The commingling must take place in the airline in-bond liquor storeroom, using liquor bottles on which the seal has not been broken.

(3) *Sealing.* All liquor kits shall be sealed as provided in § 122.132(a) before removal from the in-bond liquor storeroom. All seal numbers shall be listed on an outgoing stores list.

§ 122.136 Outgoing stores list.

(a) *Preparation.* Two copies of a serially numbered outgoing stores list shall be prepared by the airline for all liquor and tobacco withdrawn from bonded or non-tax-paid stock and added to liquor kits. The outgoing stores list

shall show the total number of bottles for each type liquor, the brand, and the size of each bottle.

(b) *Use of copies.* The two copies of the outgoing stores list shall be used as follows:

(1) One copy shall be placed and kept in the outgoing kits until the aircraft leaves the U.S.; and

(2) One copy must be filed either with the outgoing cargo manifest (for aircraft required to clear) or with Customs before departing, as provided in § 122.133(c).

In both cases, the third copy of the inward stores list shall be filed with the outgoing stores list. (See § 122.133(c)).

§ 122.137 Certificate of use.

Any liquor or tobacco withdrawn from the in-bond storeroom and shown on the outgoing stores list shall be recorded, when exported, on a certificate of use prepared by the airline.

Subpart N—Flights to and From the U.S. Virgin Islands

§ 122.141 Definitions.

Under subpart N, the following definitions apply:

(a) *United States.* The term ''U.S.'' includes the several States, the District of Columbia and Puerto Rico.

(b) *Foreign area.* The term ''foreign area'' means any area other than the several States, the District of Columbia and Puerto Rico.

§ 122.142 Flights between the U.S. Virgin Islands and a foreign area.

(a) *Aircraft arriving in the U.S. Virgin Islands.* Aircraft arriving in the U.S. Virgin Islands from a place other than the U.S. are governed by the provisions of this part which apply to aircraft arriving in the U.S. from a foreign area.

(b) *Aircraft leaving the U.S. Virgin Islands.* Aircraft leaving the U.S. Virgin Islands for a place other than the U.S. are governed by the provisions of this part that apply to aircraft leaving the U.S. for a foreign area.

§ 122.143 Flights from the U.S. to the U.S. Virgin Islands.

(a) *In general.* Aircraft on flights from the U.S. to the U.S. Virgin Islands are governed by the provisions of this part that apply to aircraft on a flight within the U.S.

(b) *Bureau of the Census.* When Bureau of the Census regulations (15 CFR part 30) apply to aircraft carrying merchandise to the U.S. Virgin Islands from the U.S., permission to depart must be obtained from the port director. Permission to depart shall not be given unless:

(1) A complete manifest and Shipper's Export Declarations as required by 15 CFR part 30 are filed; or

(2) An incomplete manifest under 15 CFR 30.24 is filed and the complete manifest and Shipper's Export Declarations are filed within 7 business days after departure.

§ 122.144 Flights from the U.S. Virgin Islands to the U.S.

(a) *Aircraft not inspected.* This paragraph applies to aircraft departing from the U.S. Virgin Islands and arriving in the U.S., without having been inspected prior to departure.

(1) *On departure.* Aircraft leaving the U.S. Virgin Islands for the U.S. are governed by the provisions of this part that apply to aircraft leaving the U.S. for a foreign area.

(2) *On arrival.* Aircraft departing from the U.S. Virgin Islands and arriving in the U.S. are governed by the provisions of this part that apply to aircraft arriving in the U.S. from a foreign area.

(b) *Supervision.* When aircraft are inspected by Customs in the U.S. Virgin Islands, the port director may order any supervision found necessary to protect the revenue and enforce the laws administered by Customs. This includes the collection of duty and taxes on articles bought in the U.S. Virgin Islands.

(c) *Procedure.* When an aircraft that was inspected in the U.S. Virgin Islands arrives in the U.S. from the U.S. Virgin Islands, the aircraft commander must be able to give evidence of the inspection to Customs on request. Evidence of the inspection shall be given in the following manner:

(1) A certificate on Customs Form 7507 shall be presented for aircraft registered in the U.S.:

(i) Of domestic origin; or

(ii) Of foreign origin, if duty has been paid and the aircraft is proceeding carrying neither passengers nor cargo, or with cargo and/or passengers solely from the U.S. Virgin Islands.

Two copies of the certificate shall be given to the inspecting Customs officers in the U.S. Virgin Islands by the aircraft commander. The certificate shall be marked with the port and date of inspection, and must be signed by the inspecting officer. The original of the certificate must be returned to the aircraft commander, who must keep the certificate for a reasonable time after the end of the flight to the U.S. If requested, the certificate shall be presented to Customs. The certificate may be destroyed or disposed of after a reasonable time at the discretion of the aircraft commander or agent.

(2) A permit to proceed on Customs Form 7507 shall be presented for aircraft registered in the U.S. which are:

(i) Of foreign origin;

(ii) Not duty paid; and

(iii) Proceeding carrying neither passengers nor cargo.

The permit to proceed, as required by subpart F of this part, shall be marked with the port and date of inspection, and shall be signed by the inspecting officer in the U.S. Virgin Islands.

(3) A permit to proceed on Customs Form 7507 shall be presented for aircraft registered in a foreign country and proceeding carrying neither passengers nor cargo. The permit to proceed, as required under subpart F of this part, shall be marked with the port and date of inspection, and shall be signed by the inspecting officer in the U.S. Virgin Islands.

(4) A permit to proceed, or other document, shall be filed as required under subpart I of this part for an aircraft carrying residue cargo and/or passengers. The permit to proceed shall be marked with the port and date of inspection, and it must be signed by the inspecting officer in the U.S. Virgin Islands.

Subpart O—Flights to and From Cuba

§ 122.151 Definitions.

Under this subpart, the following definitions apply:

(a) *United States*. The term ''U.S.'' includes the several States, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico.

(b) *Cuba*. The term ''Cuba'' does not include the Guantanamo Bay Naval Station.

§ 122.152 Application.

This subpart applies to all aircraft entering or departing the U.S. to or from Cuba except public aircraft.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 97–82, 62 FR 51770, Oct. 3, 1997]

§ 122.153 Limitations on airport of entry or departure.

The owner or person in command of any aircraft clearing the U.S. for, or entering the U.S. from, Cuba, whether the aircraft is departing on a temporary sojourn, or for export, must clear or obtain permission to depart from, or enter at, the Miami International Airport, Miami, Florida; the John F. Kennedy International Airport, Jamaica, New York; or the Los Angeles International Airport, Los Angeles, California, and comply with the requirements in this part unless otherwise authorized by the Assistant Commissioner, Office of Field Operations, Customs Headquarters.

[T.D. 99–71, 64 FR 53628, Oct. 4, 1999]

§ 122.154 Notice of arrival.

(a) *Application*. All aircraft entering the U.S. from Cuba shall give advance notice of arrival.

(b) *Procedure for giving advance notice of arrival*. The commander of an aircraft covered by this section shall give the advance notice of arrival not less than one (1) hour before crossing the U.S. coast or border. Notice shall be given either:

(1) Through Federal Aviation Administration flight notification procedure (see International Flight Information Manual, Federal Aviation Administration); or

(2) Directly to the Customs officer in charge at the Miami International Airport, Miami, Florida; the John F. Kennedy International Airport, Jamaica, New York; or the Los Angeles International Airport, Los Angeles, California, whichever is applicable.

(c) *Contents of notice*. The advance notice of arrival shall state:

(1) Type of aircraft and registration number;

(2) Name of aircraft commander;

(3) Number of U.S. citizen passengers;

(4) Number of alien passengers;

(5) Place of last foreign departure;

(6) Estimated time and location of crossing the U.S. coast or border; and

(7) Estimated time of arrival.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 99–71, 64 FR 53628, Oct. 4, 1999]

§ 122.155 Document to be presented upon arrival.

Upon arrival, the aircraft commander shall present:

(a) A manifest of all passengers on board, as required by the U.S. Immigration and Naturalization Service pursuant to 8 CFR 231.1(b), to an officer of the U.S. Immigration and Naturalization Service or to a Customs officer acting as an Immigration officer;

(b) The documents required by subpart E of this part.

§ 122.156 Release of passengers.

No passengers arriving from Cuba by aircraft will be released by Customs, nor will the aircraft be cleared or permitted to depart before the passengers are released by an officer of the Immigration and Naturalization Service or by a Customs officer acting on behalf of that agency.

§ 122.157 Documents required for clearance.

As a condition precedent to clearance, the aircraft commander shall present to Customs:

(a) The documents required by Subpart H of this part; and

(b) A validated license issued by the Department of Commerce, as provided for in 15 CFR 371.19 or a license issued by the Department of State, as provided in 22 CFR part 123.

§ 122.158 Other entry and clearance requirements.

All other provisions of this part relating to entry and clearance of aircraft are applicable to aircraft subject to this subpart.

Subpart P—Public Aircraft [Reserved]

Subpart Q—Penalties

§ 122.161 In general.

Except as provided in subpart S of this part, any person who violates any Customs requirements stated in this part, or any regulation that applies to aircraft under § 122.2, is, in addition to any other applicable penalty, subject to civil penalty of $5,000 as provided by 19 U.S.C. 1644 and 1644a, except for overages, and failure to manifest narcotics or marihuana, in which cases the penalties set forth in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584) apply, or for failure to report arrival or to present the documents required by § 122.27(c) of this part in which cases the penalties set forth in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436) apply, and any aircraft used in connection with any such violation shall be subject to seizure and forfeiture, as provided for in the Customs laws. A penalty or forfeiture may be mitigated under part 171 of this chapter.

[T.D. 91–61, 56 FR 32086, July 15, 1991, as amended by T.D. 98–74, 63 FR 51289, Sept. 25, 1998]

§ 122.162 Failure to notify and explain differences in air cargo manifest.

(a) *Application*. Penalties shall be assessed if differences in an air cargo manifest (overages or shortages) are discovered and:

(1) The required notice and explanation are not made in time;

(2) The port director is not satisfied that the differences were caused by clerical error or other mistake;

(3) There has been a loss of revenue to the U.S.; or

(4) The port director is not satisfied that there was a valid reason for delay in reporting any differences.

(b) *Definition*. Under this section, ''clerical error or other mistake'' means a non-negligent, inadvertant, or typographical mistake in the preparation, assembly, or submission (electronically or otherwise) of the manifest.

(c) *Repeated differences*. If repeated differences are found in manifests filed by the same person, it may be determined that the differences were a result of negligence and not clerical error or other mistake.

(d) *Knowledge*. A penalty may be assessed for differences in a manifest that are unknown to the aircraft commander or owner.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 99–64, 64 FR 43266, Aug. 10, 1999]

§ 122.163 Transit air cargo traveling to U.S. ports.

(a) *Application*. If transit air cargo is traveling from the port of arrival to another U.S. port under § 122.119, a liability shall be assessed, as set out in § 18.8 of this chapter if there has been:

(1) Shortage in delivery;

(2) Irregular delivery; or

(3) Non-delivery.

(b) *Liabilities assessed*. The liabilities assessed under this section are imposed as liquidated damages under a carrier's bond.

(c) *Value of merchandise*. The port director shall determine the value of merchandise for assessment purposes based on the following factors:

(1) Any data or documents available to the airline which presented a receipt for the transit air cargo, and available to the importing airline relating to the description and value of the cargo; and

(2) Other information available to the port director relating to the same or similar merchandise. If the data or documents required by this section are not submitted within 90 days of the date requested, the port director shall determine value on the basis of other available information. The transit air cargo manifest does not reflect value.

§ 122.164 Transportation to another port for exportation.

If transit air cargo is traveling from the port of arrival to another U.S. port for later exportation, any liquidated damages for shortages or irregular delivery shall be assessed as provided in § 122.163.

§ 122.165 Air cabotage.

(a) The air cabotage law (49 U.S.C. 41703) prohibits the transportation of persons, property, or mail for compensation or hire between points of the U.S. in a foreign civil aircraft. The term ''foreign civil aircraft'' includes all aircraft that are not of U.S. registration except those foreign-registered aircraft leased or chartered to a U.S. air carrier and operated under the authority of regulations issued by the Department of Transportation, as provided for in 14 CFR 121.153, and those aircraft used exclusively in the service of any government.

(b) Customs officers detecting possible violations shall report the matter to Headquarters, Attention: Entry Procedures and Carriers Branch. Liability should not be assessed under 49 U.S.C. Chapter 463 pending instructions from Headquarters since certain limited domestic transportation by foreign civil aircraft is permitted under regulations issued by the Department of Transportation.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 98–74, 63 FR 51289, Sept. 25, 1998; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 122.166 Arrival, departure, discharge, and documentation.

(a) *Liability for civil penalties*. Except as otherwise provided, any aircraft pilot violation of the requirements of section 433, Tariff Act of 1930, as amended, (19 U.S.C. 1433), with respect to the following actions shall be liable for civil penalties as provided by section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436), and described in paragraph (c) of this section:

(1) Advance notification of arrival;

(2) Report of arrival;

(3) Landing of aircraft;

(4) Presentation of documentation;

(5) Departure from the port, place, or airport of arrival without authorization; or

(6) Discharge of passenger, or merchandise (to include baggage) without authorization.

(b) *Liability for criminal penalties.* Upon conviction, any aircraft pilot violating any of the Customs requirements described in paragraph (a) of this section shall, in addition to civil penalties be subject to criminal penalties as set forth in section 436, Tariff Act of 1930, as amended, (19 U.S.C. 1436), and described in paragraph (c) of this section. If the aircraft has or is discovered to have had on board any merchandise (other than the equivalent, for a vessel, of sea stores) the importation of which into the U.S. is prohibited, that person shall be subject to an additional fine as set forth in 19 U.S.C. 1436 and described in paragraph (c) of this section.

(c) *Civil and criminal penalties described*—(1) *Civil penalty.* The pilot of any aircraft who fails to comply with the requirements of this section is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation. Any aircraft used in connection with any such violation is subject to seizure and forfeiture.

(2) *Criminal penalty.* In addition to the civil penalty prescribed for violation of this section, the pilot of any aircraft who intentionally fails to comply with the requirements of this section is liable, upon conviction, for a fine of not more than $2,000 or imprisonment for 1 year, or both. If the aircraft is found to have, or to have had, on board any merchandise the importation of which is prohibited, such individual is liable for an additional fine of not more than $10,000 or imprisonment for not more than 5 years, or both.

(3) *Additional civil penalty.* If any merchandise, other than the equivalent of vessel sea stores, is imported or brought into the U.S. aboard an aircraft which has failed to comply with the requirements prescribed by this section, the pilot of the aircraft shall be liable for a civil penalty equal to the value of the merchandise, and the merchandise may be seized and forfeited, unless properly entered by the importer or consignee.

§ 122.167 Aviation smuggling.

(a) *Civil penalties.* Any aircraft pilot who transports, or any person on board any aircraft who possesses prohibited or restricted merchandise knowing, or intending, that the merchandise will be introduced into the U.S. contrary to law shall be subject to a civil penalty of twice the value of the merchandise involved, but not less than $10,000, as prescribed in section 590, Tariff Act of 1930, as amended (19 U.S.C. 1590). Any aircraft used in connection with, or in aiding or facilitating, any violation of 19 U.S.C. 1590, whether or not any person is charged in connection with such violation, may be seized and forfeited in accordance with Customs laws.

(b) *Criminal penalties.* Any aircraft pilot or person who intentionally violates 19 U.S.C. 1590 is, upon conviction, subject to the criminal penalties of a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, if none of the merchandise involved is a controlled substance. More severe penalties are provided in 19 U.S.C. 1590 if the smuggled merchandise is a controlled substance. In such case, a violator is liable for a fine of not more than $250,000 or imprisonment for not more than 20 years, or both.

(c) For purposes of imposing civil penalties under this section, any of the following acts, when performed within 250 miles of the territorial sea of the United States, shall be evidence that the transportation or possession of merchandise was unlawful and shall indicate that the purpose of the transfer was to make it possible for such merchandise, or any part of it, to be introduced into the U.S. unlawfully. For purposes of seizure and forfeiture, the following acts shall be evidence that an aircraft was used in connection with, or to aid or facilitate, a violation of this section;

(1) The operation of an aircraft without lights during such times as lights are required to be displayed under applicable law.

(2) The presence on an aircraft of an auxiliary fuel tank which is not installed in accordance with applicable law.

(3) The failure to correctly identify the aircraft by registration number and country of registration, when requested to do so by a customs officer or other government authority.

(4) The external display of false registration numbers or false country of registration.

(5) The presence on board of unmanifested merchandise, the importation of which is prohibited or restricted.

(6) The presence on board of controlled substances which are not manifested or which are not accompanied by the permits or licenses required under Single Convention on Narcotic Drugs or other international treaty.

(7) The presence of any compartment or equipment which is built or fitted out for smuggling.

Subpart R—Air Carrier Smuggling Prevention Program

SOURCE: T.D. 91–25, 56 FR 12347, Mar. 25, 1991, unless otherwise noted.

§ 122.171 Description of program.

The Air Carrier Smuggling Prevention Program (ACSPP) is designed to enlist the cooperation of the air carriers, as defined in 19 U.S.C. 1584 note, in Customs efforts to prevent the smuggling of controlled substances. If carriers develop and implement thorough and complete internal security procedures at ACSPP designated terminals and foreign departure and intermediate points, the opportunity for their conveyances being used for transportation of controlled substances will be greatly reduced. Participation in the program is voluntary, and may be limited to specific routes. Should a controlled substance be introduced into the United States on a conveyance owned or operated by a participating carrier however, the carrier will be exempt from seizure and penalties should it satisfy the provisions of § 122.175 of this part. The program will be operational for a period of 2 years from December 18, 1989, pursuant to 19 U.S.C. 1584 note.

§ 122.172 Eligibility.

Any air carrier whose international flights arrive at, or depart from, any of the designated test airports, Miami International Airport, Dallas-Fort Worth International Airport, or Los Angeles International Airport, is eligible for participation in the ACSPP.

§ 122.173 Application procedures.

(a) *Application*. An air carrier which wishes to participate in the ACSPP shall submit an application to the Assistant Commissioner, Office of Field Operations, in which it:

(1) Identifies specific routes and designated departure points and ACSPP airports for which application is made;

(2) Certifies that it has developed and will continue to maintain standard operating procedures (SOP) which are designed to safeguard the integrity of its employees, cargo and conveyances. The application shall be accompanied by three (3) copies of the SOP developed by the air carrier.

(b) *Approval criteria*. Upon receipt, each application will be reviewed to determine whether the procedures contained therein meet the requirements of the ACSPP. In determining whether a SOP submitted by an applicant carrier contains sufficient detail to assure the proper level of care and diligence required under the provisions of the ACSPP, the Assistant Commissioner, Office of Field Operations, will apply uniform standards and verify that, at a minimum, procedures are in place which:

(1) Assure positive security background checks are performed on all carrier employees, both those employed within the United States and without, who have access to baggage, cargo or secure areas on participating routes, to the extent permitted by law;

(2) Assure a system of positive baggage and cargo identification is employed at all terminals used by the carrier;

(3) Assure the carrier employs a system to assure that no unmanifested cargo is placed on board the conveyance or brought into the United States on any of their conveyances;

(4) Assure the carrier has specific procedures through which it will notify Customs should it discover any unmanifested or improperly manifested cargo on any of its conveyances or in any area subject to its control;

(5) Assure the carrier has an effective and practical employee awareness training program in place; and

(6) Assure thorough security measures are implemented at all foreign departure points on ACSPP participating

routes which will assure that the carrier has control and knowledge of the baggage, cargo, passenger and other materials placed on board its aircraft.

(c) *Acceptance and notification*. Upon verification by Customs that a carrier's SOP meets all the criteria outlined in § 122.173(b) of this part, the carrier will be notified that its application to the ACSPP has been accepted. Acceptance into the ACSPP is made with the understanding and expectation that the carrier will continue to act with the highest degree of care and diligence required under law and that it will abide by and perform all elements of its approved SOP.

[T.D. 91–25, 56 FR 12347, Mar. 25, 1991, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 122.174 Operational procedures.

(a) *Participating carriers*. Participating carriers are required to develop and adhere to procedures whereby they will:

(1) Provide security personnel for every international arrival participating in the ACSPP to conduct the following procedures:

(i) Perform a thorough internal and external search of the arriving aircraft;

(ii) Maintain total control of all passengers and cargo being discharged from the aircraft to either the Customs passenger hall or to the carrier's cargo facility;

(iii) Verify that all cargo on aircraft is properly manifested, marked and weighed and that piece counts are properly performed; and

(iv) Maintain physical security of the aircraft and ramp access to the aircraft while it is being offloaded.

(2) Provide security personnel at the foreign point of departure for every international departure which is participating in ACSPP to conduct the following procedures:

(i) Perform a thorough internal and external search of the departing aircraft;

(ii) Maintain total control of all passengers and cargo being loaded on the aircraft from either the passenger terminal or the carrier's cargo facility;

(iii) Verify that all cargo placed on the aircraft is properly manifested, marked and weighed and that piece counts are properly performed;

(iv) Maintain physical security of the aircraft and ramp access to the aircraft while it is being loaded; and

(v) Maintain similar positive security measures at all foreign intermediate airports prior to the arrival of the aircraft at an ACSPP designated airport.

(b) *U.S. Customs*. U.S. Customs will:

(1) Retain all current options available regarding the search and inspection of any and all passengers, cargo and conveyances; and

(2) Provide training to carrier personnel to assist the development of proper operational procedures.

§ 122.175 Exemption from penalties.

Should a controlled substance be introduced into the United States or discovered aboard an aircraft owned or operated by a participating carrier, or in cargo carried by a participating carrier, on a route identified by the carrier as one participating in the ACSPP and which has been approved by Customs, the participating air carrier shall be considered to have met the test of highest degree of care and diligence required under law, and shall not be subject to the penalty or seizure provisions of the Tariff Act of 1930, as amended, if the carrier establishes at an oral presentation before the port director or his designee, that the carrier was not grossly negligent nor engaged in willful misconduct, and that it had complied with all the provisions of these regulations.

§ 122.176 Removal from ACSPP.

(a) *Grounds for removal from ACSSPP*. The Assistant Commissioner, Office of Field Operations, may revoke or supend the privilege of operating as a member of the ACSPP if:

(1) Acceptance into the program was gained through fraud or the misstatement of a material fact;

(2) The carrier refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation relative to its cooperation within the program;

(3) An officer of the carrier or corporation which has been accepted into the program is convicted of a felony or

misdemeanor involving theft, smuggling, or other theft-connected crime which was committed in his or her official capacity as an officer of the carrier, or is convicted of any Customs-related crime;

(4) The carrier fails to retain merchandise which has been designated for examination;

(5) The carrier does not provide secure facilities or properly safeguard merchandise within its area of control; or

(6) The carrier fails to observe any of the procedures which it had set forth in the SOP which served as the basis for the carrier's acceptance into the program; and

(7) The carrier has been notified in writing that it has been found in noncompliance with a provision of the program and has failed to correct such noncompliance after having been given a reasonable opportunity to correct such noncompliance.

(b) *Notice and appeal*. The Assistant Commissioner, Office of Field Operations, shall suspend or remove participants from the ACSPP by serving notice of the proposed action upon the carrier in writing. The notice shall be in the form of a statement specifically setting forth the grounds for suspension or removal and shall provide the carrier with notice that it may file a written notice of appeal from suspension or revocation within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed in duplicate to the office of the Assistant Commissioner, Field Operations, and shall set forth response of the carrier to the statement of the Assistant Commissioner.

(c) *Notice of decision*. The Assistant Commissioner, Office of Field Operations, shall notify the participating carrier in writing of the decision concerning continued participation in the program.

(d) *Use of uniform criteria*. When making any determination regarding a carrier's participation or continuation in the ACSPP, the Assistant Commissioner, Office of Field Operations, shall employ a uniform standard of performance and evaluation.

[T.D. 91–25, 56 FR 12347, Mar. 25, 1991, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

Subpart S—Access to Customs Security Areas

SOURCE: T.D. 90–82, 55 FR 42557, Oct. 22, 1990, unless otherwise noted.

§ 122.181 Definition of Customs security area.

For purposes of this section, the term ''Customs security area'' means the Federal inspection services area at any airport accommodating international air commerce designated for processing passengers, crew, their baggage and effects arriving from, or departing to, foreign countries, as well as the aircraft deplaning and ramp area and other restricted areas designated by the port director. These areas will be posted as restricted to the extent possible and are established for the purpose of prohibiting unauthorized entries or contact with persons or objects.

[T.D. 90–82, 55 FR 42557, Oct. 22, 1990, as amended by T.D. 02–40, 67 FR 48984, July 29, 2002]

§ 122.182 Security provisions.

(a) *Customs access seal required*. With the exception of all Federal and uniformed State and local law enforcement personnel and aircraft passengers and crew, all persons located at, operating out of, or employed by any airport accommodating international air commerce or its tenants or contractors, including air carriers, who have unescorted access to the Customs security area, must openly display or produce upon demand an approved access seal issued by Customs. The approved Customs access seal must be in the possession of the person in whose name it is issued whenever the person is in the Customs security area and must be used only in furtherance of that person's employment in accordance with the description of duties submitted by the employer under paragraph (c)(1) of this section. The Customs access seal remains the property

of Customs, and any bearer must immediately surrender it as provided in paragraph (g) of this section or upon demand by any authorized Customs officer for any cause referred to in § 122.187(a). Unless surrendered pursuant to paragraph (g) of this section or § 122.187, each approved Customs access seal issued under paragraph (c)(1) of this section will remain valid for 2 years from January 1, 2002, in the case of a Customs access seal issued prior to that date and for 2 years from the date of issuance in all other cases. Retention of an approved Customs access seal beyond the applicable 2-year period will be subject to the reapplication provisions of paragraph (c)(2) of this section.

(b) *Employers responsibility*. Employers operating in Customs airport security areas shall advise all employees of the provisions of the Customs regulations relative to those areas, require employees to familiarize themselves with those provisions and insure employee compliance. The employer shall also advise the port director of any changes of employment pursuant to § 122.182(g).

(c) *Application requirements*—(1) *Initial application*. An application for an approved Customs access seal, as required by this section, must be filed by the applicant with the port director on Customs Form 3078 and must be supported by a written request and justification for issuance prepared by the applicant's employer that describes the duties that the applicant will perform while in the Customs security area. The application requirement applies to all employees required to display an approved Customs access seal by this section, regardless of the length of their employment. The application must be supported by the bond of the applicant's employer or principal on Customs Form 301 containing the bond conditions set forth in § 113.62, § 113.63, or § 113.64 of this chapter, relating to importers or brokers, custodians of bonded merchandise, or international carriers. If the applicant's employer is not the principal on a Customs bond on Customs Form 301 for one or more of the activities to which the bond conditions set forth in § 113.62, § 113.63, or § 113.64 relate, the application must be supported by an Airport Customs Security Area Bond, as set forth in appendix A of part 113 of this chapter. The latter bond may be waived, however, for State or local government-related agencies in the discretion of the port director. Waiver of this bond does not relieve the agency in question or its employees from compliance with all other provisions of this subpart. In addition, in connection with an application for an approved Customs access seal under this section:

(i) The port director may require the applicant to submit fingerprints on form FD–258 or on any other approved medium either at the time of, or following, the filing of the application. If required, the port director will inform the applicant of the current Federal Bureau of Investigation user fee for conducting fingerprint checks and the Customs administrative processing fee, the total of which must be tendered by, or on behalf of, the applicant with the application; and

(ii) Proof of citizenship or authorized residency and a photograph may also be required.

(2) *Reapplication*. If a person wishes to retain an approved Customs access seal for one or more additional 2-year periods beyond the 2-year period referred to in paragraph (a) of this section, that person must submit a new application no later than 30 calendar days prior to the start of each additional period. The new application must be filed in the manner specified in paragraph (c)(1) of this section for an initial application, and the port director may also require the submission of fingerprints as provided in paragraph (c)(1)(i) of this section. The new application will be subject to review on a de novo basis as if it were an initial application except that the written attestation referred to in paragraph (d) of this section will not be required if there has been no change in the employment of the applicant since the last attestation was submitted to Customs.

(d) *Background check*. An authorized official of the employer must attest in writing that a background check has been conducted on the applicant, to the

extent allowable by law. The background check must include, at a minimum, references and employment history, to the extent necessary to verify representations made by the applicant relating to employment in the preceding 5 years. The authorized official of the employer must attest that, to the best of his knowledge, the applicant meets the conditions necessary to perform functions associated with employment in the Customs security area. Additionally, the application may be investigated by Customs and a report prepared concerning the character of the applicant. Records of background investigations conducted by employers must be retained for a period of one year following cessation of employment and made available upon request of the port director.

(e) *Law Enforcement officers and other governmental officials.* Law enforcement officers and other Federal, State, or local officials whose official duties require access to the Customs security area may request from the port director the issuance of an approved Customs access seal. They need not make application nor submit to background checks for security area access. An Airport Customs Security Area Bond is not required.

(f) *Replacement access seal.* A new Custom access seal may be obtained from the port director in the following circumstances, without the completion of an additional application, except as determined by the port director in his discretion:

(1) A change in employee name or address;

(2) A change in the name or ownership of the employing company;

(3) A change in employer or airport authority identification card format; or

(4) Loss or theft of the Customs access seal (see § 122.185 of this part).

(g) *Surrender of access seal.* Where the employee no longer requires access to the Customs security area for an extended period of time at the airport of issuance due to a change in duties, termination of employment, or other reason, or where the 2-year period referred to in paragraph (a) of this section expires and a new application under paragraph (c)(2) of this section has not been approved, the employer shall notify the port director in writing, at the time of such change, and shall return the Customs access seal to Customs. The notification shall include information regarding the disposition of the approved Customs access seal of the employee.

[T.D. 90–82, 55 FR 42557, Oct. 22, 1990, as amended by T.D. 93–18, 58 FR 15773, Mar. 24, 1993; T.D. 02–40, 67 FR 48984, July 29, 2002; 67 FR 51928, Aug. 9, 2002]

§ 122.183 Denial of access.

(a) *Grounds for denial.* Access to the Customs security area will not be granted, and therefore an approved Customs access seal will not be issued, to any person whose access to the Customs security area will, in the judgment of the port director, endanger the revenue or the security of the area or pose an unacceptable risk to public health, interest or safety, national security, or aviation safety. Specific grounds for denial of access to the Customs security area include, but are not limited to, the following:

(1) Any cause which would justify a demand for surrender of a Customs access seal or the revocation or suspension of access under § 122.182(g) or § 122.187;

(2) Evidence of a pending or past investigation establishing probable cause to believe that the applicant has engaged in any conduct which relates to, or which could lead to a conviction for, a disqualifying offense listed under paragraph (a)(4) of this section;

(3) The arrest of the applicant for, or the charging of the applicant with, a disqualifying offense listed under paragraph (a)(4) of this section on which prosecution or other disposition is pending;

(4) A disqualifying offense committed by the applicant. For purposes of this paragraph, an applicant commits a disqualifying offense if the applicant has been convicted of, or found not guilty of by reason of insanity, or has committed any act or omission involving, any of the following in any jurisdiction during the 5-year period, or any longer period that the port director deems appropriate for the offense in question, prior to the date of the application submitted under § 122.182 or at any time

while in possession of an approved Customs access seal:

(i) Forgery of certificates, false marking of aircraft, and other aircraft registration violation (49 U.S.C. 46306);

(ii) Interference with air navigation (49 U.S.C. 46308);

(iii) Improper transportation of a hazardous material (49 U.S.C. 46312);

(iv) Aircraft piracy in the special aircraft jurisdiction of the United States (49 U.S.C. 46502(a));

(v) Interference with flight crew members or flight attendants (49 U.S.C. 46504);

(vi) Commission of certain crimes aboard aircraft in flight (49 U.S.C. 46506);

(vii) Carrying a weapon or explosive aboard aircraft (49 U.S.C. 46505);

(viii) Conveying false information and threats (49 U.S.C. 46507);

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States (49 U.S.C. 46502(b));

(x) Lighting violations involving transportation of controlled substances (49 U.S.C. 46315);

(xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements (49 U.S.C. 46314);

(xii) Destruction of an aircraft or aircraft facility (18 U.S.C. 32);

(xiii) Murder;

(xiv) Assault with intent to murder;

(xv) Espionage;

(xvi) Sedition;

(xvii) Kidnapping or hostage taking;

(xviii) Treason;

(xix) Rape or aggravated sexual abuse;

(xx) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon;

(xxi) Extortion;

(xxii) Armed or felony unarmed robbery;

(xxiii) Distribution of, or intent to distribute, a controlled substance;

(xxiv) Felony arson;

(xxv) Felony involving:

(A) A threat;

(B) Willful destruction of property;

(C) Importation or manufacture of a controlled substance;

(D) Burglary;

(E) Theft;

(F) Dishonesty, fraud, or misrepresentation;

(G) Possession or distribution of stolen property;

(H) Aggravated assault;

(I) Bribery; or

(J) Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than one year;

(xxvi) Violence at an airport serving international civil aviation (18 U.S.C. 37);

(xxvii) Embezzlement;

(xxviii) Perjury;

(xxix) Robbery;

(xxx) Crimes associated with terrorist activities;

(xxxi) Sabotage;

(xxxii) Assault with a deadly weapon;

(xxxiii) Illegal use or possession of firearms or explosives;

(xxxiv) Any violation of a U.S. immigration law;

(xxxv) Any violation of a Customs law or any other law administered or enforced by Customs involving narcotics or controlled substances, commercial fraud, currency or financial transactions, smuggling, failure to report, or failure to declare;

(xxxvi) Airport security violations; or

(xxxvii) Conspiracy or attempt to commit any of the offenses or acts referred to in paragraphs (a)(4)(i) through (a)(4)(xxxv) of this section;

(5) Denial or suspension of the applicant's unescorted access authority to a Security Identification Display Area (SIDA) pursuant to regulations promulgated by the U.S. Federal Aviation Administration or other appropriate government agency; or

(6) Inability of the applicant's employer or Customs to complete a meaningful background check or investigation of the applicant.

(b) *Notification of denial.* The port director shall give written notification to any person whose application for access to the Customs security area has been denied, fully stating the reasons for denial and setting forth specific appeal procedures. The employer shall be notified in writing that the applicant has been denied access to the area and that the detailed reasons for the denial have been furnished to the applicant.

Detailed reasons regarding the denial, however, shall not be furnished to the employer by Customs.

(c) *Appeal of denial.* The denial will be final unless the applicant files with the port director a written notice of appeal within 10 days following receipt of the notice of denial. The notice of appeal shall be filed in duplicate and shall set forth the response of the applicant to the statement of the port director. The port director will render his decision on the appeal to the applicant in writing within 30 calendar days of receipt of the notice of appeal and, if the application is denied on appeal, the decision will advise the applicant of the procedures for filing a further appeal pursuant to paragraph (d) of this section.

(d) *Further appeal of denial.* Where the application on appeal is denied by the port director, the applicant may file a further written notice of appeal with the director of field operations at the Customs Management Center having jurisdiction over the office of the port director within 10 calendar days of receipt of the port director's decision on the appeal. The further notice of appeal must be filed in duplicate and must set forth the response of the applicant to the decision of the port director. The director of field operations will review the appeal and render a written decision. The final decision will be transmitted to the port director and served by him on the applicant.

[T.D. 90–82, 55 FR 42557, Oct. 22, 1990, as amended by T.D. 02–40, 67 FR 48985, July 29, 2002]

§ 122.184 Change of identification; change in circumstances of employee; additional employer responsibilities.

(a) *Change of identification.* The Customs access seal may be removed from the employee by the port director where, for security reasons, a change in the nature of the identification card or other medium on which it appears is necessary.

(b) *Change in circumstances of employee.* If, after issuance of a Customs access seal to an employee, any circumstance arises (for example, an arrest or conviction for a disqualifying offense) that constitutes a ground for denial of access to the Customs security area under § 122.183(a) or for revocation or suspension of access to the Customs security area and surrender of the Customs access seal under § 122.187(a), the employee must within 24 hours advise the port director in writing of that change in circumstance. In the case of an arrest or prosecution for a disqualifying offense listed in § 122.183(a)(4), the employee also must within 5 calendar days advise the port director in writing of the final disposition of that arrest or prosecution. In addition, if an airport operator or an aircraft operator suspends an employee's unescorted access authority to a Security Identification Display Area pursuant to regulations promulgated by the U.S. Federal Aviation Administration or other appropriate government agency and the employee also has an approved Customs access seal, the employee must within 24 hours advise the port director in writing of the fact of, and basis for, the suspension.

(c) *Additional employer responsibilities.* If an employer becomes aware of any change in the circumstances of its employee as described in paragraph (b) of this section, the employer must immediately advise the port director of that fact even though the employee may have separately reported that fact to the port director under paragraph (b) of this section. In addition, each employer must submit to the port director during the first month of each calendar quarter a report setting forth a current list of all its employees who have an approved Customs access seal. The quarterly report must list separately all additions to, and deletions from, the previous quarterly report. Moreover, each employer must take appropriate steps to ensure that an employee uses an approved Customs access seal only in connection with activities relating to his employment.

[T.D. 02–40, 67 FR 48986, July 29, 2002; 67 FR 51928, Aug. 9, 2002]

§ 122.185 Report of loss or theft of Customs access seal.

The loss or theft of an approved Customs access seal must be promptly reported in writing by the employee to the port director. The Customs access

seal may be replaced, as provided in § 122.182(f).

[T.D. 02–40, 67 FR 48986, July 29, 2002]

§ 122.186 Presentation of Customs access seal by other person.

If an approved Customs access seal is presented by a person other than the one to whom it was issued, the Customs access seal will be removed and destroyed. An approved Customs access seal may be removed from an employee by any Customs officer designated by the port director.

[T.D. 02–40, 67 FR 48986, July 29, 2002]

§ 122.187 Revocation or suspension of access.

(a) *Grounds for revocation or suspension of access*—(1) *General.* The port director:

(i) Must immediately revoke or suspend an employee's access to the Customs security area and demand the immediate surrender of the employee's approved Customs access seal for any ground specified in paragraph (a)(2) of this section; or

(ii) May propose the revocation or suspension of an employee's access to the Customs security area and the surrender of the employee's approved Customs access seal whenever, in the judgment of the port director, it appears for any ground not specified in paragraph (a)(2) of this section that continued access might pose an unacceptable risk to public health, interest or safety, national security, aviation safety, the revenue, or the security of the area. In this case the port director will provide the employee with an opportunity to respond to the notice of proposed action.

(2) *Specific grounds.* Access to the Customs security area will be revoked or suspended, and surrender of an approved Customs access seal will be demanded, in any of the following circumstances:

(i) There is probable cause to believe that an approved Customs access seal was obtained through fraud, a material omission, or the misstatement of a material fact;

(ii) The employee is or has been convicted of, or found not guilty of by reason of insanity, or there is probable cause to believe that the employee has committed any act or omission involving, an offense listed in § 122.183(a)(4);

(iii) The employee has been arrested for, or charged with, an offense listed in § 122.183(a)(4) and prosecution or other disposition of the arrest or charge is pending;

(iv) The employee has engaged in any other conduct that would constitute a ground for denial of access to the Customs security area under § 122.183;

(v) The employee permits the approved Customs access seal to be used by any other person or refuses to openly display or produce it upon the proper demand of a Customs officer;

(vi) The employee uses the approved Customs access seal in connection with a matter not related to his employment or not constituting a duty described in the written justification required by § 122.182(c)(1);

(vii) The employee refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation;

(viii) For all employees of the bond holder, if the bond required by § 122.182(c) is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time;

(ix) The employee no longer requires access to the Customs security area for an extended period of time at the airport of issuance because of a change in duties, termination of employment, or other reason; or

(x) The employee or employer fails to provide the notification of a change in circumstances as required under § 122.184(b) or (c) or the employee fails to report the loss or theft of a Customs access seal as required under § 122.185.

(b) *Notice of revocation or* suspension. The port director will revoke or suspend access to the Customs security area and demand surrender of the Customs access seal by giving notice of the revocation or suspension and demand in writing to the employee, with a copy of the notice to the employer. The notice will indicate whether the revocation or suspension is effective immediately or is proposed.

(1) *Immediate revocation or suspension.* When the revocation or suspension of

access and the surrender of the Customs access seal are effective immediately, the port director will issue a final notice of revocation or suspension. The port director or his designee may deny physical access to the Customs security area and may demand surrender of an approved Customs access seal at any time on an emergency basis prior to issuance of a final notice of revocation or suspension whenever in the judgment of the port director or his designee an emergency situation involving public health, safety, or security is involved and, in such a case, a final notice of revocation or suspension will be issued to the affected employee within 10 calendar days of the emergency action. A final notice of revocation or suspension will state the specific grounds for the immediate revocation or suspension, direct the employee to immediately surrender the Customs access seal if that Customs access seal has not already been surrendered, and advise the employee that he may choose to pursue one of the following two options:

(i) Submit a new application for an approved Customs access seal, in accordance with the provisions of § 122.182(c), on or after the 180th calendar day following the date of the final notice of revocation or suspension; or

(ii) File a written administrative appeal of the final notice of revocation or suspension with the port director in accordance with paragraph (c) of this section within 30 calendar days of the date of the final notice of revocation or suspension. The appeal may request that a hearing be held in accordance with paragraph (d) of this section, and in that case the appeal also must demonstrate that there is a genuine issue of fact that is material to the revocation or suspension action.

(2) *Proposed revocation or suspension*—(i) *Issuance of notice.* When the revocation or suspension of access and the surrender of the Customs access seal is proposed, the port director will issue a notice of proposed revocation or suspension. The notice of proposed revocation or suspension will state the specific grounds for the proposed action, inform the employee that he may continue to have access to the Customs security area and may retain the Customs access seal pending issuance of a final notice under paragraph (b)(2)(ii) of this section, and advise the employee that he may file with the port director a written response addressing the grounds for the proposed action within 10 calendar days of the date the notice of proposed action was received by the employee. The employee may respond by accepting responsibility, explaining extenuating circumstances, and/or providing rebuttal evidence. The employee also may ask for a meeting with the port director or his designee to discuss the proposed action.

(ii) *Final notice*—(A) *Based on nonresponse.* If the employee does not respond to the notice of proposed action, the port director will issue a final notice of revocation or suspension within 30 calendar days of the date the notice of proposed action was received by the employee. The final notice of revocation or suspension will state the specific grounds for the revocation or suspension, direct the employee to immediately surrender the Customs access seal, and advise the employee that he may choose to pursue one of the two options specified in paragraphs (b)(1)(i) and (ii) of this section.

(B) *Based on response.* If the employee files a timely response, the port director will issue a final determination regarding the status of the employee's right of access to the Customs security area within 30 calendar days of the date the employee's response was received by the port director. If this final determination is adverse to the employee, then the final notice of revocation or suspension will state the specific grounds for the revocation or suspension, direct the employee to immediately surrender the Customs access seal, and advise the employee that he may choose to pursue one of the two options specified in paragraphs (b)(1)(i) and (ii) of this section.

(c) *Appeal procedures*—(1) *Filing of appeal.* The employee may file a written appeal of the final notice of revocation or suspension with the port director within 10 calendar days following receipt of the final notice of revocation or suspension. The appeal must be filed

in duplicate and must set forth the response of the employee to the statement of the port director. The port director may, in his discretion, allow the employee additional time to submit documentation or other information in support of the appeal.

(2) *Action by port director*—(i) *If a hearing is requested*. If the appeal requests that a hearing be held, the port director will first review the appeal to determine whether there is a genuine issue of fact that is material to the revocation or suspension action. If a hearing is required because the port director finds that there is a genuine issue of fact that is material to the revocation or suspension action, a hearing will be held, and a decision on the appeal will be rendered, in accordance with paragraphs (d) through (f) of this section. If the port director finds that there is no genuine issue of fact that is material to the revocation or suspension action, no hearing will be held and the port director will forward the administrative record as provided in paragraph (c)(2)(ii) of this section for the rendering of a decision on the appeal under paragraph (c)(3) of this section.

(ii) *CMC review*. If no hearing is requested or if the port director finds that a requested hearing is not required, following receipt of the appeal the port director will forward the administrative record to the director of field operations at the Customs Management Center having jurisdiction over the office of the port director for a decision on the appeal. The transmittal of the port director must include a response to any disputed issues raised in the appeal.

(3) *Action by the director*. Following receipt of the administrative record from the port director, the director of field operations will render a written decision on the appeal based on the record forwarded by the port director. The decision will be rendered within 30 calendar days of receipt of the record and will be transmitted to the port director and served by the port director on the employee. A decision on an appeal rendered under this paragraph will constitute the final administrative action on the matter.

(d) *Hearing*. A hearing will be conducted in connection with an appeal of a final notice of revocation or suspension of access to the Customs security area only if the affected employee in writing requests a hearing and demonstrates that there is a genuine issue of fact that is material to the revocation or suspension action. If a hearing is required, it must be held before a hearing officer designated by the Commissioner, or his designee. The employee will be notified of the time and place of the hearing at least 5 calendar days before the hearing. The employee may be represented by counsel at the revocation or suspension hearing. All evidence and testimony of witnesses in the proceeding, including substantiation of charges and the answer to the charges, must be presented. Both parties will have the right of cross'examination. A stenographic record of the proceedings will be made upon request and a copy furnished to the employee. At the conclusion of the proceedings or review of a written appeal, the hearing officer must promptly transmit all papers and the stenographic record to the director of field operations, together with the recommendation for final action. If neither the employee nor his attorney appears for a scheduled hearing, the hearing officer must record that fact, accept any appropriate testimony, and conclude the hearing. The hearing officer must promptly transmit all papers, together with his recommendations, to the director of field operations.

(e) *Additional written views*. Within 10 calendar days after delivery of a copy of the stenographic record of the hearing to the director of field operations, either party may submit to the director of field operations additional written views and arguments on matters in the record. A copy of any submission will be provided to the other party. Within 10 calendar days of receipt of the copy of the submission, the other party may file a reply with the director of field operations, and a copy of the reply will be provided to the other party. No further submissions will be accepted.

(f) *Decision*. After consideration of the recommendation of the hearing officer and any additional written submissions and replies made under paragraph (e) of this section, the director of field operations will render a written decision. The decision will be transmitted to the port director and served by the port director on the employee. A decision on an appeal rendered under this paragraph will constitute the final administrative action on the matter.

[T.D. 02–40, 67 FR 48986, July 29, 2002; 67 FR 51928, Aug. 9, 2002; 67 FR 54023, Aug. 20, 2002]

§ 122.188 Issuance of temporary Customs access seal.

(a) *Conditions for issuance*. When an approved Customs access seal is required under § 122.182(a) of this part and the port director determines that the application cannot be administratively processed in a reasonable period of time, an employer may, upon written request, be issued a temporary Customs access seal for his employee. The employer must satisfy the port director that a hardship would result if the request is not granted. Surety on the bond, as required by § 122.182(c), may be waived in the discretion of the port director but only for the period of the temporary Customs access seal and its renewal period.

(b) *Validation period*. The temporary Customs access seal shall be valid for a period of 60 days. The port director may renew the temporary Customs access seal for additional 30 day periods where the circumstances under which the temporary Customs access seal was originally issued continue to exist. The temporary Customs access seal shall be destroyed by the port director when the permanent approved Customs access seal is issued, or the privileges granted thereby are withdrawn.

(c) *Temporary employees and official visitors*. The provisions of this section shall also apply to temporary employees and official visitors requiring access to the Customs security area. In the case of temporary employees, the Customs access seal shall be valid for a period of 30 days. In the case of official visitors, the temporary Customs access seal shall be valid for the day of issuance only. Temporary employee and official visitor Customs access seal are renewable for periods equal to their original period of validity.

(d) *Revocation of denial and access*. The temporary Customs access seal may be revoked and access to the Customs security area denied at any time if the holder of the temporary Customs access seal refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation, or if, in the judgment of the port director, continuation of the privileges granted thereby would endanger the revenue or pose a threat to the Customs security area.

[T.D. 90–82, 55 FR 42557, Oct. 22, 1990, as amended by T.D. 02–40, 67 FR 48988, July 29, 2002]

§ 122.189 Bond liability.

Any failure on the part of a principal to comply with the conditions of the bond required under § 122.182(c), including a failure of an employer to comply with any requirement applicable to the employer under this subpart, will constitute a breach of the bond and may result in a claim for liquidated damages under the bond.

[T.D. 02–40, 67 FR 48988, July 29, 2002]

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

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AUTHORITY: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624, 2071 note.

Section 123.1 also issued under 19 U.S.C. 1459;

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Section 123.4 also issued under 19 U.S.C. 1484, 1498;

Section 123.7 also issued under 19 U.S.C. 1498;

Section 123.8 also issued under 19 U.S.C. 1450–1454, 1459;

Section 123.9 also issued under 19 U.S.C. 1460, 1584, 1618;

Section 123.12 also issued under 19 U.S.C. 1202 (Chapter 86, Additional U.S. Note 1, HTSUS), 1322;

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Sections 123.21–123.23, 123.25–123.29, 123.41, 123.51 also issued under 19 U.S.C. 1554;

Section 123.24 also issued under 19 U.S.C. 1551;

Sections 123.31–123.34, 123.42, 123.52, 123.64 also issued under 19 U.S.C. 1553;

Section 123.63 also issued under 19 U.S.C. 1461, 1462;

Sections 123.71–123.76 also issued under 19 U.S.C. 1618;

Section 123.81 also issued under 19 U.S.C. 1595.

SOURCE: T.D. 70–121, 35 FR 8215, May 26, 1970, unless otherwise noted.

§ 123.0 Scope.

This part contains special regulations pertaining to Customs procedures at the Canadian and Mexican borders. Included are provisions governing report of arrival, manifesting, unlading and lading, instruments of international traffic, shipments in transit through Canada or Mexico or through the United States, commercial traveler's samples transiting the United States or Canada, and baggage arriving from Canada or Mexico including baggage transiting the United States or Canada or Mexico. Aircraft arriving from or departing for Canada or Mexico are governed by the provisions of part 122 of this chapter. The arrival of all vessels from, and clearance of all vessels departing for, Canada or Mexico are governed by the provisions of part 4 of this chapter. Fees for services provided in connection with the arrival of aircraft, vessels, vehicles and other conveyances from Canada or Mexico are set forth in § 24.22 of this chapter. Regulations pertaining to the treatment of goods from Canada or Mexico under the North American Free Trade Agreement are contained in part 181 of this chapter.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 88–12, 53 FR 9315, Mar. 22, 1988; T.D. 93–85, 58 FR 54286, Oct. 21, 1993; T.D. 93–96, 58 FR 67317, Dec. 21, 1993; T.D. 94–1, 58 FR 69471, Dec. 30, 1993; 59 FR 10283, Mar. 4, 1994]

Subpart A—General Provisions

§ 123.1 Report of arrival from Canada or Mexico and permission to proceed.

(a) *Individuals.* Individuals arriving in the United States, unless excepted by voluntary enrollment in and compliance with PORTPASS—a joint Customs Service/Immigration and Naturalization Service facilitated entry program (See, Immigration and Naturalization Regulations at 8 CFR 235.7), must report their arrival to Customs, and failure to report arrival may result in the individual being liable for certain civil and criminal penalties, as provided under 19 U.S.C. 1459, in addition to other penalties applicable under other provisions of law. The specific reporting requirements are as follows:

(1) *Individuals not arriving by conveyance.* Persons arriving otherwise than by conveyance may enter the U.S. only at those locations specified by the Commissioner of Customs, or his designee, and shall then immediately report their arrival to Customs. Such persons shall not depart from the Customs port or station until authorized to do so by the appropriate Customs officer.

(2) *Persons arriving aboard a conveyance that reported its arrival.* Persons aboard a conveyance the arrival of which has been reported to Customs at locations specified by the Commissioner of Customs, or his designee in accordance with section 1433, 1644 or 1644a of title 19, United States Code (19 U.S.C. 1433, 1644, 1644a), shall remain on board until authorized by Customs to depart, and shall then immediately report to the designated Customs facility together with all articles accompanying them.

(3) *Persons arriving aboard a conveyance that has not reported its arrival.* Persons aboard a conveyance the arrival of which has not been reported in accordance with the laws referred to in paragraph (a)(2) of this section, shall immediately notify a Customs officer and report their arrival, together with appropriate information concerning the conveyance on or in which they arrived, at a location or locations specified by the Commissioner of Customs, or his designee and shall present themselves and their property for Customs inspection and examination.

(b) *Vehicles.* Vehicles may arrive in the U.S. only at a designated port of entry (see § 101.3 of this chapter) or Customs station if the Commissioner of Customs, or his designee authorizes entry at that station (see § 101.4 of this chapter). Upon arrival of the vehicle in the U.S., the driver, unless he or she and all of the vehicle's occupants are

excepted by enrollment in, and in compliance with, PORTPASS—a joint Customs Service/Immigration and Naturalization Service facilitated entry program (See, Immigration and Naturalization Regulations at 8 CFR 235.1 and 286.8), immediately shall report such arrival to Customs, and shall not depart or discharge any passenger or merchandise (including baggage) without authorization by the appropriate Customs officer.

(c) *Vessels*. For report of arrival requirements applicable to all vessels, regardless of tonnage, and arriving from any location, see § 4.2 of this chapter.

(d) *Method of reporting*. Report of arrival under paragraphs (a), (b), and (c) of this section shall be made in person unless the port director, by local instructions, requires that it be made by some other specific means. Such local instructions issued by the port director will be made available to interested parties by posting in Customs offices, publication in a newspaper of general circulation in the Customs port that supervises the location, and/or other appropriate means.

[T.D. 93–96, 58 FR 67317, Dec. 21, 1993, as amended by T.D. 94–44, 59 FR 23795, May 9, 1994; T.D. 97–48, 62 FR 32031, June 12, 1997; T.D. 98–74, 63 FR 51289, Sept. 25, 1998; CBP Dec. 04–28, 69 FR 52599, Aug. 27, 2004]

§ 123.2 Penalty for failure to report arrival or for proceeding without a permit.

(a) *Persons*. Any person arriving otherwise than by conveyance who enters the U.S. at other than a designated port of entry, or Customs station if authorization exists for entry at that station, who fails to report arrival as required in § 123.1(a) of this part, or who departs from the port of entry or Customs station without authorization by the appropriate Customs officer, whether or not intentionally, shall be subject to such civil and criminal penalties as are prescribed under 19 U.S.C. 1459 and provided for in § 123.1 of this part.

(b) *Vessels*. The penalty provisions applicable to vessels for failure to report arrival or for proceeding without a permit are those as provided in § 4.3a.

(c) *Vehicles*. (1) *Civil penalties*. The person in charge of any vehicle who—

(i) Enters the vehicle into the U.S. at other than a designated port of entry, or Customs station if authorization exists for entry at that station;

(ii) Fails to report arrival and present the vehicle and all persons and merchandise (including baggage) on board for inspection as required in § 123.1(b) of this part;

(iii) Fails to file a manifest or any other document required to be filed in connection with arrival in the U.S. under this part; or

(iv) Without authorization by the appropriate Customs officer, removes such vehicle from the port of entry or Customs station or discharges any passenger or merchandise (including baggage) shall be subject to such civil penalties as are prescribed in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436), and any conveyance used in connection with any such violation shall be subject to seizure and forfeiture. The person also may be subject to an additional civil penalty equal to the value of the merchandise on the conveyance which was not entered or reported as required by § 123.1(b) of this part, and that merchandise may be subject to seizure and forfeiture unless properly entered by the importer or consignee. If the merchandise consists of any controlled substances, additional penalties may be assessed, as prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584).

(2) *Criminal penalties*. Upon conviction, any person in charge of a vehicle who intentionally commits any of the violations described in paragraph (c)(1) of this section shall, in addition to the penalties described therein, be subject to such additional criminal penalties as are prescribed in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436). If the vehicle has or is discovered to have had on board any merchandise (other than sea stores or the equivalent for conveyances other than vessels) the importation of which into the U.S. is prohibited, the person in charge of the vehicle is subject to such additional criminal penalties as are prescribed in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436).

[T.D. 93–96, 58 FR 67318, Dec. 21, 1993]

§ 123.3 Inward foreign manifest required.

(a) *General requirements*. Baggage or other merchandise carried on a vehicle or on a vessel of less than 5 net tons arriving otherwise than by sea from Canada or Mexico shall be listed on a manifest as prescribed by § 123.4. Vessels which are required to make entry under § 4.3 of this chapter because they are arriving by sea or are 5 net tons or over shall have manifests on board as provided in § 4.7(a) of this chapter.

(b) *Exception where in possession of traveler*. When baggage arrives in the actual possession of a traveler, his declaration will be accepted in lieu of a manifest. Merchandise imported by a person otherwise than in a vessel or vehicle need not be covered by a manifest but shall be presented for inspection, and entry shall be made in accordance with the applicable laws and regulations.

§ 123.4 Inward foreign manifest forms to be used.

The inward foreign manifest required by § 123.3 for a vehicle or a vessel of less than 5 net tons arriving in the United States from Canada or Mexico otherwise than by sea with baggage or merchandise, shall be on Customs Form 7533, except as provided for shipments in transit in subparts C, D, E, F, and G of this part, and in the following special cases:

(a) For merchandise free of duty entered on Customs Form 7523, the same form may be used as a manifest in lieu of other forms. (See § 143.23 of this chapter.)

(b) For dutiable merchandise not exceeding $2,000 in value entered on Customs Form 368 or 368A, (serially numbered) or Customs Form 7501 the same form may be used as a manifest in lieu of other forms. (See § 143.21 of this chapter.) The port director may also allow such merchandise to be entered informally upon the presentation of a commercial invoice which contains the following declaration, signed by the importer or his agent:

I declare that the information on this invoice is accurate to the best of my knowledge and belief; that the invoice quantities are true and correct manifest quantities; and that I have not received and do not know of any invoice other than this one.

(c) For a shipment not exceeding $250 in value consisting of articles of American origin entered free of duty under the provisions of § 10.1(i) of this chapter and imported in a vehicle, Customs Form 3311 used in entering the goods, in duplicate, may be accepted in lieu of a manifest.

(d) For baggage arriving in baggage cars, Customs Form 7533 shall be used. (See subpart G of this part.)

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 73–175, 38 FR 17447, July 2, 1973; T.D. 75–105, 40 FR 19813, May 7, 1975; T.D. 82–145, 47 FR 35478, Aug. 16, 1982; T.D. 87–75, 52 FR 26142, July 13, 1987; T.D. 92–56, 57 FR 24944, June 12, 1992; T.D. 94–47, 59 FR 25570, May 17, 1994; T.D. 98–28, 63 FR 16416, Apr. 3, 1998]

§ 123.5 Certification and filing of inward foreign manifest.

The manifest listing baggage and other merchandise, certified by the master of the vessel or the person in charge of the vehicle, shall be presented to the Customs officer at the time the report of arrival is made. It shall be filed in the original only, unless additional copies are required in this part.

§ 123.6 Train sheet for arriving railroad trains.

The conductor of a railroad train arriving from Canada or Mexico shall present to the Customs officer at the port of arrival individual car manifests and a train sheet, sometimes called a consist, bridge sheet, or trip sheet, listing each car and showing the car numbers and initials.

§ 123.7 Manifest used as an entry for unconditionally free merchandise value not over $250.

When a shipment not exceeding $250 in value which is unconditionally free of duty and not subject to quota or to internal revenue tax arrives on a vessel of less than 5 net tons arriving otherwise than by sea, the inward foreign manifest on Customs Form 7533 may be presented in duplicate and used as an entry if:

(a) No merchandise for a different entrant is listed on the same page of the manifest,

(b) The country of exportation of the merchandise, its value, and the provision of law under which free entry is claimed are noted thereon, and

(c) Evidence of the right to make entry is furnished as required by § 141.11 of this chapter.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 73–175, 38 FR 17447, July 2, 1973]

§ 123.8 Permit or special license to unlade or lade a vessel or vehicle.

(a) *Permission to unlade or lade.* Before any passenger or merchandise, including baggage, may be landed or discharged from any vessel of less than 5 net tons arriving from Canada or Mexico by any route, or from a vehicle, permission to unlade shall be obtained from a Customs officer. Permission to unlade during overtime hours, on a Sunday or holiday, or to lade during overtime hours on a Sunday or holiday merchandise requiring Customs supervision, shall be obtained from the port director. Permission to unlade or lade a truck will be denied for any cargo with respect to which advance electronic information has not been received as provided in § 123.92 or 192.14 of this chapter, as applicable. In cases in which CBP does not receive complete cargo information in the time and manner and in the electronic format required by § 123.92 or 192.14 of this chapter, as applicable, CBP may delay issuance of a permit or special license to unlade or lade a truck. Permission to unlade is not required for a vessel of less than 5 net tons arriving otherwise than by sea carrying no baggage or other merchandise. For permission to unlade or lade for vessels of 5 net tons or over, see § 4.30 of this chapter.

(b) *Application for permit or special license to unlade or lade*—(1) *Permit to unlade during regular hours.* Application for a permit to unlade any vehicle or a vessel of less than 5 net tons may be made and permission may be granted orally. The port director may require that the application and permission to unlade be on Customs Form 3171.

(2) *Special license to unlade or lade at night, on a Sunday or holiday.* Application for permission to unlade passengers or merchandise from, or lade any merchandise requiring Customs supervision on, a vessel of less than 5 net tons or a vehicle arriving from or departing for Canada or Mexico by any route at night, on a Sunday or holiday, and requests for any reimbursable overtime services shall be made on Customs Form 3171. In the discretion of the port director and under such condition as he may deem advisable the application may be made orally for vessels of less than 5 net tons and vehicles not carrying persons or property for hire, but requests for reimbursable overtime services shall be on Customs Form 3171. The port director may authorize Customs inspectors to approve the request for overtime services and to grant oral permission to unlade or lade.

(c) *Cash deposit or bond for overtime services.* A request for reimbursable overtime services shall not be approved unless the required cash deposit or bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter, is on file or is filed with the request.

(d) *Term permit or special license.* A permit or special license required by this section may be issued on a term basis in the manner, and under the conditions applicable, described in § 4.30 (f) or (g) of this chapter. A term permit or special license to unlade or lade a truck already issued will not be applicable as to any cargo with respect to which advance electronic information has not been received as provided in § 123.92 or 192.14 of this chapter, as applicable.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 84–213, 49 FR 41183, Oct. 19, 1984; T.D. 94–2, 58 FR 68526, Dec. 28, 1993; CBP Dec. 03–32, 68 FR 68173, Dec. 5, 2003]

§ 123.9 Explanation of a discrepancy in a manifest.

(a) *Provisions applicable*—(1) *Overages.* If any merchandise (including sea stores or its equivalent) is found on board a vessel or vehicle arriving in the U.S. that is not listed on a manifest filed in accordance with § 123.5 of this part, or after having been unladen from such vessel or vehicle, is found not to have been included or described in the

manifest or does not agree therewith (an overage), the master, person in charge, or owner of the vessel or vehicle or any person directly or indirectly responsible for the discrepancy is subject to such penalties as are prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), and any such merchandise belonging or consigned to the master, person in charge, or owner of the vehicle is subject to seizure and forfeiture.

(2) *Shortages*. If merchandise is manifested but not found on board a vessel or vehicle arriving in the U.S. (a shortage), the master, person in charge, or owner of the vessel or vehicle or any person directly or indirectly responsible for the discrepancy is subject to such penalties as are prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584).

(3) *Failure to file a manifest*. The master or person in charge of a vessel or vehicle arriving in the U.S. or the U.S. Virgin Islands who fails to present a manifest to Customs is liable for civil penalties as are provided by law, and the conveyance used in connection with the failure to file is subject to seizure and forfeiture. A criminal conviction for intentional failure to file shall make the master or person in charge liable for criminal penalties, as provided by statute, and if any merchandise is found or determined to have been on board (other than sea stores or the equivalent for vehicles), the importation of which is prohibited, additional penalties may apply.

(b) *Report of discrepancies*—(1) *Discrepancies discovered by master, person in charge, owner, agent, or person directly or indirectly responsible*. The master, person in charge, owner, or agent of the vessel or vehicle, or any person directly or indirectly responsible for any discrepancy between the merchandise and the manifest, shall report any discrepancy to the port director within 60 days after the date of arrival by completing a report for an overage or a declaration for a shortage. The overage report or shortage declaration may be made on the appropriate manifest form, as listed in § 123.4, or on Customs Form 5931, Discrepancy Report and Declaration. If no manifest has been filed, an original copy of the appropriate form, as listed in § 123.4, should be used. In each case in which a manifest form is used, the form shall be marked or stamped ''Overage Report'' or ''Shortage Declaration'', as appropriate. The form used shall list the merchandise involved and state the reasons for the discrepancy.

(2) *Discrepancies discovered by Customs*. The port director immediately shall advise the master, person in charge, owner, agent, or any person directly or indirectly responsible for the discrepancy between the merchandise and the manifest of any discrepancy discovered by Customs officers which has not been reported. The person so notified shall file an explanation of the discrepancy, as required by paragraph (b)(1) of this section, within 30 days of notification, or within 60 days after arrival of the vessel or vehicle, whichever is later. The port director may notify the master, person in charge, owner, agent, or any person directly or indirectly responsible for the discrepancy by furnishing a copy of Customs Form 5931 to that person, or by any other appropriate written means. Use of Customs Form 5931 shall not preclude assessment of any penalty or liability to forfeiture otherwise incurred.

(c) *Statement on report of discrepancy required*. The overage report or shortage declaration shall bear the following statement signed by the master of the vessel, the person in charge of the vehicle, the owner of the vessel or vehicle, an authorized agent, or the person directly or indirectly responsible for the discrepancy:

> I declare to the best of my knowledge and belief that the discrepancy described herein occurred for the reasons stated. I also certify that evidence to support a claim of nonimportation or proper disposition of merchandise will be retained in the carrier's files for a period of at least one year from the date of this report of discrepancy and will be made available to Customs upon demand.

(d) *Action on the discrepancy report*. (1) In accordance with the proviso to 19 U.S.C. 1584, no penalty shall be incurred under that section if—

(i) The manifest discrepancy relates only to a shortage;

(ii) There is timely filing of the discrepancy report;

(iii) There has been no loss of revenue;

(iv) The port director is satisfied that the discrepancy resulted from clerical error or other mistake; and

(v) In the case of a discrepancy not reported initially by the master, person in charge, owner, agent, or the person directly or indirectly responsible, the port director is satisfied that there is a valid reason for failure to file the discrepancy report.

(2) If the criteria in paragraph (d)(1) of this section are not met, applicable penalties under 19 U.S.C. 1584 shall be assessed.

(3) Any penalty or liability to forfeiture incurred under 19 U.S.C. 1584 may be mitigated or remitted under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618).

(e) *Penalty assessment*. For the purpose of assessing penalties under 19 U.S.C. 1584, the value of the merchandise shall be determined as described in section 162.43 of this chapter.

(f) *Lack of knowledge does not relieve liability*. The fact that the master of the vessel, the person in charge of the vehicle, or the owner of the vessel or vehicle had no knowledge of a discrepancy shall not relieve the master, the person in charge, or the owner from a penalty, or the vessel or vehicle from liability to forfeiture, incurred under 19 U.S.C. 1584.

(g) *Clerical error or other mistake defined*. For the purpose of this section, the term ''clerical error or other mistake'' is defined as a non-negligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of manifests. However, repeated similar manifest discrepancies by the same persons may be considered the result of negligence and not clerical error or other mistake.

[T.D. 80–236, 45 FR 64172, Sept. 29, 1980, as amended by T.D. 93–96, 58 FR 67318, Dec. 21, 1993]

§ 123.10 General order merchandise.

(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 unlading until the fifteenth calendar day after landing. No later than 20 calendar days after landing, the owner or operator of the vehicle 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 owner or operator of the vehicle 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 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. 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. The arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (*see* § 19.9 of this chapter). Any unentered merchandise or baggage shall remain the responsibility of the carrier, master, or person in charge of the importing vehicle 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 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 fails to timely relinquish custody of the merchandise to a Customs-approved bonded General Order warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) If the bonded warehouse operator fails to take possession of unentered 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). If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (*see* § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (*see* §§ 113.63(c)(3) and 113.64(b) of this chapter).

(f) 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.

(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 vehicle arrived, to be held there at the risk and expense of the consignee.

[T.D. 98–74, 63 FR 51289, Sept. 25, 1998, as amended by T.D. 02–65, 67 FR 68033, Nov. 8, 2002]

Subpart B—International Traffic

§ 123.11 Supplies on international trains.

(a) *Articles acquired abroad.* Articles subject to internal revenue tax and other merchandise acquired abroad constituting supplies arriving on international trains crossing and recrossing the boundary line, for which the train

crew elects not to file an inventory as provided for in paragraph (b) of this section, shall be subject to duty and tax unless locked or sealed in a separate compartment or locker upon arrival, and the lock or seal remains unbroken until the train departs from the United States at the final port of exit.

(b) *Inventory procedure.* Supplies acquired abroad for which internal revenue stamps are not required may be used in the United States under the following procedure:

(1) *Port of arrival.* An inventory executed in duplicate consisting of an itemized list showing the kind and quantity of each class of supplies on hand in the car with space for a parallel column in which to show at the port of exit the quantity used, shall be certified by the person in charge of the car and furnished to the Customs officer upon arrival. The Customs officer shall certify the correctness of both copies of the inventory, return the original to the person in charge of the car and retain the duplicate, or forward it to the port of exit if this differs from the port of arrival.

(2) *Port of exit.* Upon arrival at the port of exit, the inventory returned at the port of arrival to the person in charge of the car shall be submitted to the Customs officer after completion by showing the quantity of each item used in the United States, and being certified by the person in charge of the car. Entries must be filed and applicable duties and taxes paid at the port of exit on the quantity of supplies consumed in the United States.

(c) *Supplies purchased in the United States.* Supplies purchased in the United States shall be passed free of duty without inventory or entry.

§ 123.12 Entry of foreign locomotives and equipment in international traffic.

(a) *Use on a continuous route.* Foreign locomotives or other foreign railroad equipment in use on a continuous route crossing the boundary into the United States shall be admitted without formal entry or the payment of duty to proceed to the end of the run and depart for a foreign country, in accordance with the following:

(1) *On inward trip.* Unless formally entered and cleared through Customs into the United States, or unless exempt from entry as provided in §141.4(b)(4) of this chapter, a foreign locomotive shall be used on the inward trip only in connection with taking the inbound train to the last place in a continuous haul, including the switching of cars which it has hauled into the United States. Other foreign railroad equipment may proceed to the place of complete unloading for any merchandise imported therein.

(2) *On outward trip.* Unless formally entered and cleared through Customs into the United States, or unless exempt from entry as provided in §141.4(b)(4) of this chapter, foreign locomotives may be used on the outward trip only in connection with through trains crossing the boundary, including switching to make up such trains. Other foreign railroad equipment may be used in such trains or for such local traffic as is reasonably incidental to its economical and prompt departure for a foreign country.

(b) *Admission of empty equipment.* Empty foreign railroad equipment shall be admitted to the United States without formal entry and payment of duty only if:

(1) The passengers or goods to be loaded are to be transported directly to or through a foreign country; or

(2) The equipment is exempt from entry as provided in §141.4(b)(4) of this chapter.

(c) *Penalty for improper use.* The use of any foreign locomotive and other foreign railroad equipment in violation of this section may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

(d) *Domestic and foreign locomotives and other railroad equipment defined.* For the purpose of this section and §123.13, locomotives or other railroad equipment manufactured in, or regularly imported into, the United States, shall be considered ''domestic'' if not subsequently formally entered and cleared through foreign customs into another country, nor used in foreign local traffic otherwise than as an incident of the return of the equipment to the United States. Other locomotives

and railroad equipment shall be considered ''foreign''.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 73–73, 38 FR 6991, Mar. 15, 1973; T.D. 79–160, 44 FR 31956, June 4, 1979; T.D. 83–118, 48 FR 23385, May 25, 1983; T.D. 94–51, 59 FR 30294, June 13, 1994]

§ 123.13 Foreign repairs to domestic locomotives and other domestic railroad equipment.

A report of the first arrival in the United States of a domestic locomotive or other railroad equipment after repairs have been made in a foreign country other than those required to restore it to the condition in which it last left the United States (''running repairs''), shall be made promptly, in writing, to the Customs officer at the port of re-entry. The report shall state the time and place of arrival, and the nature and value of the repairs. Each such locomotive or other piece of railroad equipment when withdrawn from international traffic shall be subject to duty upon the value of the repairs (other than ''running repairs''), made abroad at the rate at which the repaired article would be dutiable if imported. For the appropriate determination as to whether the locomotive or other railroad equipment should be considered ''domestic'' or ''foreign'', see § 123.12(d).

[T.D. 73–73, 38 FR 6991, Mar. 15, 1973]

§ 123.14 Entry of foreign-based trucks, busses, and taxicabs in international traffic.

(a) *Admission without entry or payment of duty*. Trucks, busses, and taxicabs, however owned, which have their principal base of operations in a foreign country and which are engaged in international traffic, arriving with merchandise or passengers destined to points in the United States, or arriving empty or loaded for the purpose of taking out merchandise or passengers, may be admitted without formal entry or the payment of duty. Such vehicles shall not engage in local traffic except as provided in paragraph (c) of this section.

(b) *Deposit of registration by vehicle not on regular trip*. In any case in which a foreign-based truck, bus, or taxicab admitted under this section is not in use on a regularly scheduled trip, the port director may require that the registration card for the vehicle be deposited pending the return of the vehicle for departure to the country from which it arrived, or the port director may take other appropriate measures to assure the proper use and departure of the vehicle.

(c) *Use in local traffic*. Foreign-based trucks, busses, and taxicabs admitted under this section shall not engage in local traffic in the United States unless the vehicle comes within one of the following exceptions:

(1) The vehicle may carry merchandise or passengers between points in the United States if such carriage is incidental to the immediately prior or subsequent engagement of that vehicle in international traffic. Any such carriage by the vehicle in the general direction of an export move or as part of the return of the vehicle to its base country shall be considered incidental to its engagement in international traffic. An alien driver will not be permitted to operate a vehicle under this paragraph, unless the driver is in compliance with the applicable regulations of the Immigration and Naturalization Service.

(2) A foreign-based truck trailer may carry merchandise between points in the United States on its departure for a foreign country under the same conditions as are prescribed for ''other foreign railroad equipment'' in § 123.12(a)(2).

(d) *Penalty for improper use*. The use of any vehicle referred to in this section in violation of this section may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 79–160, 44 FR 31956, June 4, 1979; T.D. 83–118, 48 FR 23385, May 25, 1983; T.D. 99–10, 64 FR 7504, Feb. 16, 1999]

§ 123.15 Vehicles of foreign origin used between communities of the United States and Canada or Mexico.

Vehicles of foreign origin which are used for commercial purposes between adjoining or neighboring communities of the United States and Canada or Mexico, such as delivery, peddlers', and service trucks, or wagons, are subject

to duty on first arrival, but may thereafter be admitted without formal entry or the payment of duty so long as they are continuously employed in such service.

§ 123.16 Entry of returning trucks, busses, or taxicabs in international traffic.

(a) *Admission without entry or payment of duty*. Trucks, busses, and taxicabs, whether of foreign or domestic origin, taking out merchandise or passengers for hire or leaving empty for the purpose of bringing back merchandise or passengers for hire shall on their return to the United States be admitted without formal entry or the payment of duty upon their identity being established by State registration cards.

(b) *Use in local traffic*. Trucks, busses, and taxicabs in use in international traffic, which may include the incidental carrying of merchandise or passengers for hire between points in a foreign country, or between points in this country, shall be admitted under this section. However, such vehicles taken abroad for commercial use between points in a foreign country, otherwise than in the course of their use in international traffic, shall be considered to have been exported and must be regularly entered on return.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 99–10, 64 FR 7504, Feb. 16, 1999]

§ 123.17 Foreign repairs to domestic trucks, busses, taxicabs and their equipment.

(a) *Domestic trucks, busses, and taxicabs and their equipment defined*. For the purpose of this section, trucks, busses, and taxicabs and their equipment manufactured in, or regularly imported into the United States, shall be considered ''domestic'' if not subsequently formally entered and cleared through foreign customs into another country, nor used in foreign local traffic otherwise than as an incident of their return to the United States.

(b) *Report of arrival and payment of duty on repairs*. A report of the first arrival in the United States of domestic trucks, busses, and taxicabs and their equipment after repairs have been made in a foreign country, other than those required to restore such vehicle or equipment to the condition in which it last left the United States (''running repairs''), shall be made by the driver or person in charge of the vehicle promptly, in writing, to the Customs officer at the port of reentry. The report shall state the time and place of arrival and the nature and value of the repairs. Each such vehicle or its equipment when withdrawn from international traffic shall be subject to duty upon the value of the repairs (other than ''running repairs'') made abroad at the rate at which the repaired article would be dutiable if imported.

§ 123.18 Equipment and materials for constructing bridges or tunnels between the United States and Canada or Mexico.

(a) *Admission of equipment and materials*. Equipment for use in construction of bridges or tunnels between the United States and Canada or Mexico shall be admitted without entry or the payment of duty. Materials for such use shall be admitted without entry or payment of duty only for installation in the bridge or tunnel proper, and not in the approaches on land at the United States end of such bridge or tunnel.

(b) *Customs supervision*. All articles admitted under paragraph (a) of this section shall be subject to Customs supervision at the expense of the builder until installed, entered, or exported.

Subpart C—Shipments in Transit Through Canada or Mexico

§ 123.21 Merchandise in transit.

(a) *Status*. Merchandise may be transported from one port to another in the United States through Canada or Mexico in accordance with the regulations in this subpart or subparts E for trucks transiting Canada, F for commercial traveler's samples, or G for baggage. Merchandise so transported is not subject to treatment as an importation when returned to the United States, and no inward foreign manifest is required for merchandise returned under an in-transit manifest. In-transit merchandise returned to the United States shall be treated as an importation as are shipments made from Canada or Mexico if:

(1) An in-transit manifest is not furnished for the merchandise upon its return to the United States;

(2) The merchandise has been transshipped in foreign territory without Customs supervision when the transshipment required the breaking of Customs seals; or

(3) The Customs inspector finds any of the Customs seals applied to the conveyance or compartment unlocked or missing.

(b) *Use of certain vessels prohibited.* Merchandise shall not be transported from port to port in the United States through Canada or Mexico by vessel in violation of the provisions of section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883), or section 588, Tariff Act of 1930, as amended (19 U.S.C. 1588). (See § 4.80 of this chapter.)

(c) *Regulations applicable.* The provisions of this subpart shall govern all merchandise transported from one port to another in the United States through Canada or Mexico under in-transit procedures, except as otherwise provided in this subpart or in subpart E for truck shipments transiting Canada, subpart F for commercial traveler's samples transiting Canada, and subpart G for baggage transiting Canada or Mexico.

§ 123.22 In-transit manifest.

(a) *Manifest required.* A manifest in duplicate covering the in-transit merchandise which is to proceed under the provisions of this subpart shall be presented by the carrier to the Customs officer at each port of lading of a vessel, or at the port of exit of a vehicle. Where the merchandise is transported under Customs red in-bond seals and is accompanied by a transportation in-bond manifest, a separate in-transit manifest is not required.

(b) *Additional copies.* In the following cases additional copies of the manifest shall be presented:

(1) When the merchandise is to be transshipped in foreign territory under Customs supervision, a copy of the manifest for each place of transshipment shall be presented.

(2) When a Customs officer requests an extra copy of the manifest as a record of the transaction.

(c) *Manifest forms to be used.* The in-transit manifest forms to be used are:

(1) For trucks, railroad cars or other overland carriers transiting Mexico a manifest on Customs Form 7512–B or 7533–C shall be presented.

(2) For vessels of less than 5 net tons departing and arriving otherwise than by sea, a manifest on Customs Form 7512–B or 7533–C shall be presented. All other vessels are subject to the manifesting requirements contained in § 4.82 of this chapter.

(3) For rail cars transiting Canada, a manifest on Customs Form 7533–C (Canada A4–1/2) shall be presented. For trains which will remain intact while transiting Canadian territory, a consolidated train manifest containing all the information included in the individual car manifests and the train sheet required by § 123.23 may be used in lieu of individual car manifests. For a number of cars which will transit Canada as a group, a consolidated manifest may be used, but a train sheet shall also be presented.

(4) In all other cases where no in-transit manifest form is specified in this subpart, or in subpart E relating to truck shipments on the Canadian border, subpart F relating to commercial traveler's samples, and subpart G relating to baggage, Customs Form 7512–B or 7533–C shall be presented.

(d) *Contents of in-transit manifest.* The information contained in the manifest shall correspond to the information contained in the waybill accompanying the shipment, except that:

(1) The conveyance shall be identified in a suitable manner in the place provided for such identification.

(2) The description of ladings made up of several shipments which are to go forward in a conveyance or compartment sealed with Customs seals shall be ''miscellaneous shipments.''

(3) When an in-transit rail shipment will enter and reenter Canada in a continuing movement en route to a final destination in the United States, only the final United States port of reentry shall be shown on the manifest.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 82–145, 47 FR 35478, Aug. 16, 1982]

§ 123.23 Train sheet for in-transit rail shipments.

Before an in-transit train proceeding under the provisions of this subpart departs from the United States, the carrier shall furnish to the customs officer at the port of exit a train sheet, sometimes called a consist, bridge sheet or trip sheet, listing each car of the train and specifically identifying the in-transit cars, unless a consolidated manifest containing this information has been presented for a train which will remain intact.

§ 123.24 Sealing of conveyances or compartments.

(a) *Sealing required.* Merchandise in transit proceeding under the provisions of this subpart shall be transported in sealed conveyances or compartments, except that:

(1) Less than load or compartment lots may be forwarded in unsealed conveyances or compartments, without cording and sealing;

(2) The Commissioner of Customs may authorize treatment of full loads or lots in the same manner as less than load or compartment lots;

(3) Live animals identifiable by specific description in the manifest may be transported in the care of an attendant or customs inspector at the expense of the parties in interest, in unsealed conveyances or compartments.

(b) *Seals to be affixed.* The carrier shall affix blue in-transit seals to all openings of conveyances and compartments containing in-transit merchandise except that:

(1) Sealable carload shipments on the Canadian border shall be sealed with yellow in-transit seals.

(2) Conveyances or compartments sealed with U.S. Customs red in-bound seals may go forward without additional seals.

(c) *Carrier relieved of responsibility.* The port director may relieve the carrier of the responsibility of affixing in-transit seals by notification in writing that Customs inspectors will assume it.

§ 123.25 Certification and disposition of manifests.

(a) *Certification.* Conveyances proceeding under the provisions of this subpart shall not proceed until the Customs inspector has certified the in-transit manifest or verified its certification by the carrier. The port director may require the carrier to execute the certificate as an alternative to certification by the Customs officer. When the carrier is to execute the certificate, and the merchandise will be forwarded without being under Customs seals, the agent of the carrier shall carefully examine the packages covered by the manifests to satisfy himself that the merchandise agrees with the manifest as to quantity and description.

(b) *Disposition of manifest.* The original manifest, after certification, shall accompany the merchandise. Additional copies required when the merchandise is to be transshipped in Canada or Mexico under Customs supervision shall be given to the person in charge of the conveyance for delivery to the Customs officers who will supervise transshipment.

§ 123.26 Transshipment of merchandise moving through Canada or Mexico.

(a) *General.* Merchandise in transit proceeding under the provisions of this subpart may be transshipped from one conveyance to another in foreign territory. When transshipment requires the breaking of Customs seals, the breaking of the seals, transshipment and sealing of the conveyance or compartment to which the merchandise is transshipped shall be under the supervision of a Customs officer. He shall note his action on both the additional copy of the manifest presented to him, in accordance with §123.25(b), and on the original copy, which shall be returned to the person in charge of the conveyance to accompany the merchandise. Merchandise transshipped in foreign territory without customs supervision when Customs seals were broken shall be treated upon return to the United States as imported merchandise.

(b) *Storage awaiting transshipment.* Merchandise moving under in-transit manifests and Customs seals which is to be stored in foreign territory awaiting transshipment shall be checked into a storehouse by the Customs officer at the place of transshipment. It

shall remain under Customs locks and seals until transshipment is completed under Customs supervision.

(c) *Manifests where contents broken up.* When transshipment involves the breaking up of the in-transit contents of a conveyance or compartment, in such a manner as to require separate manifests for articles previously covered by a single manifest, the Customs officer supervising the transshipment shall take up the carrier's copy of the manifest and require the carrier to prepare a new manifest, in duplicate, for each conveyance to which the merchandise is transshipped. If there is to be further transshipment, an additional copy of each new manifest shall be presented by the carrier, and shall be returned to the person in charge of the carrier for delivery to the Customs officer at the point of further transshipment in accordance with § 123.25(b). After the transshipment and sealing of the conveyances and compartments has been supervised and the new manifests certified the originals of the new manifests shall be returned to the carrier to accompany the merchandise to the point of reentry into the United States.

§ 123.27 Feeding and watering animals in Canada.

If animals in sealed conveyances or compartments cannot be fed and watered in Canada without breaking customs seals, the seals shall be broken and the animals fed and watered under the supervision of a United States or Canadian Customs officer. The supervising officer shall reseal the conveyance or compartment, and make notation as to the resealing on the manifest.

§ 123.28 Merchandise remaining in or exported to Canada or Mexico.

(a) *In-transit status abandoned.* When the in-transit status of merchandise transiting Canada or Mexico is abandoned and the merchandise is entered for consumption or other disposition in Canada or Mexico, the carrier shall send the in-transit seals and manifests to the port where the manifests were first filed with U.S. Customs, or in the case of trucks under subpart E, the port of exit, with an endorsement by the carrier's agent on each manifest showing that the merchandise was so entered. The carriers shall comply with the export control regulations, 15 CFR part 370.

(b) *In-transit merchandise exported to Canada or Mexico.* Merchandise to be exported to Canada or Mexico after moving in-transit through a contiguous country shall be treated as exported when it has passed through the last port of exit from the United States. This paragraph shall control whether or not the merchandise to be exported is domestic or foreign and whether or not it is exported with benefit of drawback. The manifest, shipper's export declaration, and the notice of exportation, if any, shall be filed at the last port of exit from the United States.

§ 123.29 Procedure on arrival at port of reentry.

(a) *Presentation of documents.* At the first port in the United States after transportation through Canada or Mexico under the provisions of this subpart, the carrier shall present to Customs the in-transit manifest or manifests for each loaded conveyance. For mixed ladings, that is, ladings made up of several shipments, the waybills shall be available at the port of return or discharge for use by Customs officers. For a railroad train for which a consolidated manifest was not used the conductor shall also present a train sheet showing the car numbers and initials.

(b) *Vessels and rail shipments continuing in-transit movement*—(1) *Vessels.* In the case of a vessel carrying in-transit merchandise, the master's copies of the in-transit or in-bond manifest covering the merchandise given final Customs release at that port shall be retained by Customs at that port and the manifests covering merchandise to be discharged at subsequent ports of arrival shall be returned to the master of the vessel for presentation to Customs at the next port.

(2) *Rail shipments.* An in-transit rail shipment arriving at an intermediate port of reentry or exit intended for further in-transit movement through Canada may be permitted to go forward under the accompanying in-transit manifest after verification by Customs

that the manifest satisfactorily identifies the shipment.

(c) *Checking and breaking of seals*—(1) *Checking seals*. The Customs officer at the port of arrival shall check customs seals applied to the conveyance or compartment for unlocked or missing seals. Where the seals are unlocked or missing, the merchandise shall be treated as having been imported from the transited country.

(2) *Breaking seals*. In-bond seals shall be broken only by a Customs officer or by a person acting under the direction of a Customs officer. In-transit seals may be broken by any carrier's employee, or by a consignee at any time or place after the merchandise under such seals has been released by Customs.

(d) *Proper manifest*. In-transit merchandise shall not be released until proper in-transit manifests are received except that it may be treated as imported merchandise.

(e) *Substitution of merchandise*. Any instance of substitution of merchandise shall be reported to the Commissioner of Customs, and the merchandise shall be detained.

Subpart D—Shipments in Transit Through the United States

§ 123.31 Merchandise in transit.

(a) *From one contiguous country to another*. Merchandise may be transported in transit across the United States between Canada and Mexico under the procedures set forth in part 18 of this chapter for merchandise entered for transportation and exportation.

(b) *From one point in a contiguous country to another through the United States*. Merchandise may be transported from point to point in Canada or in Mexico through the United States in bond in accordance with the procedures set forth in §§ 18.20 to 18.24 of this chapter except where those procedures are modified by this subpart or subparts E for trucks transiting the United States, F for commercial traveler's samples, or G for baggage.

§ 123.32 Manifests.

(a) *Form and number of copies required*. Three copies of the transportation entry and manifest on Customs Form 7512 shall be presented upon arrival of merchandise which is to proceed under the provisions of this subpart.

(b) *Consolidated train manifest*. When the route is such that a train will remain intact while proceeding through the United States, a consolidated train manifest containing the same information as is required on individual manifests may be used.

(c) *Disposition of manifest form*. One copy of the manifest shall be delivered to the person in charge of the carrier to accompany the conveyance and be delivered to the Customs officer at the final port of exit.

§ 123.33 [Reserved]

§ 123.34 Certain vehicle and vessel shipments.

In the following circumstances, the copy of Customs Form 7512 to be retained at the port of first arrival may be adapted for use as a combined inward foreign manifest and in-bond transportation or direct exportation entry:

(a) When all the merchandise arriving on one vehicle (except on trucks on the Canadian border) is to move in bond in the importing vehicle in a continuing movement through the United States; or

(b) When all the merchandise arriving on one vessel or on one vehicle (except on trucks on the Canadian border) is entered immediately upon arrival either under a single immediate transportation entry or a single transportation and exportation or direct exportation entry.

When Customs Form 7512 is to be used in this manner, the foreign port of lading and the name of the shipper shall be shown in every case, and a certificate in the following form shall be legibly stamped on the manifest or on a separate paper securely fastened thereto and executed by the master of the vessel or the person in charge of the vehicle:

This entry correctly covers all the merchandise on the vessel or vehicle, of which I am the master or person in charge, when it first arrived in the United States. If an error in the quantity, kind of article, or other details is discovered, I will immediately report the correct information to the port director.

Subpart E—United States and Canada In-Transit Truck Procedures

§ 123.41 Truck shipments transiting Canada.

(a) *Manifest required.* Trucks with merchandise transiting Canada from point to point in the United States will be manifested on United States-Canada Transit Manifest, Customs Form 7512–B Canada 8½. The driver shall present the manifest in four copies to U.S. Customs at the United States port of departure for review and validation.

(b) *Procedure at United States port of departure.* The Customs officer receiving the manifest shall validate it by stamping each copy in the lower right hand corner to show the port name and date and by initialing each copy. All copies of the validated manifest then will be returned to the driver for presentation to Canadian Customs at the Canadian port of entry.

(c) *Procedure at Canadian ports of arrival and exit.* Truck shipments transiting Canada shall comply with Canadian Customs regulations. These procedures generally are as follows:

(1) *Canadian port of arrival.* The driver shall present a validated United States-Canada Transit Manifest Customs Form 7512–B Canada 8½, in four copies to the Canadian Customs officer, who shall review the manifest for accuracy and verify its validation by U.S. Customs. If the manifest is found not to be properly validated, the truck shall be required to be returned to the United States port of departure so that the manifest may be validated. If the manifest is validated properly and no irregularity is found, the truck will be sealed unless sealing is waived by Canadian Customs. The original manifest will be retained by Canadian Customs at the port of arrival, and the three copies will be returned to the driver for presentation to Canadian Customs at the Canadian port of exit.

(2) *Canadian port of exit.* The driver shall present the three copies of the validated manifest to the Canadian Customs officer at the Canadian port of exit for certification. That officer shall verify that the seals are intact if the vehicle has been sealed or, if sealing has been waived, that there are no irregularities. After verification and certification of the manifest, two certified copies will be returned to the driver (one to be presented to U.S. Customs at the United States port of reentry, the other for the carrier's records), and the truck will be allowed to proceed to the United States.

(d) *Procedure at United States port of reentry.* The driver of a truck reentering the United States after transiting Canada shall present a certified copy of the United States-Canada Transit Manifest, Customs Form 7512–B Canada 8½, to the U.S. Customs officer. If this copy of the manifest does not bear the certification of a Canadian Customs officer at the Canadian port of exit, the driver will be allowed to return to that port to have it certified. The driver will be allowed to break any seals affixed by Canadian Customs upon presentation of a certified manifest. If sealing has been waived, the U.S. Customs officer shall satisfy himself that the truck contains only that merchandise covered by the manifest which moved on the truck from the United States through Canada.

(e) *Proof of exportation from Canada.* The certified copy of the manifest returned to the driver by Canadian Customs at the Canadian port of exit will serve as proof of exportation of the shipment from Canada.

[T.D. 81–85, 46 FR 21990, Apr. 15, 1981]

§ 123.42 Truck shipments transiting the United States.

(a) *Manifest required.* Trucks with merchandise transiting the United States from point to point in Canada will be manifested on United States-Canada Transit Manifest, Customs Form 7512–B Canada 8½. The driver, in accordance with Canadian Customs regulations, shall present the manifest in four copies to Canadian Customs at the Canadian port of departure for review and validation.

(b) *Procedure at Canadian port of departure.* The Customs officer receiving the manifest shall validate it by stamping each copy in the lower right hand corner to show the port name and date and by initialing each copy. All copies of the validated manifest then

will be returned to the driver for presentation to U.S. Customs at the United States port of entry.

(c) *Procedure at United States port of arrival*—(1) *Presentation of manifest*. The driver shall present a validated United States-Canada Transit Manifest, Customs Form 7512–B Canada 8½, in four copies to the U.S. Customs officer, who shall review the manifest for accuracy and verify its validation by Canadian Customs. If the manifest is found not to be validated properly, the truck will be required to be returned to the Canadian port of departure so that the manifest may be validated in accordance with Canadian Customs regulations. If the manifest is validated properly and no irregularity is found the truck will be sealed unless sealing is waived by U.S. Customs. The U.S. Customs officer shall note on the manifest over his initials the seal numbers or the waiver of sealing, retain the original, and return three copies of the manifest to the driver for presentation to U.S. Customs at the United States port of exit.

(2) *Sealing or waiver of sealing*. Trucks transiting the United States will be sealed with red in-bond seals at the United States port of arrival unless sealing is waived in accordance with § 18.4 of this chapter. If a truck cannot be sealed effectively and sealing is deemed necessary to protect the revenue or to prevent violation of the Customs laws or regulations, the truck will not be permitted to transit the United States under bond.

(d) *Procedure at United States port of exit*. The driver shall present the three validated copies of the manifest to the U.S. Customs officer at the U.S. port of exit. The Customs officer shall check the numbers and condition of the seals and record and certify his findings on all copies of the manifest, returning two certified copies to the driver (one to be presented to Canadian Customs at the Canadian port of reentry, the other for the carrier's records), and the truck will be allowed to proceed to Canada. The check of the seals shall be made as follows:

(1) If the seals are intact, they will be left unbroken unless there is indication that the contents should be verified.

(2) If the seals have been broken, or there is other indication that the contents should be verified, all merchandise will be required to be unladen and a detailed inventory made against the waybills.

If sealing has been waived, the Customs officer shall verify the goods against the accompanying waybills in sufficient detail to detect any irregularity.

(e) *Procedure at Canadian port of reentry*. The driver of a truck reentering Canada after transiting the United States shall present a certified copy of the United States-Canada Transit Manifest, Customs Forms 7512–B Canada 8½, to the Canadian Customs officer. If this copy of the manifest does not bear the certification of a U.S. Customs officer at the United States port of exit, the driver will be allowed to return to that port to have it certified.

(f) *Proof of exportation from United States*. The certified copy of the manifest returned to the driver by the U.S. Customs officer at the U.S. port of exit will serve as proof of exportation of the shipment from the U.S.

(g) *Forwarding procedure*. Except as otherwise provided in this section, merchandise transported in trucks shall be forwarded in accordance with the general provisions for transportation in bond (§§ 18.1–18.8 of this chapter).

[T.D. 81–85, 46 FR 21991, Apr. 15, 1981, as amended by T.D. 84–212, 49 FR 39047, Oct. 3, 1984; T.D. 00–22, 65 FR 16518, Mar. 29, 2000]

Subpart F—Commercial Traveler's Samples in Transit Through the United States or Canada

§ 123.51 Commercial samples transported by automobile through Canada between ports in the United States.

(a) *General provisions*. A commercial traveler arriving at a U.S. frontier port desiring to transport his commercial samples by automobile through Canada to another place in the United States without displaying the samples in Canada may request a U.S. Customs officer at the port of departure to cord and seal the outer containers of the samples if they can be effectively corded and sealed.

(b) *List of samples.* The traveler shall furnish the U.S. Customs officer at the port of exit a list, in duplicate, of all the articles in the containers, with their approximate values, in substantially the following form:

SAMPLES CARRIED IN TRANSIT THROUGH CANADA IN PRIVATE VEHICLE

_____
(U.S. port of exit printed here) (Date)

I have checked the quantity and values of the below-listed articles carried by _____(Name and address of traveler) and owned by _____(Name and address of firm or company)

These articles are contained in _____ (Number) packages which have been corded and sealed for in-transit movement through Canada to _____ (U.S. port of reentry) in _____ (Year, make and license number of vehicle)

_____
(U.S. Customs Inspector)

Description of merchandise	*Value*

When the traveler arrives at Customs with lists already prepared, the form may be inscribed ''as per list attached.''

(c) *Checking, cording, and sealing by U.S. Customs officers.* The Customs officer shall check the list with the articles and satisfy himself that the values shown are approximately correct. The Customs officer will cord and seal the containers with yellow in-transit seals. The traveler may be required to assist the Customs officer in the cording and sealing. The original of the list, signed by the Customs officer over his title and showing that the articles on the list have been checked by the officer against those in the containers shall be returned to the traveler for submission by him to Canadian customs upon his arrival in Canada.

(d) *In-transit manifest.* The traveler shall execute and file Customs Form 7512–B or 7533–C, in the original only, at the U.S. port of departure, as an in-transit manifest covering the movement of the samples to the U.S. port through which the traveler will return. Descriptions, quantities, and values may be shown thereon by noting ''Commercial Samples'' and the number of corded and sealed containers. The manifest shall be returned to the traveler to accompany the samples after being signed and dated by the Customs officer.

(e) *Presentation of in-transit manifest at U.S. port of reentry.* Upon return to the United States, the traveler shall present Customs Form 7512–B or 7533–C and the corded and sealed samples to the U.S. Customs officer at the port where the samples are returned to this country. The Customs officer shall verify that there has been no irregularity.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 82–145, 47 FR 35478, Aug. 16, 1982]

§ 123.52 Commercial samples transported by automobile through the United States between ports in Canada.

(a) *General provisions.* A commercial traveler arriving from Canada may be permitted to transport effectively corded and sealed samples in his automobile without further sealing in the United States, upon compliance with this section and subject to the conditions of § 18.20(b), since Customs bonded carriers as described in § 18.1 of this chapter are not considered to be reasonably available. Samples having a total value of not more than $200 may be carried by a nonresident commercial traveler through the United States without cording and sealing and without an in-transit manifest in accordance with § 148.41 of this chapter.

(b) *Presentation of sample list at Canadian port of exit.* A commercial traveler arriving from Canada desiring to transport without display in the United States commercial samples in his automobile through the United States to another port in Canada, may present his samples to a Canadian Customs officer at the Canadian port of exit. The traveler will be required to furnish the Canadian Customs officer a list in duplicate of all articles presented showing their approximate values. The list shall bear the traveler's name and address, and the name and address of the firm represented.

(c) *Checking, cording, and sealing by Canadian Customs officers.* The Canadian Customs officer will examine the articles, identify them with the list,

and satisfy himself that the values shown are approximately correct. The Canadian Customs officer will cord and seal the outer containers with uncolored in-transit seals and authenticate the list of samples with his signature and title. Cording and sealing may be waived with the concurrence of the United States and Canadian Customs officers.

(d) *Treatment at U.S. port of arrival.* The list of samples properly authenticated shall be submitted upon arrival to the U.S. Customs officer at the port of arrival. After ascertaining that the samples are effectively corded and sealed, or that sealing has been waived, notation of the number of corded and sealed containers, or of the waiver shall be made on the list of samples and the list shall be retained by the Customs officer as a record of the shipment.

(e) *In-transit manifest.* Movement of the samples from the port of arrival to the port of exit from the United States under this procedure shall be under an in-transit manifest on Customs Form 7512 executed and filed in triplicate by the traveler at the port of arrival in the United States. Descriptions, quantities, and values may be shown thereon by noting ''Commercial Samples,'' the number of corded and sealed containers, and the approximate total value of the samples. When cording and sealing has been waived with the concurrence of a Canadian Customs officer, samples must be identified on the manifest by suitable itemized descriptions and approximate values, or by attaching to the manifest a copy of the list of samples which has been initialed by the Customs officer.

(f) *Presentation of samples and manifest at U.S. port of exit.* The manifest on Customs Form 7512 shall be presented to the Customs officer at the U.S. port of exit, together with the samples covered. If the seals are broken or cording and sealing has been waived, the Customs officer shall verify that there are no irregularities.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 73–27, 38 FR 2449. Jan. 26, 1973; T.D. 87–75, 52 FR 20068, May 29, 1987]

Subpart G—Baggage

§ 123.61 Baggage arriving in baggage car.

An inward foreign manifest on Customs Form 7533 shall be used for all baggage arriving in baggage cars.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 82–145, 47 FR 35478, Aug. 16, 1982]

§ 123.62 Baggage in possession of traveler.

For baggage arriving in the actual possession of a traveler, his declaration shall be accepted in lieu of an inward foreign manifest. (See § 123.3.)

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 73–72, 38 FR 2449, Jan. 26, 1973]

§ 123.63 Examination of baggage from Canada or Mexico.

(a) *Opening vehicle or compartment to examine baggage.* Customs officers are authorized to unlock, open, and examine vehicles and compartments thereof for the purposes of examining baggage under sections 461, 462, 496, 581(a) and 582, Tariff Act of 1930, as amended (19 U.S.C. 1461, 1462, 1496, 1581(a), and 1582) and 19 U.S.C. 482. However, to the extent practical, the Customs officer should ask the owner or operator to unlock such vehicle or compartment first. Where the owner or operator is unavailable or refuses to unlock the vehicle or compartment or where it is not practical to ask the owner or operator to unlock the same, it shall be opened by the Customs officer. If any article is subject to duty, or any prohibited article is found upon opening by the Customs officer, the whole contents and the vehicle shall be subject to forfeiture pursuant to 19 U.S.C. 1462.

(b) *Inspection of baggage.* A Customs officer has the right to inspect all merchandise and baggage brought into the United States from contiguous countries under 19 U.S.C. 1461. He also has the right, under the same statute, to require that owners of such baggage open it or furnish keys for doing so. Where the owner or agent is unavailable or refuses to open the baggage or furnish keys or where it is not practical to ask the owner or agent to open or furnish keys to the same, it shall be

opened by the Customs officer. If any article is subject to duty, or any prohibited article is found upon opening by the Customs officer, the baggage shall be subject to forfeiture pursuant to 19 U.S.C. 1462.

[T.D. 95–86, 60 FR 54188, Oct. 20, 1995]

§ 123.64 Baggage in transit through the United States between ports in Canada or in Mexico.

(a) *Procedure*. Baggage in transit from point to point in Canada or Mexico through the United States may be transported in bond through the United States in accordance with the procedures set forth in §§ 18.13, 18.14, and 18.20 through 18.24 of this chapter except where those procedures are modified by this section.

(b) *In-transit manifest*. Three copies of the manifest on Customs Form 7512 shall be required. One copy of the Form 7512 shall be delivered to the person in charge of the carrier to accompany the baggage and shall be delivered by the carrier to the Customs officer at the port of departure from the United States.

(c) *Consolidated train manifest*. When the route is such that a train carrying baggage in bond will remain intact while proceeding through the United States, a consolidated train manifest containing the same information as is required on individual manifests may be used in lieu of individual manifest on Customs Form 7512.

(d) *Baggage cards*—(1) *Baggage arriving from Mexico*. For baggage arriving at a port on the Mexican border for in-transit movement through the United States in bond and return to Mexico, the in-transit baggage card described in § 18.14 of this chapter shall be used.

(2) *Baggage arriving from Canada*. For baggage arriving at a port on the Canadian border for in-transit movement through the United States in bond and return to Canada, the joint United States-Canada in-transit baggage card, Customs Form 7512–B (Canada 8½) or Customs Form 7533–C (Canada A4–½), shall be used. The baggage card will be filled out and securely attached to the baggage and the attachment verified by a Canadian Customs officer before the baggage leaves Canada. If the joint in-transit baggage card is found to be improperly prepared or attached upon arrival of the baggage in the United States for movement in bond, the carrier may be required to furnish the baggage card described in § 18.14 of this chapter for attachment to the baggage before being allowed to proceed. At the port of exit from the United States the joint in-transit baggage card shall be allowed to remain on the baggage.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 71–70, 36 FR 4491, Mar. 6, 1971; T.D. 84–212, 49 FR 39047, Oct. 3, 1984; T.D. 87–75, 52 FR 20068, May 29, 1987; T.D. 00–22, 65 FR 16518, Mar, 29, 2000]

§ 123.65 Domestic baggage transiting Canada or Mexico between ports in the United States.

(a) *General provision*. Upon request of the carrier, checked baggage of domestic origin may be transported from one port in the United States to another through Canada or through Mexico in accord with the procedure set forth in this section. The provisions of this section shall not apply to domestic hand baggage crossing Canada or Mexico which, upon reentry into the United States, shall be examined in the same manner as baggage of foreign origin.

(b) *Special in-transit tag manifest*. The carrier shall complete and attach to each piece of baggage by wire or cord under Customs supervision a special in-transit tag manifest furnished by the carrier as follows:

(1) *Baggage transiting Mexico*. For baggage of domestic origin to be transported through Mexico between ports of the United States, the special in-transit tag manifest attached to each piece of baggage shall be on white cardboard not less than 2½ × 4½ inches in size printed in substantially the following form:

UNITED STATES CUSTOMS

IN-TRANSIT BAGGAGE MANIFEST

Carrier's Baggageman: Destroy this tag if owner has access to baggage before its return to United States.

Check No. ____.

This baggage is in transit from _____ (Port of exit) through foreign territory to _____ (Port of reentry) in the United States.

This baggage was laden for transportation as above stated.

Date _____

(U.S. Customs Officer)

(2) *Baggage transiting Canada.* For baggage of domestic origin to be transported through Canada between ports in the United States, the joint United States-Canada in-transit baggage card, Customs Form 7512–B (Canada 8½) or Customs Form 7533–C (Canada A4–½), shall be used as the special in-transit tag manifest attached to each piece of baggage.

(c) *Removal of special in-transit tag manifest.* The special in-transit tag manifest shall be removed only by the Customs officers at the final port of reentry into the United States. If the officer finds the special in-transit tag manifest missing or not intact, or for any other reason believes that the baggage has been tampered with while outside the United States, he shall detain it for examination. Otherwise, baggage transported under the procedure in this section may be passed without examination.

(d) *Procedure in lieu of special in-transit tag manifest.* In lieu of attaching the special in-transit tag manifest to each piece of baggage as set forth in paragraph (b) of this section, baggage of domestic origin may be forwarded in a car or compartment sealed with in-transit seals and manifested as in the case of other merchandise in transit through Canada or Mexico, as provided in subpart C of this part.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 87–75, 52 FR 20068, May 29, 1987]

Subpart H—Land Border Carrier Initiative Program

SOURCE: T.D. 99–2, 64 FR 31, Jan. 4, 1999, unless otherwise noted.

§ 123.71 Description of program.

The Land Border Carrier Initiative Program (LBCIP) is a program designed to enlist the voluntary cooperation of commercial conveyance entities in Customs effort to prevent the smuggling of controlled substances into the United States. Participation in the LBCIP requires the land or rail commercial carrier to enter into a written agreement with Customs that describes the responsibilities of participants in the LBCIP. The agreement generally provides that the carrier agrees to enhance the security of its facilities and the conveyances employed to transport merchandise. The carrier also agrees to cooperate closely with Customs in identifying and reporting suspected smuggling attempts. In exchange for this cooperation, Customs agrees to provide training to carrier personnel in the areas of cargo and personnel security, document review techniques, drug awareness, and conveyance searches. Customs also agrees that should a controlled substance be found aboard a conveyance owned or operated by a participating carrier, special administrative procedures relating to the assessment and mitigation of drug-related penalties will be followed; the degree of compliance with the terms of the agreement will be considered as an additional positive mitigating factor in any seizure or penalties decision or recommendation. Lastly, at certain high-risk locations, for the use of Line Release, imported merchandise, which otherwise qualifies for Line Release entry (*see,* subpart D of part 142 of this chapter), must be transported over the border by carriers that participate in the LBCIP. The locations where the use of Line Release will be conditioned on participation in the LBCIP will be published in the FEDERAL REGISTER.

§ 123.72 Written agreement requirement.

Commercial carriers desiring to participate in the LBCIP shall enter into a written agreement with Customs regarding the mutual obligations of the carrier-participant and Customs. The terms and conditions in the written agreement shall generally provide that the carrier-applicant agrees:

(a) To participate in Customs training regarding cargo and personnel security, document review techniques, drug awareness, and conveyance searches;

(b) To establish security systems at the place of business for the safe storage and handling of cargo intended to be imported into the United States; and security procedures aimed at restricting access to transporting conveyances and preventing the unauthorized lading of illegal drugs while the

conveyance is en route to the United States;

(c) To conduct, to the extent allowed by law, employment and criminal history record checks on all personnel designated to participate in the LBCIP and to exercise responsible supervision and control over those personnel;

(d) To ensure that only authorized drivers and properly registered conveyances are utilized in the transportation of merchandise into the United States, and to maintain current lists of such drivers and conveyances for Customs inspection upon request;

(e) To immediately report to the appropriate port director any criminal or dishonest conduct on the part of drivers designated to participate in the LBCIP, or attempts by others to impede, influence, or coerce the carrier or drivers into violating any United States law, including Customs regulations, especially those concerned with trafficking in illegal drugs; and

(f) To notify the appropriate port director in writing by mail within 5 days of any change in legal name, business address, business principals, ownership, drivers, or conveyances that affects the basis for continued participation in the LBCIP.

§ 123.73 Application to participate.

To request participation in the LBCIP, the carrier-applicant must submit an application containing the information requested in this section. The application must be accompanied by two copies of a LBCIP written agreement (see § 123.72 of this part; upon request, the local port director will provide copies of an unsigned written agreement) containing original signatures of corporate officers or owners of the common carrier. The application shall be prepared by the common carrier, be signed by corporate officers or owners, and submitted to the port director. If a submitted application does not provide all of the information specified in this section, the processing of the application will either be delayed or the application will be rejected. The application shall include the following information:

(a) *General business identification and site condition information.* The name and address of the commercial conveyance entity, the names of all principals or corporate officers, the name and telephone number of an individual to be contacted for further information, and a complete and detailed description of the premises where business operations are conducted, to include all working/storage areas and security features employed;

(b) *Designated driver information.* A listing of the drivers designated by the carrier who will be transporting merchandise into the U.S. The listing shall set forth the name(s), address(es), date of birth, nationality, driver's license number, and any other personal identifying information regarding the drivers listed, *e.g.*, social security number (if available), to enable Customs to conduct background checks and to aid Customs officers at the border crossing point in identifying individual LBCIP-authorized drivers;

(c) *Conveyance identification information.* A listing of the conveyances, *e.g.*, trucks and locomotives, that the carrier will utilize to transport merchandise into the U.S. The listing shall set forth the type and make of conveyances, country of registration and license number(s), conveyance-specific identifying markings, *e.g.*, vehicle identification numbers (VINs), and any other general conveyance identifying information, *e.g.*, weight, color, recognizable modifications, etc., to aid Customs officers at the border crossing point in identifying particular LBCIP-registered conveyances; and

(d) *Affidavit of business character.* A statement signed by the carrier-applicant which attests to each principal's or corporate officer's past and present business relations, *e.g.*, a list of past companies worked for and positions held, which fully explains the presence of any past or present crime involving theft or smuggling or investigations into such crimes, or other dishonest conduct on the part of a principal.

§ 123.74 Notice of selection; appeal of determination.

The information provided pursuant to paragraphs (b) through (d) of § 123.73 shall constitute the criteria used to evaluate the competency of the carrier-applicant to participate in the LBCIP. Following Customs evaluation

of the information provided, Customs shall notify the carrier-applicant in writing of Customs determination as to whether the carrier-applicant is qualified to participate in the LBCIP. In cases of selection, Customs will sign and return one of the copies of the written agreement. In cases of nonselection, the written notice shall clearly state the reason(s) for denial and recite the applicant's appeal rights under paragraph (b) of this section.

(a) *Grounds for nonselection.* The port director may deny a carrier's application to participate in the LBCIP for any of the following reasons:

(1) Evidence of any criminal or dishonest conduct involving the carrier, a corporate officer, designated drivers, or other person the port director determines is exercising substantial ownership or control over the carrier operation or corporate officer;

(2) Evidence of improper use of designated conveyances;

(3) Evidence that the written agreement was entered into by fraud or misstatement of a material fact; or

(4) A determination is made that the grant of LBCIP privileges would endanger the revenue or security of the Customs area.

(b) *Appeal of determination.* Carrier-applicants not selected to participate in the LBCIP and who wish to appeal the decision shall either:

(1) Appeal the adverse determination in accordance with the appeal procedure set forth in § 123.75(c) of this part; or

(2) Cure any deficiency in the first application by submitting a new application to the port director who denied the previous application after waiting 60 days from the date of issuance of the first determination.

§ 123.75 Notice of revocation; appeal of decision.

(a) *Revocation.* The port director may immediately revoke a carrier's participation in the LBCIP and cancel the written agreement for any of the following applicable reasons:

(1) The selection and written agreement were obtained through fraud or the misstatement of a material fact by the carrier;

(2) The carrier, a corporate officer, or other person the port director determines is exercising substantial ownership or control over the carrier operation or corporate officer, is indicted for, convicted of, or has committed acts which would constitute any felony or misdemeanor under United States Federal or State law. In the absence of an indictment, conviction, or other legal process, the port director must have probable cause to believe the proscribed acts occurred;

(3) The carrier-participant allows an unauthorized person or entity to use its LBCIP certificate or other approved form of identification;

(4) The carrier-participant misuses authorized conveyances;

(5) The carrier-participant refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation;

(6) The carrier-participant fails to operate in accordance with the terms of the written agreement; or

(7) Continuation of LBCIP privileges would endanger the revenue or security of the Customs area in the judgment of the port director.

(b) *Notice.* When a decision revoking participation has been made, the port director shall notify the carrier-participant of the decision in writing. The notice of revocation shall clearly state the reason(s) for revocation and recite the applicant's appeal rights under paragraph (c) of this section.

(c) *Appeal of decision.* Carrier-participants that receive a notice of revocation and who wish to appeal the decision shall file a written appeal with the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, Washington, DC 20229, within 10 calendar days of receipt of the notice. The appeal shall be filed in duplicate and shall set forth the carrier's responses to the grounds specified by the port director in the notice. Within 30 working days of receipt of the appeal, the Assistant Commissioner, or his designee, shall make a determination regarding the appeal and notify the applicant in writing.

§ 123.76 Authorization by Customs for participants to use certain drivers.

(a) *Responsibilities of LBCIP participants.* An LBCIP participant is required, pursuant to § 123.73 of this part, to list the drivers designated to transport merchandise into the United States for the carrier to enable Customs to conduct background checks. An LBCIP participant is also required, pursuant to § 123.72 of this part, to conduct, to the extent allowed by law, employment and criminal history checks on all personnel designated to participate in the LBCIP; these personnel include drivers.

(b) *Authorization of drivers by Customs.* Customs may not approve a carrier for participation in the LBCIP if it determines that there is evidence that a driver designated by a carrier has been involved in criminal or dishonest conduct or it may request that the carrier not use that driver before approving the carrier for participation. Once a carrier has been accepted in the LBCIP, Customs may determine to cancel a particular driver's authorization to transport merchandise for a LBCIP carrier for the reasons set forth in paragraph (c) of this section.

(c) *Reasons for cancellation of driver's authorization.* Customs may cancel a driver's authorization to transport merchandise for an LBCIP participant for any of the following reasons:

(1) The designated driver is indicted for, convicted of, or has committed acts which would constitute any felony or misdemeanor under United States Federal or State law. In the absence of an indictment, conviction, or other legal process, the port director must have probable cause to believe the proscribed acts occurred;

(2) The designated driver allows an unauthorized person or entity to use his LBCIP certificate or other approved form of identification;

(3) The designated driver misuses authorized conveyances;

(4) The designated driver refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation; or

(5) The designated driver fails to operate in accordance with the terms of the written agreement.

(d) *Notice; rights of driver.* (1) *If driver not acceptable to Customs at time of review of carrier's application.* When Customs notifies a carrier-applicant, pursuant to § 123.74 of this part, of its nonselection into the LBCIP because of conduct committed by a driver designated by the carrier or when Customs conditionally approves a carrier-applicant's participation in the LBCIP, but does not approve a driver designated on the application to be authorized to transport merchandise under the LBCIP, Customs will also notify the driver of the decision in writing and recite the driver's appeal rights under paragraph (e) of this section.

(2) *If driver's authorization cancelled.* When Customs makes a determination to cancel the authorization of a particular designated driver, pursuant to § 123.76(b) of this section, Customs will notify both the carrier-participant and the driver of the decision in writing; the notice to the driver will recite the driver's appeal rights under paragraph (e) of this section.

(e) *Appeal rights of drivers.* Drivers who receive a notice of nonselection or cancellation and who wish to appeal the decision shall file a written appeal with the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, Washington, D.C. 20229, within 10 calendar days of receipt of the notice. The appeal shall be filed in duplicate and shall set forth the driver's responses to the grounds specified by the port director in the notice. Within 30 working days of receipt of the appeal, the Assistant Commissioner, or his designee, shall make a determination regarding the appeal and notify the applicant in writing.

Subpart I—Miscellaneous Provisions

§ 123.81 Merchandise found in building on the boundary.

When any merchandise on which the duty has not been paid or which was imported contrary to law is found in any building upon or within 10 feet of the boundary line between the United States and Canada or Mexico, such merchandise shall be seized and a report of the facts shall be made to the Commissioner. With his approval the

building or that portion thereof which is within the United States shall be taken down or removed. The provisions of subpart B of part 162, of this chapter shall be applicable to the search of any such building.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 72–211, 37 FR 16487, Aug. 15, 1972. Redesignated by T.D. 99–2, 64 FR 31, Jan. 4, 1999]

§ 123.82 Treatment of stolen vehicles returned from Mexico.

Port directors shall admit without entry and payment of duty allegedly stolen or embezzled vehicles, trailers, airplanes, or component parts of any of them, under the provisions of The Convention between the United States of America and the United Mexican States for the Recovery and Return of Stolen or Embezzled Vehicles and Aircraft (Treaties and Other International Acts Series [TIAS] 10653), of June 28, 1983, if accompanied by a letter from the U.S. Embassy in Mexico City containing:

(a) A statement that the Embassy is satisfied from information furnished it that the property is stolen property being returned to the U.S. under the provisions of the convention between the U.S. and Mexico concluded January 15, 1981, and

(b) An adequate description of the property for identification purposes.

[T.D. 86–118, 51 FR 22515, June 20, 1986. Redesignated by T.D. 99–2, 64 FR 31, Jan. 4, 1999]

Subpart J—Advance Information for Cargo Arriving by Rail or Truck

SOURCE: CBP Dec. 03–32, 68 FR 68173, Dec. 5, 2003, unless otherwise noted.

§ 123.91 Electronic information for rail cargo required in advance of arrival.

(a) *General requirement*. Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), and subject to paragraph (e) of this section, for any train requiring a train sheet under § 123.6, that will have commercial cargo aboard, Customs and Border Protection (CBP) must electronically receive from the rail carrier certain information concerning the incoming cargo, as enumerated in paragraph (d) of this section, no later than 2 hours prior to the cargo reaching the first port of arrival in the United States. Specifically, to effect the advance electronic transmission of the required rail cargo information to CBP, the rail carrier must use a CBP-approved electronic data interchange system.

(1) *Through cargo in transit to a foreign country*. Cargo arriving by train for transportation in transit across the United States from one foreign country to another; and cargo arriving by train for transportation through the United States from point to point in the same foreign country are subject to the advance electronic information filing requirement for incoming cargo under paragraph (a) of this section.

(2) *Cargo under bond*. Cargo that is to be unladed from the arriving train and entered, in bond, for exportation, or for transportation and exportation, in another vehicle or conveyance is also subject to the advance electronic information filing requirement under paragraph (a) of this section.

(b) *Exception; cargo in transit from point to point in the United States*. Domestic cargo transported by train to one port from another in the United States by way of Canada or Mexico is not subject to the advance electronic information filing requirement for incoming cargo under paragraph (a) of this section.

(c) *Incoming rail carrier*. (1) *Receipt of data; acceptance of cargo*. As a pre-requisite to accepting the cargo, the carrier must receive, from the foreign shipper and owner of the cargo or from a freight forwarder, as applicable, any necessary cargo shipment information, as listed in paragraph (d) of this section, for electronic transmission to CBP.

(2) *Accuracy of information received by rail carrier*. Where the rail carrier electronically presenting the cargo information required in paragraph (d) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the rail carrier acquired such information, and whether and how the

carrier is able to verify this information. Where the rail carrier is not reasonably able to verify such information, CBP will permit the carrier to electronically present the information on the basis of what the carrier reasonably believes to be true.

(d) *Cargo information required.* The rail carrier must electronically transmit to CBP the following information for all required incoming cargo that will arrive in the United States by train:

(1) The rail carrier identification SCAC code (the unique Standard Carrier Alpha Code assigned for each carrier by the National Motor Freight Traffic Association; see § 4.7a(c)(2)(iii) of this chapter);

(2) The carrier-assigned conveyance name, equipment number and trip number;

(3) The scheduled date and time of arrival of the train at the first port of entry in the United States;

(4) The numbers and quantities of the cargo laden aboard the train as contained in the carrier's bill of lading, either master or house, as applicable (this means the quantity of the lowest external packaging unit; containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);

(5) A precise cargo description (or the Harmonized Tariff Schedule (HTS) number(s) to the 6-digit level under which the cargo is classified if that information is received from the shipper) and weight of the cargo; or, for a sealed container, the shipper's declared description and weight of the cargo (generic descriptions, specifically those such as ''FAK'' (''freight of all kinds''), ''general cargo,'' and ''STC'' (''said to contain'') are not acceptable);

(6) The shipper's complete name and address, or identification number, from the bill(s) of lading (for each house bill in a consolidated shipment, the identity of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of the carrier, freight forwarder, consolidator, or broker, is not acceptable; the identification number will be a unique number to be assigned by CBP upon the implementation of the Automated Commercial Environment);

(7) The complete name and address of the consignee, or identification number, from the bill(s) of lading (The consignee is the party to whom the cargo will be delivered in the United States. However, in the case of cargo shipped ''to order of [a named party],'' the carrier must identify this named ''to order'' party as the consignee; and, if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact information (address) in the ''Notify Party'' field of the advance electronic data transmission to CBP, to the extent that the CBP-approved electronic data interchange system is capable of receiving this data. The identification number will be a unique number assigned by CBP upon implementation of the Automated Commercial Environment);

(8) The place where the rail carrier takes possession of the cargo shipment;

(9) Internationally recognized hazardous material code when such materials are being shipped by rail;

(10) Container numbers (for containerized shipments) or the rail car numbers; and

(11) The seal numbers for all seals affixed to containers and/or rail cars to the extent that CBP's data system can accept this information (for example, if a container has more than two seals, and only two seal numbers can be accepted through the system per container, the carrier's electronic presentation of two of these seal numbers for the container would be considered as constituting full compliance with this data element).

(e) *Date for compliance with this section.* Rail carriers must commence the advance electronic transmission to CBP of the required cargo information, 90 days from the date that CBP publishes notice in the FEDERAL REGISTER informing affected carriers that the approved electronic data interchange system is in place and operational at the port of entry where the train will first arrive in the United States.

§ 123.92 Electronic information for truck cargo required in advance of arrival.

(a) *General requirement.* Pursuant to section 343(a) of the Trade Act of 2002, as amended (19 U.S.C. 2071 note), and subject to paragraph (e) of this section, for any truck required to report its arrival under § 123.1(b), that will have commercial cargo aboard, Customs and Border Protection (CBP) must electronically receive from the party described in paragraph (c) of this section certain information concerning the cargo, as enumerated in paragraph (d) of this section. The CBP must receive such cargo information by means of a CBP-approved electronic data interchange system no later than either 30 minutes or 1 hour prior to the carrier's reaching the first port of arrival in the United States, or such lesser time as authorized, based upon the CBP-approved system employed to present the information.

(1) *Through cargo in transit to a foreign country.* Cargo arriving by truck in transit through the United States from one foreign country to another (§ 123.31(a)); and cargo arriving by truck for transportation through the United States from one point to another in the same foreign country (§ 123.31(b); § 123.42) are subject to the advance electronic information filing requirement in paragraph (a) of this section.

(2) *Cargo entered under bond.* Cargo that is to be unladed from the arriving truck and entered, in bond, for exportation, or for transportation and exportation, in another vehicle or conveyance are also subject to the advance electronic information filing requirement in paragraph (a) of this section.

(b) *Exceptions from advance reporting requirements.* (1) *Cargo in transit from point to point in the United States.* Domestic cargo transported by truck and arriving at one port from another in the United States after transiting Canada or Mexico (§ 123.21; § 123.41) is exempt from the advance electronic filing requirement for incoming cargo under paragraph (a) of this section.

(2) *Certain informal entries.* The following merchandise is exempt from the advance cargo information reporting requirements under paragraph (a) of this section, to the extent that such merchandise qualifies for informal entry pursuant to part 143, subpart C, of this chapter:

(i) Merchandise which may be informally entered on Customs Form (CF) 368 or 368A (cash collection or receipt);

(ii) Merchandise unconditionally or conditionally free, not exceeding $2,000 in value, eligible for entry on CF 7523; and

(iii) Products of the United States being returned, for which entry is prescribed on CF 3311.

(c) *Carrier; and importer or broker.* (1) *Single party presentation.* Except as provided in paragraph (c)(2) of this section, the incoming truck carrier must present all required information to CBP in the time and manner prescribed in paragraph (a) of this section.

(2) *Dual party presentation.* The United States importer, or its Customs broker, may elect to present to CBP a portion of the required information that it possesses in relation to the cargo. Where the broker, or the importer (see § 113.62(j)(2) of this chapter), elects to submit such data, the carrier is responsible for presenting to CBP the remainder of the information specified in paragraph (d) of this section.

(3) *Party receiving information believed to be accurate.* Where the party electronically presenting the cargo information required in paragraph (d) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present the information on the basis of what the party reasonably believes to be true.

(d) *Cargo information required.* The following commodity and transportation information, as applicable, must be electronically transmitted to and received by CBP for all required incoming cargo arriving in the United States by truck, to the extent that the particular CBP-approved electronic data interchange system employed can accept this information:

(1) Conveyance number, and (if applicable) equipment number (the number of the conveyance is its Vehicle Identification Number (VIN) or its license plate number and state of issuance; the equipment number, if applicable, refers to the identification number of any trailing equipment or container attached to the power unit);

(2) Carrier identification (this is the truck carrier identification SCAC code (the unique Standard Carrier Alpha Code) assigned for each carrier by the National Motor Freight Traffic Association; see § 4.7a(c)(2)(iii) of this chapter);

(3) Trip number and, if applicable, the transportation reference number for each shipment (the transportation reference number is the freight bill number, or Pro Number, if such a number has been generated by the carrier);

(4) Container number(s) (for any containerized shipment) (if different from the equipment number), and the seal numbers for all seals affixed to the equipment or container(s);

(5) The foreign location where the truck carrier takes possession of the cargo destined for the United States;

(6) The scheduled date and time of arrival of the truck at the first port of entry in the United States;

(7) The numbers and quantities for the cargo laden aboard the truck as contained in the bill(s) of lading (this means the quantity of the lowest external packaging unit; containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);

(8) The weight of the cargo, or, for a sealed container, the shipper's declared weight of the cargo;

(9) A precise description of the cargo or the Harmonized Tariff Schedule (HTS) numbers to the 6-digit level under which the cargo will be classified (generic descriptions, specifically those such as FAK (''freight of all kinds''), ''general cargo,'' and ''STC'' (''said to contain'') are not acceptable);

(10) Internationally recognized hazardous material code when such cargo is being shipped by truck;

(11) The shipper's complete name and address, or identification number, from the bill(s) of lading (for each house bill in a consolidated shipment, the identity of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of the carrier, freight forwarder, consolidator, or broker, is not acceptable; the identification number will be a unique number to be assigned by CBP upon the implementation of the Automated Commercial Environment); and

(12) The complete name and address of the consignee, or identification number, from the bill(s) of lading (the consignee is the party to whom the cargo will be delivered in the United States, with the exception of ''FROB'' (Foreign Cargo Remaining On Board); the identification number will be a unique number assigned by CBP upon implementation of the Automated Commercial Environment).

(e) *Date for compliance with this section.* The incoming truck carrier and, if electing to do so, the United States importer, or its Customs broker, must present the necessary cargo data to CBP at the particular port of entry where the truck will arrive in the United States on and after 90 days from the date that CBP has published a notice in the FEDERAL REGISTER informing affected carriers that:

(1) The approved data interchange is in place and fully operational at that port; and

(2) The carrier must commence the presentation of the required cargo information through the approved system.

PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

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AUTHORITY: 19 U.S.C. 66, 1565, and 1624.

Section 125.31, also issued under 5 U.S.C. 301; 19 U.S.C. 1311, 1312, 1484, 1555, 1556, 1557, 1623, and 1646a.

Section 125.32 also issued under 5 U.S.C. 301; 19 U.S.C. 1484.

Section 125.33 also issued under 19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1623, and 1646a.

Sections 125.41 and 125.42 also issued under 19 U.S.C. 1623.

SOURCE: T.D. 73–140, 38 FR 13554, May 23, 1973, unless otherwise noted.

§ 125.0 Scope.

This part is concerned with cartage and lighterage of merchandise and the duties and liabilities of cartmen and lightermen, as well as those parties authorized in § 112.2(b) to engage in cartage. Provisions for licensing cartmen and lightermen are in part 112 of this chapter.

[T.D. 94–81, 59 FR 51495, Oct. 12, 1994]

Subpart A—General Provisions

§ 125.1 Classes of cartage.

(a) *Government cartage.* Government cartage must be done by a licensed customhouse cartman or other bonded carrier as provided in § 112.2 of this chapter under contract or other specific authority for that purpose (except as provided for in § 125.12). All government cartage must be contracted for using the procedures specified in § 125.3.

(b) *Importers' cartage.* Importers' cartage may be done by any licensed customhouse cartman or other bonded carrier as provided in § 112.2 of this chapter.

[T.D. 94–81, 59 FR 51495, Oct. 12, 1994]

§ 125.2 Supervision of cartage and lighterage.

All licensed vehicles or lighters shall be subject to the control and direction of the officer having charge of the merchandise being carried.

§ 125.3 Contracts for Government cartage.

Contracts for Government cartage shall be procured by formally advertised solicitation for bids and award of contract or by negotiation in accordance with the appropriate provisions of the Federal Procurement Regulations, as supplemented by the special procurement requirements of the U.S. Customs Service.

Subpart B—Cartage of Packages for Examination

§ 125.11 Cartage for examination in public stores.

(a) *Government cartage.* The cartage of merchandise in Customs custody designated for examination at the public stores shall be done by a licensed customhouse cartman or a bonded carrier under contract or other specific authority for that purpose.

(b) *Where there is no contract for Government cartage.* At ports where there is no contract for Government cartage in effect, the cartage of packages designated for examination at the public stores shall be done by a licensed customhouse cartman or a bonded carrier designated by the port director for this purpose.

(c) *Payment for Government cartmen.* The cost of the cartage shall be paid by Customs.

[T.D. 73–140, 38 FR 13554, May 23, 1973, as amended by T.D. 94–81, 59 FR 51495, Oct. 12, 1994]

§ 125.12 Cartage for examination at importers' premises or other place.

Merchandise designated for examination at an importer's premises or other place not in the charge of a Customs officer may be carted, lightered, or carried to any such place by the importer without a cartman's or lighterman's license, when in the judgment of the port director the revenue will not be endangered. Otherwise, such transfer shall be done by a licensed cartman, who shall be the contract cartman whenever practicable.

§ 125.13 Cartage of merchandise withdrawn from general order for regular entry.

When merchandise withdrawn from general order for regular entry is to be conveyed to a place designated by the port director for examination, the cartage shall be at the expense of the importer and shall be under the cartage arangements established at the port for hauling examination packages under the provisions of § 125.11(a) and (b). Reimbursement of the cost of the cartage shall be collected from the importer prior to release of the merchandise from Customs custody.

§ 125.14 Cartage of unclaimed merchandise.

Unclaimed merchandise shall be carted to the public stores or a bonded warehouse designated by the port director under the cartage arrangements established at the port for hauling examination packages under the provisions of § 125.11. Reimbursement of the cost of the cartage shall be collected from the importer prior to release if entry is made or from the proceeds of sale of the merchandise.

[T.D. 73–140, 38 FR 13554, May 23, 1973, as amended by T.D. 78–151, 43 FR 23566, May 31, 1978]

Subpart C—Importers' Cartage

§ 125.21 Cartage other than for examination.

Any licensed customhouse cartman, including an importer licensed to cart his own imported merchandise and a bonded carrier provided for in § 112.2 of this chapter, at the expense of the importer or other party in interest, may transfer merchandise from the importing vessel or other conveyance to a bonded warehouse, from one vessel or conveyance to another, from one bonded warehouse to another, from the public stores to a bonded warehouse, from warehouse for transportation or for exportation, and from an internal revenue warehouse for exportation under the internal revenue laws without payment of tax. Foreign trade zone operators, bonded warehouse proprietors, container station operators and centralized examination station operators may engage in limited cartage or lighterage under the conditions specified in § 112.2 of this chapter. Nothing in this section shall apply to the cartage of examination packages to the place of examination.

[T.D. 94–81, 59 FR 51495, Oct. 12, 1994]

§ 125.22 Designation of cartman or lighterman, or other bonded carrier.

Importers and exporters shall designate on the entry and permit of bonded merchandise the bonded cartman, lighterman, or other bonded carrier as provided in § 112.2 of this chapter by whom they wish their merchandise to be conveyed. An importer also may designate a foreign trade zone operator, bonded warehouse proprietor, container station operator or centralized examination station operator under the conditions specified in § 112.2 of this chapter for limited cartage; if he does so, the importer must also designate that the merchandise is bound for the facility run by the operator he designates. Approval of a designation shall be indicated on the entry papers by the initials of the appropriate Customs officer placed in close proximity to the designation.

[T.D. 94–81, 59 FR 51495, Oct. 12, 1994]

§ 125.23 Failure to designate.

If an importer does not cart his merchandise or designate a licensed customhouse cartman, other bonded carrier, foreign trade zone operator, bonded warehouse proprietor, container station operator or centralized examination station operator, as provided for

in § 112.2 of this chapter, for the purpose, it shall be carted by a bonded carrier or by a public store cartman authorized by contract or designated by the port director for that purpose. The cost of such cartage shall be paid by the importer of the merchandise before its release from Customs custody.

[T.D. 94–81, 59 FR 51496, Oct. 12, 1994]

§ 125.24 Failure of designated cartman, lighterman or other bonded carrier to appear.

The cartman, lighterman, other bonded carrier, foreign trade zone operator, bonded warehouse proprietor, container station operator or centralized examination station operator designated to convey the merchandise shall be present to take the merchandise when the Customs officer in charge is ready to send it. If the designated vehicle or lighter is not present, after waiting a reasonable time, such officer shall send the merchandise by any available licensed cartman, lighterman, or qualifying bonded carrier.

[T.D. 94–81, 59 FR 51496, Oct. 12, 1994]

Subpart D—Delivery and Receipt

§ 125.31 Documents used.

When merchandise is carted or lightered to and received from a bonded store or bonded warehouse, it shall be accompanied by one of the following tickets or documents:

(a) Customs Form 6043—Delivery Ticket.

(b) Customs Form 7501, Entry Summary, annotated ''Permit''.

(c) Customs Form 7512—Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit.

[T.D. 82–204, 47 FR 49375, Nov. 1, 1982, as amended by T.D. 84–129, 49 FR 23167, June 5, 1984; T.D. 95–81, 60 FR 52295, Oct. 6, 1995]

§ 125.32 Merchandise delivered to a bonded store or bonded warehouse.

When merchandise is carried, carted or lightered to and received in a bonded store or bonded warehouse, the proprietor or his representative shall check the goods against the accompanying delivery ticket, Customs Form 6043, or copy of the permit, Customs Form 7501, and countersign the document acknowledging receipt of the merchandise as listed thereon. If the proprietor or his agent has been designated to carry the merchandise to his own bonded warehouse, he shall check the goods against the accompanying delivery ticket, Customs Form 6043, or copy of the permit, Customs Form 7501, at the time he picks up the cargo. Receipt of merchandise by a bonded warehouse proprietor for the purpose of transportation to his own warehouse constitutes receipt into a bonded warehouse.

[T.D. 94–81, 59 FR 51496, Oct. 12, 1994]

§ 125.33 Procedure on receiving merchandise.

(a) *From public or bonded store.* A receipt shall be taken from the cartman, lighterman or bonded carrier for all goods delivered to him from public store or bonded store. The receipt may be taken on Customs Form 6043, or on the appraising officer's release ticket at the time delivery is made.

(b) *From bonded warehouse.* In case of withdrawals from bonded warehouse, the merchandise shall be released only to the proprietor of the warehouse, who shall acknowledge such release on the appropriate withdrawal or removal document.

(c) *All other cases.* A receipt shall be taken for all goods delivered from Customs custody in any other case where the port director deems such receipt necessary.

[T.D. 73–140, 38 FR 13554, May 23, 1973, as amended by T.D. 82–204, 47 FR 49375, Nov. 1, 1982; T.D. 94–81, 59 FR 51496, Oct. 12, 1994]

§ 125.34 Countersigning of documents and notation of bad order or discrepancy.

When a cartman, lighterman, other bonded carrier, foreign trade zone operator, bonded warehouse proprietor, container station operator or centralized examination station operator, as provided for in § 112.2, receives merchandise remaining in Customs custody, he shall countersign the appropriate document in the space provided and shall note thereon any bad order or

discrepancy. When available, the importing carrier's tally slip for the merchandise shall be attached to the delivery ticket which accompanies the merchandise while it is being carted or lightered in bond, for the use of Customs officers only at destination.

[T.D. 73–140, 38 FR 13554, May 23, 1973, as amended by T.D. 94–81, 59 FR 51496, Oct. 12, 1994]

§ 125.35 Report of loss, detention, or accident.

Any loss or detention of bonded merchandise, or any accident happening to a vehicle or lighter while carrying bonded merchandise shall be immediately reported by the cartman, lighterman, qualified bonded carrier, foreign trade zone operator, bonded warehouse proprietor, container station operator or centralized examination station operator to the port director.

[T.D. 94–81, 59 FR 51496, Oct. 12, 1994]

§ 125.36 Inability to deliver merchandise.

If the warehouse is closed or the warehouseman refuses to receive the merchandise, the cartman or bonded carrier shall notify the appropriate Customs inspector. The inspector shall promptly report the facts to the port director or his delegated representative for instructions. The merchandise shall then be returned to the Customs inspector, deposited in the public stores for safekeeping, or handled as ordered by the port director.

[T.D. 73–140, 38 FR 13554, May 23, 1973, as amended by T.D. 94–81, 59 FR 51496, Oct. 12, 1994]

Subpart E—Liability

§ 125.41 Liability for cartage.

(a) *Liability of cartman, lighterman or bonded carrier.* The cartman, lighterman, or bonded carrier conveying the merchandise, including merchandise covered by a TIR carnet which has not been ''taken on charge'' (see § 114.22(c)(2) of this chapter), shall be liable under his bond for its prompt delivery in sound condition, or in no worse than the damaged condition noted on the delivery ticket, if damage is so noted.

(b) *Liability of foreign trade zone operator, bonded warehouse proprietor, container station operator or centralized examination station operator.* A foreign trade zone operator, bonded warehouse proprietor, container station operator or centralized examination station operator who picks up merchandise including merchandise covered by a TIR carnet which has not been ''taken on charge'', to transport the merchandise to his own facility shall be liable under his bond for the merchandise as soon as he collects the merchandise. The merchandise must be receipted as soon as it is picked up and must be delivered to either the respective foreign trade zone, bonded warehouse, container station or centralized examination station promptly after it is picked up in sound condition, or in no worse than the damaged condition noted on the delivery ticket, if damage is noted.

[T.D. 94–81, 59 FR 51496, Oct. 12, 1994]

§ 125.42 Cancellation of liability.

The Fines, Penalties, and Forfeitures Officer, in accordance with delegated authority, may cancel liquidated damages incurred under the bond of the foreign trade zone operator, containing the bond conditions set forth in § 113.73 of this chapter, or under the bond of the cartman, lighterman, bonded carrier, bonded warehouse operator, container station operator or centralized examination station operator on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter, upon the payment of such lesser amount, or without the payment of any amount, as the Fines, Penalties, and Forfeitures Officer may deem appropriate under the circumstances. Application for cancellation of liquidated damages incurred shall be made in accordance with the provisions of part 172 of this chapter.

[T.D. 00–57, 65 FR 53575, Sept. 5, 2000]

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

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AUTHORITY: 19 U.S.C. 66, 1311, 1312, 1484, 1485, 1490, 1491, 1492, 1493, 1506, 1559, 1563, 1623, 1624, 1646a; 26 U.S.C. 5753.

Section 127.12 also issued under 19 U.S.C. 1753;

Section 127.14 also issued under 19 U.S.C. 1555, 1556, 1557;

Section 127.21 also issued under 19 U.S.C. 1753;

Section 127.28 also issued under 15 U.S.C. 2612, 26 U.S.C. 5688;

Sections 127.31, 127.36, 127.37 also issued under 19 U.S.C. 1753.

SOURCE: T.D. 74–114, 39 FR 12092, Apr. 3, 1974, unless otherwise noted.

§ 127.0 Scope.

This part sets forth regulations pertaining to general order merchandise, unclaimed merchandise, and abandoned merchandise, the storage and sale thereof, and the distribution of the proceeds from the sale thereof. Regulations regarding the abandonment of merchandise by the importer to the Government in accordance with section 506(1), Tariff Act of 1930, as amended (19 U.S.C. 1506(1)), appear in part 158 of this chapter.

Subpart A—General Order Merchandise

§ 127.1 Merchandise considered general order merchandise.

Merchandise shall be considered general order merchandise when it is taken into the custody of the port director and deposited in the public stores or a general order warehouse at the risk and expense of the consignee for any of the following reasons:

(a) Whenever entry of any imported merchandise is not made within the time provided by law or regulations prescribed by the Secretary of the Treasury.

(b) Whenever entry is incomplete because of failure to pay estimated duties.

(c) Whenever, in the opinion of the port director, entry cannot be made for want of proper documents or other causes.

(d) Whenever the port director believes that any merchandise is not correctly or legally invoiced.

(e) Whenever, at the request of the consignee or the owner or master of the vessel or person in charge of the vehicle in which merchandise is imported, any merchandise is taken possession of by the port director after the expiration of 1 day after entry of the vessel or report of the vehicle.

§ 127.2 Withdrawal from general order for entry or exportation.

(a) *Exportation within 6 months from date of importation.* Merchandise in general order may be exported without examination or appraisement if the merchandise is delivered to the exporting carrier within 6 months from the date

of importation. This merchandise may be entered within 6 months from date of importation for immediate transportation to any port of entry designated by the consignee.

(b) *After expiration of 6 months from date of importation.* Entry for immediate transportation shall be permitted after the expiration of the 6-month period only for the purpose of filing an entry for consumption at the port of destination.

(c) *Withdrawal of less than single general order lot.* The withdrawal from general order of less than a single general order lot shall not be permitted except as provided for in § 141.52 of this chapter.

[T.D. 74–114, 39 FR 12092, Apr. 3, 1974, as amended by T.D. 98–74, 63 FR 51290, Sept. 25, 1998]

§ 127.4 General order period defined.

The general order period is that period of time during which general order merchandise, as defined in § 127.1, is not subject to sale. The general order period expires 6 months from the date of importation.

[T.D. 79–221, 44 FR 46814, Aug. 9, 1979, as amended by T.D. 98–74, 63 FR 51290, Sept. 25, 1998]

Subpart B—Unclaimed and Abandoned Merchandise

§ 127.11 Unclaimed merchandise.

Any entered or unentered merchandise (except merchandise under section 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), but including merchandise entered for transportation in bond or for exportation) which remains in Customs custody for 6 months from the date of importation or a lesser period for special merchandise as provided by § 127.28 (c), (d), and (h), and without all estimated duties and storage or other charges having been paid, shall be considered unclaimed and abandoned.

[T.D. 79–221, 44 FR 46814, Aug. 9, 1979, as amended by T.D. 98–74, 63 FR 51290, Sept. 25, 1998]

§ 127.12 Abandoned merchandise.

(a) *Involuntarily abandoned merchandise.* The following shall be considered to be involuntarily abandoned merchandise:

(1) Articles entered for a trade fair under the provisions of section 3 of the Trade Fair Act of 1959 (19 U.S.C. 1752), which are still in Customs custody at the expiration of 3 months after the closing date of the fair for which they were entered. (See § 147.47 of this chapter.)

(2) Any imported merchandise upon which any duties or charges are unpaid, remaining in a bonded warehouse beyond the 5-year warehouse period.

(b) *Voluntarily abandoned merchandise.* The following merchandise shall be considered to be voluntarily abandoned merchandise and the property of the United States Government:

(1) Merchandise which is taken possession of by the port director at the request of the consignee, or owner or master of the vessel or person in charge of the vehicle in which the merchandise was imported.

(2) Merchandise abandoned by the importer to the United States within 30 days after entry in the case of merchandise not sent to the public stores for examination, or within 30 days after the release of the examination packages or merchandise in the case of merchandise sent to the public stores for examination.

(3) Articles entered for a trade fair under the provisions of section 3 of the Trade Fair Act of 1959 (19 U.S.C. 1752), which have been abandoned to the United States within 3 months of the closing of the fair.

(4) Merchandise in a bonded warehouse abandoned by the consignee within 3 years from the date of original importation. (See subpart D of part 158 of this chapter.)

[T.D. 74–114, 39 FR 12092, Apr. 3, 1974, as amended by T.D. 79–221, 44 FR 46814, Aug. 9, 1979]

§ 127.13 Storage of unclaimed and abandoned merchandise.

(a) *Place of storage.* A class 11 bonded warehouse or warehouse of class 3, 4, or 5, certified by the port director as qualified to receive general order merchandise, will be responsible for the transportation and storage of unclaimed and abandoned merchandise, upon due notification to the proprietor

of the warehouse by the arriving carrier (or other party to whom the carrier has transferred the merchandise under a Customs-authorized permit to transfer or in-bond entry), as provided in §§4.37(c), 122.50(c), and 123.10(c) of this chapter. If no warehouse of these classes is available to receive general order merchandise, or if the 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, will direct the storage of the merchandise by the carrier or by any other appropriate means.

(b) *Payment of storage and expenses.* Storage at the ordinary rates and all other expenses shall be paid by the owner or consignee of the merchandise upon entry thereof. If the goods are sold, such charges shall be paid from the proceeds of the sale to the extent that proceeds are available.

[T.D. 74–114, 39 FR 12092, Apr. 3, 1974, as amended by T.D. 02–65, 67 FR 68034, Nov. 8, 2002]

§ 127.14 Disposition of merchandise in Customs custody beyond time fixed by law.

(a) *Merchandise subject to sale or other disposition*—(1) *General.* If storage or other charges due the United States have not been paid on merchandise remaining in Customs custody after the expiration of the bond period in the case of merchandise entered for warehouse, or after the expiration of the general order period, as defined in §127.4, in any other case, even though any duties due have been paid, such merchandise will be sold as provided in subpart C of this part, retained for official use as provided in subpart E of this part, destroyed, or otherwise disposed of as authorized by the Commissioner of Customs under the law, unless the merchandise is entered or withdrawn for consumption in accordance with paragraph (b) of this section.

(2) *Destruction of merchandise.*—(i) *Proprietor responsibility.* If the port director concludes that merchandise in general order has no commercial value or is otherwise unsalable and cannot be disposed of at public auction (*see* §127.29), and that its destruction is warranted, the warehouse proprietor must assume responsibility under bond, including the expense, for destroying the merchandise (*see* §113.63(c)(3) of this chapter). The port director will authorize such destruction on Customs Form (CF) 3499, or on a similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs.

(ii) *Notice of destruction.* Before destroying the merchandise, the warehouse proprietor must first make a reasonable effort under bond (*see* §113.63(b) and (c) of this chapter), to identify and inform the importer (owner) or consignee regarding the intended destruction of the merchandise. When the appropriate party is identified, notice of destruction will be provided to the party on Customs Form (CF) 5251, appropriately modified, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, at least 30 calendar days prior to the date of intended destruction.

(b) *Entry of merchandise subject to sale.* Merchandise subject to sale (except merchandise abandoned under section 506(1) or 563(b), Tariff Act of 1930, as amended (19 U.S.C. 1506(1), 1563(b))), may be entered or withdrawn for consumption at any time prior to the sale upon payment of the duties, any internal revenue tax, and all charges and expenses that may have accrued thereon. Such merchandise may not be exported without payment of duty nor entered for warehouse.

(c) *Release of merchandise to warehouse proprietor.* The following merchandise for which a permit to release has been issued shall be held to be no longer in the custody of Customs officers and shall be released to the warehouse proprietor:

(1) Merchandise upon which all duties and charges have been paid.

(2) Free and duty-paid merchandise upon which all charges have been paid,

not entered for warehouse which remains in bonded warehouse for more than the general order period.

[T.D. 74–114, 39 FR 12092, Apr. 3, 1974, as amended by T.D. 75–161, 40 FR 28790, July 9, 1975; T.D. 79–221, 44 FR 46814, Aug. 9, 1979; T.D. 82–204, 47 FR 49375, Nov. 1, 1982; T.D. 02–65, 67 FR 68034, Nov. 8, 2002]

Subpart C—Sale of Unclaimed and Abandoned Merchandise

§ 127.21 Time of sale.

All unclaimed and abandoned merchandise will be sold at the first regular sale held after the merchandise becomes subject to sale, unless a deferment of its sale is authorized by the port director. Regular sales shall be made once every year or more often at the discretion of the port director.

[T.D. 74–114, 39 FR 12092, Apr. 3, 1974, as amended by T.D. 02–65, 67 FR 68034, Nov. 8, 2002]

§ 127.22 Place of sale.

The port director, in his discretion, may authorize the sale of merchandise subject to sale (including explosives, perishable articles and articles liable to depreciation) at any port. The consignee of any merchandise which is to be transferred from the port where it was imported to another port for sale, shall be notified of the transfer so that he may have the option of making entry of the merchandise before the transfer and sale.

[T.D. 95–77, 60 FR 50020, Sept. 27, 1995]

§ 127.23 Appraisement of merchandise.

Before unclaimed and abandoned merchandise is offered for sale, it shall be appraised in accordance with sections 402 and 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402). Such merchandise shall also be appraised at its actual domestic value in its condition at the time and place of examination, whether or not it has depreciated or appreciated in value since the date of exportation. The quantity of merchandise in each lot shall be reported.

§ 127.24 Notice of sale.

Notice of sale shall be sent on Customs Form 5251, 30 days prior to the date of sale, or 30 days prior to the transfer of merchandise to the place of sale, to the following:

(a) Importer, if known; or

(b) Consignee, if name and address can be ascertained; or

(c) Shipper, his representative or agent, if merchandise is consigned to order or consignee cannot be ascertained; or

(d) Warehouse transferee; or

(e) Lienholder.

§ 127.25 Advertisement of sale.

(a) *Regular advertising.* Except as prescribed in § 127.28 (c), (d), and (h), and in paragraph (b) of this section, a brief notice of the time and place of sale shall be given for three successive weeks, immediately preceding the sale, in one newspaper of extensive circulation published at the port where the sale is to be held. The newspaper is to be selected by the port director and publication of the notice shall be authorized on the standard form provided for that purpose. The notice shall designate the place where catalogs may be obtained and a reasonable opportunity to inspect the merchandise shall be afforded prospective purchasers.

(b) *Where proceeds are insufficient to pay expenses and duties.* If the port director is satisfied that the proceeds of the sale will not be sufficient to pay the expenses and duties, a written or printed notice of the sale in lieu of the advertisement shall be conspicuously posted in the customhouse, and, if deemed necessary, at some other proper place for the time specified in paragraph (a) of this section.

§ 127.26 Catalogs.

Catalogs, if used shall specify the description of packages, the description and quantities of their contents, the appraised value thereof, and also the domestic value at the time and place of the examination of the merchandise. They shall be distributed at the sale and announcement made that the Government does not guarantee quality or value and that no allowance will be made for any deficiency found after sale.

§ 127.27 Conduct of sale.

Sales may be conducted by the port director, any employee designated by him or by a public auctioneer.

§ 127.28 Special merchandise.

(a) *Drugs, seeds, plants, nursery stock, and other articles required to be inspected by the Department of Agriculture.* Drugs, seeds, plants, nursery stock, and other articles required to be inspected by the Department of Agriculture must be inspected by a representative of the Department of Agriculture to ascertain whether they comply with the requirements of the law and regulations of that Department. If found not to comply with such requirements, they shall be immediately destroyed.

(b) *Pesticides and devices.* Pesticides and devices intended for trapping, destroying, repelling or mitigating any pest or any other form of plant or animal life (other than man or other than bacteria, virus, or other microorganism on or in living man or other living animals) shall be inspected by a representative of the Environmental Protection Agency to ascertain whether they comply with the requirements of the law and regulations of that agency. If found not to comply with such requirements, they shall be immediately destroyed.

(c) *Explosives, dangerous articles, fruit, and perishables.* Unclaimed explosives and other dangerous articles, and fruit and other perishable articles shall be sold after 3-days' public notice. When it is probable that entry will be made at an early date for unclaimed perishable merchandise, the port director may hold the merchandise for a reasonable time in a bonded cold-storage warehouse if one is available.

(d) *Articles liable to depreciation.* Other unclaimed merchandise shall be sold at public auction upon public notice of not less than 6 or more than 10 days, as the port director may determine, if in his opinion such merchandise will depreciate and sell for an amount insufficient to pay the duties, storage, and other charges if allowed to remain in general order for 6 months.

(e) *Tobacco and tobacco products.* Tobacco articles and tobacco materials as defined in 26 U.S.C. 5702(j) and (k), may be sold for domestic consumption only if they will bring an amount sufficient to pay the expenses of sale as well as the internal revenue tax. If these articles cannot be sold for domestic consumption in accordance with the foregoing conditions, they shall be destroyed unless they can be advantageously sold for export from continuous Customs custody or unless the Commissioner of Customs has authorized other disposition to be made under the law. These articles may be sold for domestic consumption even though the proceeds of sale will not cover the duties due.

(f) *Distilled spirits, wines, and malt beverages.* All unclaimed and abandoned distilled spirits, wines, and malt beverages may be sold for domestic consumption if they will bring an amount sufficient to pay the internal revenue tax. If they cannot be sold for domestic consumption in accordance with the foregoing condition, they shall be destroyed unless they can be advantageously sold for export from continuous Customs custody or unless the Commissioner of Customs has authorized other disposition to be made under the law. The sale must be conducted in accordance with the alcoholic beverage laws of the state in which the sale is held.

(g) *Other merchandise subject to internal revenue taxes.* All other unclaimed and abandoned merchandise subject to internal revenue taxes may be sold for domestic consumption if it will bring an amount sufficient to pay the internal revenue tax. If, in the opinion of the port director, it is insufficient in value to justify its sale, the merchandise shall be destroyed, unless it can be advantageously sold for export from continuous Customs custody or unless the Commissioner of Customs has authorized other disposition to be made under the law. These articles may be sold for domestic consumption even though the proceeds of sale will not cover the duties due.

(h) *Unclaimed merchandise remaining on dock.* Unclaimed merchandise remaining on the dock which, in the opinion of the port director, will not sell for enough to pay the cost of cartage and storage shall be sold at public auction upon public notice of not less than 6 or more than 10 days.

(i) *Chemical substances, mixtures, and articles containing chemical substances or mixtures.* Chemical substances, mixtures, and articles containing a chemical substance or mixture, as these items are defined in section 3, Toxic Substances Control Act (''TSCA'') and section 12.120 of this chapter, shall be inspected by a representative of the Environmental Protection Agency to ascertain whether they comply with TSCA and the regulations and orders issued thereunder. If found not to comply with these requirements they shall be exported or otherwise disposed of immediately in accordance with the provisions of §§ 12.125 through 12.127 of this chapter.

[T.D. 74–114, 39 FR 12092, Apr. 3, 1974, as amended by T.D. 83–158, 48 FR 34740, Aug. 1, 1983; T.D. 98–74, 63 FR 51290, Sept. 25, 1998; T.D. 02–65, 67 FR 68034, Nov. 8, 2002]

§ 127.29 Unsold merchandise.

Merchandise offered for sale but not sold shall be included in the next regular sale of unclaimed and abandoned merchandise. If the port director is satisfied that such merchandise is unsalable or of no commercial value, it shall be destroyed.

Subpart D—Proceeds of Sale

§ 127.31 Disposition of proceeds.

From the proceeds of sale of merchandise remaining in public stores or in bonded warehouse beyond the time fixed by law, the following charges shall be paid in the order named:

(a) Internal revenue taxes.

(b) Expenses of advertising and sale.

(c) Expenses of cartage, storage and labor. When the proceeds are insufficient to pay such charges fully, they shall be paid pro rata. (For merchandise entered for warehousing, see § 127.32 of this subpart.)

(d) Duties.

(e) Any other charges due the United States in connection with the merchandise.

(f) Any sum due to satisfy a lien for freight, charges, or contributions in general average, of which due notice shall have been given in the manner prescribed by law.

§ 127.32 Expenses of cartage, storage, and labor.

The expenses of cartage, storage, and labor for merchandise entered for warehousing shall be paid in the following order:

(a) When such merchandise was warehoused in public stores, expenses of storage and labor shall be paid after expenses of sale (pro-rated when proceeds are insufficient to pay them fully) and any cartage charges shall be paid last.

(b) When such merchandise was warehoused in a bonded warehouse, expenses of storage, cartage, and labor shall be paid last (pro-rated when proceeds are insufficient to pay them fully).

§ 127.33 Chargeable duties.

The duties chargeable on any merchandise within the purview of this subpart shall be assessed on the appraised dutiable value at the rate of duty chargeable at the time the merchandise became subject to sale. Household and personal effects of the character provided for in Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), which belong to persons who have not arrived in this country before the effects become subject to sale, are dutiable at the rates in effect when the effects become subject to sale, even though such persons arrive and make entry for the effects before they are sold.

[T.D. 74–114, 39 FR 12092, Apr. 3, 1974, as amended by T.D. 89–1, 53 FR 51255, Dec. 21, 1988; T.D. 97–82, 62 FR 51770, Oct. 3, 1997]

§ 127.34 Auctioneer's commissions.

The duties of the auctioneer shall be confined to selling the merchandise and his charge for such service shall in no case exceed the commissions usual at the port. Such commissions shall be based on the amount of the successful bid.

§ 127.35 Presentation of accounts.

Accounts for the auctioneer's charges and all other expenses of sale which may be properly chargeable on the merchandise shall be presented to the port director for payment within 10

days from the date of sale. Such expenses shall be apportioned pro rata on the amounts received for different lots sold.

§ 127.36 Claim for surplus proceeds of sale.

(a) *Filing of claim.* Claims for the surplus proceeds of the sale of unclaimed or abandoned merchandise shall be filed with the port director at whose direction the merchandise was sold. The following shall be used in filing a claim:

(1) *Unclaimed merchandise.* Claims for surplus proceeds of the sale of unclaimed merchandise which has become abandoned and sold under section 491 of the Tariff Act of 1930, as amended (19 U.S.C. 1491), shall be supported by the original bill of lading. If only part of a shipment is involved, either a photostatic or certified copy of the original bill of lading may be submitted in lieu of the original bill of lading.

(2) *Involuntarily abandoned merchandise*—(i) *Warehouse goods deemed abandoned.* Claims for surplus proceeds of sale of warehouse goods deemed involuntarily abandoned sold under section 559 of the Tariff Act of 1930, as amended (19 U.S.C. 1559), shall be established by reference to the warehouse entry, or, if the right to withdraw the merchandise from warehouse has been transferred, by reference to the documents by which the transfer was made.

(ii) *Trade fair articles deemed abandoned.* Claims for surplus proceeds of sale of trade fair articles deemed involuntarily (mandatorily) abandoned under section 4 of the Trade Fair Act of 1959 (19 U.S.C. 1753(c)), shall be supported by the original bill of lading. If only part of a shipment is involved, either a photostatic copy or certified copy of the original bill of lading may be submitted in lieu of the original bill of lading. (See § 147.47 of this chapter.)

(b) *Payment of claim.* If a claim of the owner or consignee of unclaimed or abandoned merchandise for the surplus proceeds of sale is properly established as provided in this section, such proceeds of sale shall be paid to him pursuant to section 493 of the Tariff Act of 1930, as amended (19 U.S.C. 1493).

(c) *Doubtful claims.* Any doubtful claims for the proceeds of sale along with all pertinent documents and information available to the port director shall be forwarded to the Commissioner of Customs for instructions or for referral to the General Accounting Office for direct settlement.

§ 127.37 Insufficient proceeds.

(a) *Warehouse merchandise deemed involuntarily abandoned.* If the proceeds of sale of warehouse merchandise deemed involuntarily abandoned are insufficient to pay the duties after payment of all charges having priority, the deficiency shall be collected under the bond for the importation and entry of merchandise on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter.

(b) *Unclaimed merchandise and trade fair articles involuntarily abandoned.* If the proceeds of sale of unclaimed merchandise or trade fair articles involuntarily abandoned are insufficient to pay the charges and duties, the consignee shall be liable for the deficiency unless the merchandise was shipped to him without his consent. If no entry for the merchandise has been filed, and no other attempt to control the merchandise has been made, the merchandise shall be regarded as shipped to the consignee without his consent and no effort shall be made to collect any deficiency of duties or charges from such consignee.

[T.D. 74–114, 39 FR 12092, Apr. 3, 1974, as amended by T.D. 84–213, 49 FR 41183, Oct. 19, 1984]

Subpart E—Title to Unclaimed and Abandoned Merchandise Vesting in Government

SOURCE: T.D. 02–65, 67 FR 68034, Nov. 8, 2002, unless otherwise noted.

§ 127.41 Government title to unclaimed and abandoned merchandise.

(a) *Vesting of title in Government.* At the end of the 6-month period noted in

§ 127.11 of this part, at which time merchandise having thus remained in Customs custody is considered as unclaimed and abandoned, the port director, with the concurrence of the Assistant Commissioner, Office of Field Operations, may, in lieu of sale of the merchandise as provided in subpart C of this part, provide notice to all known interested parties under paragraph (b) of this section that the title to such merchandise will be considered as vesting in the United States, free and clear of any liens or encumbrances, as of the 30th day after the date of the notice unless, before the 30th day, the merchandise is entered or withdrawn for consumption and all duties, taxes, fees, transfer and storage charges, and any other expenses that may have accrued on the merchandise are paid.

(b) *Notice to known interested parties.* Notice that the title to unclaimed and abandoned merchandise will vest in the United States, as described in paragraph (a) of this section, will be sent to the following parties on Customs Form (CF) 5251, appropriately modified, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs:

(1) Importer, if known;

(2) Consignee, if name and address can be ascertained;

(3) Shipper, or the shipper's representative or agent, if merchandise is consigned to order or the consignee cannot be ascertained; and

(4) Any other known interested parties.

(c) *Appraisement of merchandise.* Before title to unclaimed and abandoned merchandise is vested in the United States, the merchandise will be appraised in accordance with section 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a).

§ 127.42 Disposition of merchandise owned by Government.

(a) *Disposition.* If title to any unclaimed and abandoned merchandise vests in the United States under § 127.41, the merchandise may be retained by Customs for its official use, or in Customs discretion, the merchandise may be transferred to any other Federal, state or local agency, destroyed or disposed of otherwise.

(b) *Payment of charges and expenses.* All transfer and storage charges or expenses accruing on retained or transferred merchandise will be paid by the receiving agency. Such transfer and storage charges or expenses will include those accruing with respect to the merchandise while subject to general order.

§ 127.43 Petition of party for surplus proceeds had merchandise been sold.

(a) *Filing of petition.* Under section 491(d), Tariff Act of 1930, as amended (19 U.S.C. 1491(d)), any party who can satisfactorily establish title to or a substantial interest in unclaimed and abandoned merchandise, the title to which has vested in the United States, may file a petition for the amount that would have been payable to the party had the merchandise been sold and a proper claim made under section 493, Tariff Act of 1930, as amended (19 U.S.C. 1493).

(b) *When and with whom filed.* The petition may be filed with the port director at whose direction the title to the merchandise was vested in the United States. If the party received notice under § 127.41(b), the petition must be filed within 30 calendar days after the day on which title vested in the United States. If the party can satisfactorily establish that such notice was not received, the party must file the petition within 30 calendar days of learning of the vesting but not later than 90 calendar days from the vesting.

(c) *Evidence required.* The petition must show the party's title to or interest in the merchandise, and be supported, as appropriate, with the original bill of lading, bill of sale, contract, mortgage, or other satisfactory documentary evidence, or a certified copy of the foregoing. Also, if applicable, the petition must be supported by satisfactoryproof that the petitioner did not receive notice that title to the merchandise would vest in the United States and was in such circumstances as prevented the receipt of notice.

(d) *Payment of claim.* If the claim of the owner, consignee, or other party having title to or a substantial interest

in the merchandise, is properly established as provided in this section, the party may be paid out of the Treasury of the United States the amount that it is believed the party would have received under 19 U.S.C. 1493 had the merchandise been sold and a proper claim for the surplus of the proceeds of sale been made under that provision (*see* § 127.36 of this part). In determining the amount that may have been payable under 19 U.S.C. 1493, given that the merchandise was not in fact sold at public auction under 19 U.S.C. 1491(a), the appraisement of the merchandise, as provided in § 127.41(c), will be taken into consideration. By virtue of the authority delegated to the port director in this matter, any payment made as provided under this paragraph in connection with the filing of a petition under paragraph (b) of this section will be final and conclusive on all parties.

(e) *Doubtful claim.* Any doubtful claim for payment along with all pertinent documents and information available to the port director will be forwarded to the Assistant Commissioner, Office of Finance, for instructions. The decision of the Assistant Commissioner, Office of Finance, with respect to any petition filed under this section will be final and conclusive on all parties.

PART 128—EXPRESS CONSIGNMENTS

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AUTHORITY: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

SOURCE: T.D. 89–53, 54 FR 19566, May 8, 1989, unless otherwise noted.

§ 128.0 Scope.

This part sets forth requirements and procedures for the clearance of imported merchandise carried by express consignment operators and carriers, including couriers, under special procedures.

Subpart A—General

§ 128.1 Definitions.

For the purpose of this part the following definitions shall apply:

(a) *Express consignment operator or carrier.* An ''express consignment operator or carrier'' is an entity operating in any mode or intermodally moving cargo by special express commercial service under closely integrated administrative control. Its services are offered to the public under advertised, reliable timely delivery on a door-to-door basis. An express consignment operator assumes liability to Customs for the articles in the same manner as if it is the sole carrier.

(b) *Cargo.* ''Cargo'' means any and all shipments imported into the Customs territory of the United States by an express consignment operator or carrier whether manifested, accompanied, or unaccompanied.

(c) *Courier shipment.* A ''courier shipment'' is an accompanied express consignment shipment.

(d) *Hub.* A ''hub'' is a separate, unique, single purpose facility normally operating outside of Customs operating hours approved by the port director for entry filing, examination, and release of express consignment shipments.

(e) *Express consignment carrier facility.* An ''express consignment carrier facility'' is a separate or shared specialized facility approved by the port director solely for the examination and release of express consignment shipments.

(f) *Closely integrated administrative control.* The term ''closely integrated administrative control'' means operations must be sufficiently integrated at both ends of the service (i.e., pick-up

and delivery) so that the express consignment company can exercise a high degree of control over the shipments, particularly in regard to the reliability of information supplied for Customs purposes. Such control would be indicated by substantial common ownership between the local company and the foreign affiliate and/or by a very close contractual relationship between the local company and its foreign affiliate(s) (*e.g.*, a franchise arrangement).

(g) *Reimbursable.* ''Reimbursable'' means all normal costs incurred at an express consignment operator's hub or an express consignment carrier facility that are required to be reimbursed to the Government.

Subpart B—Administration

§ 128.11 Express consignment carrier application process.

(a) *Facility application.* Requests for approval of an express consignment carrier or hub facility must be in writing to the port director.

(b) *Application contents.* The application for approval of an express consignment carrier or hub facility must include the following:

(1) A full description of the international cargo facilities, including blueprints, floor plans and facility location(s).

(2) A statement of the general character of the express consignment operations.

(3) An estimate of volume of transactions by:

(i) Formal entries.

(ii) Informal entries.

(iii) Shipments not requiring entry (see § 128.23 of this part).

(4) An application processing fee, as set forth in § 128.13.

(5) A list of principal company officials or officers.

(6) A projected start-up date, and days and hours of operation.

(7) An agreement that the express consignment entity will:

(i) Ensure that all cargo will be processed in the Customs Automated Commercial System (ACS) and associated modules, including, but not limited to, Automated Broker Interface (ABI), Automated Manifest System (AMS), Cargo Selectivity, and Statement Processing.

(ii) Sign and implement a narcotics enforcement agreement with Customs.

(iii) Provide, without cost to the Government, adequate office space, equipment, furnishings, supplies and security as per Customs specifications.

(iv) Timely pay all reimbursable costs, as determined by the port director.

(v) Pay to Customs all relocation, training and all other exceptional costs and expenses incurred by Customs in relocating necessary staff to the company's hub location to provide service to the company and to pay expenses incurred by Customs due to termination or decline of operations at the facility.

(c) *Changes or alterations to facility.* All proposed changes or alterations to an existing approved international cargo processing facility must be submitted in writing to the port director for approval prior to the implementation thereof and shall contain the information specified in paragraph (b) of this section. Failure to obtain Customs approval by an express consignment operator or carrier for any modifications to the international cargo processing area may result in the suspension of approval as an express consignment facility or hub and the procedures for processing cargo contained in this part.

[T.D. 89–53, 54 FR 19566, May. 8, 1989, as amended by T.D. 93–66, 58 FR 44130, Aug. 19, 1993]

§ 128.12 Application approval/denial and suspension of operating privileges.

(a) *Notice.* (1) The port director shall promptly notify the applicant in writing of the decision to approve or deny the application to establish an express consignment carrier or hub facility or to suspend or revoke operating privileges at an existing facility.

(2) The notice shall specifically state the grounds for denial or for the proposed suspension or revocation.

(b) *Appeal.* The express consignment entity may file a written notice of appeal seeking review of the denial or proposed suspension or revocation within 30 days after notification.

(c) *Recommendation*. The port director shall consider the allegations and responses in the appeal unless, in the case of a suspension or revocation, the express consignment entity requests a hearing. The appeal along with the port director's recommendation shall be forwarded to the Commissioner of Customs or his designee for a final administrative decision.

(d) *Hearing*. In the case of a proposed suspension or revocation, a hearing may be requested within 30 days after notification. If a hearing is requested, it shall be held before a hearing officer appointed by the Commissioner of Customs or his designee within 30 days following the express consignment entity's request. The entity shall be notified of the time and place of the hearing at least 5 days prior thereto. The express consignment entity may be represented by counsel at such hearing, and all evidence and testimony of witnesses in such proceedings, including substantiation of the allegations and the responses thereto shall be presented, with the right of cross-examination to both parties. A stenographic record of any such proceeding shall be made and a copy thereof shall be delivered to the express consignment entity. At the conclusion of the hearing, all papers and the stenographic record of the hearing shall promptly be transmitted to the Commissioner of Customs or his designee together with a recommendation for final action. The express consignment entity may submit in writing additional views or arguments to the Commissioner or his designee following a hearing on the basis of the stenographic record, within 10 days after delivery to it of a copy of such record. The Commissioner or his designee shall thereafter render the decision in writing, stating the reasons therefor. Such decision shall be served on the express consignment entity, and shall be considered the final administrative action.

§ 128.13 Application processing fee.

Each operator of an express consignment hub or carrier facility will be charged a fee to establish, alter, or relocate such facility which shall be determined under the provisions of 31 U.S.C. 9701. The fee will be periodically reviewed and revised to reflect changes in processing expenses and any changes thereto will be published in the FEDERAL REGISTER and ''Customs Bulletin''.

Subpart C—Procedures

§ 128.21 Manifest requirements.

(a) *Additional information*. Express consignment operators and carriers shall provide the following manifest information in advance of the arrival of all cargo, including all articles for which an entry is not required as noted in § 128.23 (which shall be listed separately and their entry status noted), in addition to the information and documents otherwise required by this chapter:

(1) Country of origin of the merchandise.

(2) Shipper name, address and country.

(3) Ultimate consignee name and address.

(4) Specific description of the merchandise, and under the following conditions, the Harmonized Tariff Schedule of the United States (HTSUS) subheading number:

(i) If the merchandise is required to be formally entered as provided in § 128.25; or

(ii) If the merchandise is eligible for, and is entered under, the informal entry procedures as provided in § 128.24, but may not be passed free of duty and tax as consisting of a shipment of merchandise imported by one person on one day having a fair retail value in the country of shipment not exceeding $200, as provided in § 128.24(e).

(5) Quantity.

(6) Shipping weight.

(7) Value.

(b) *Sorting of cargo*. If the shipments are physically sorted by country of origin of the merchandise when they arrive at the hub or express consignment facility and are presented to Customs in this manner, the advance manifest information shall also be provided with the merchandise segregated by country of origin.

[T.D. 89–53, 54 FR 19566, May 8, 1989, as amended by T.D. 94–51, 59 FR 30294, June 13, 1994]

§ 128.22 Bonds.

Each express consignment operator or carrier must be recognized by Customs as an international carrier and approved as a carrier of bonded merchandise, and shall file bonds on Customs Form 301, containing the bond conditions set forth in §§113.62, 113.63, 113.64 and 113.66 of this chapter, to insure compliance with Customs requirements relating to the importation and entry of merchandise as well as the carriage and custody of merchandise under Customs control.

§ 128.23 Entry requirements.

(a) *General rule*. Except as provided in paragraph (c) of this section, all articles carried by an express consignment entity shall be entered by a person with the right to file entry.

(b) *Procedures*—(1) *General*. All express consignment entities utilizing the procedures in this part shall comply with the requirements of the Customs Automated Commercial System (ACS). These requirements include those under the Automated Manifest System (AMS), Cargo Selectivity, Statement Processing, the Automated Broker Interface System (ABI), and enhancements of ACS.

(2) *Entry number*. All entry numbers must be furnished to Customs in a Customs approved bar coded readable format in order to assist in the processing of express consignment cargo under the Customs Automated Commercial System (ACS).

(3) *Paper entry document waiver*. The port director is authorized, at the time of entry, to accept the appropriate electronic equivalent in lieu of entry documents for those entries designated as not requiring examination or review when the advance manifest requirements of §128.21(a) of this part have been met.

(c) *Exception*. Articles specifically exempt from entry by §141.4(b) of this chapter need not satisfy the general rule as set forth in paragraph (a) of this section.

[T.D. 94–51, 59 FR 30294, June 13, 1994]

§ 128.24 Informal entry procedures.

(a) *Eligibility*. Informal entry procedures may generally be used for shipments not exceeding $2,000 in value which are imported by express consignment operators and carriers. Individual shipments valued at $2,000 or less may be consolidated on one entry. Such procedures, however, may not be used for prohibited or restricted merchandise, merchandise which is subject to a quota or other quantitative restraints, or for any articles precluded from informal entry procedures by virtue of section 498, Tariff Act of 1930, as amended, (19 U.S.C. 1498).

(b) *Procedures*. Customs Form 3461, appropriately modified to cover all importations under the special procedures contained in this part, shall be submitted prior to the commencement of hub or express consignment carrier facility operations. The party who may make entry under §143.26 of this chapter may submit a copy of the invoice or the advance manifest as described in §128.21 in lieu of other control documents.

(c) *Alternative procedure*. The party who may make entry under §143.26 of this chapter may be required to submit an individual Customs Form 3461 covering the eligible shipments on a daily basis or by flight basis. Commercial invoices or advance manifests shall be attached to the Customs Form 3461 which will contain the entry number and such other information deemed necessary by the port director. A notation shall be placed on the Customs Form 3461 that the entry covers multiple shipments.

(d) *Entry summary*. An entry summary (Customs Form 7501) must be presented in proper form, and estimated duties deposited within 10 days of the release of the merchandise under either the regular or alternative procedure described in this section. However, see paragraph (e) of this section if the shipment is valued at $200 or less.

(e) *Shipments valued at $200 or less*. Shipments valued at $200 or less meeting the requirements of §10.151 of this chapter shall be passed free of duty and tax. Such shipments must be segregated on the manifest from shipments valued at more than $200 if an advance manifest is used as the entry document, as provided for in §128.21. If such an advance manifest is used as the entry document, the following are not

required to be provided for shipments qualifying under this paragraph:

(1) The Harmonized Tariff Schedule of the United States (HTSUS) subheading number (see § 128.21(a)(4)); and

(2) An entry summary (see paragraph (d) of this section).

[T.D. 89–53, 54 FR 19566, May 8, 1989, as amended by T.D. 94–51, 59 FR 30294, June 13, 1994; T.D. 95–31, 60 FR 18991, Apr. 14, 1995; T.D. 98–28, 63 FR 16417, Apr. 3, 1998]

§ 128.25 Formal entry procedures.

Formal entry, as provided for under 19 U.S.C. 1484 in parts 141, 142, and 143 (except for subpart C), of this chapter, is required for all shipments exceeding the monetary limitation for informal entry (see § 128.24) and any shipment for which the informal entry procedures may not be used (see § 128.24).

[T.D. 94–51, 59 FR 30295, June 13, 1994]

PART 132—QUOTAS

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132.25 Undeliverable shipment.

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

Sections 132.15, 132.17, and 132.18 also issued under 19 U.S.C. 1202 (additional U.S. Note 3 to Chapter 2, HTSUS; additional U.S. Note 8 to Chapter 17, HTSUS; and subchapter II of Chapter 99, HTSUS, respectively), 1484, 1508.

SOURCE: T.D. 73–203, 38 FR 20230, July 30, 1973, unless otherwise noted.

§ 132.0 Scope.

This part sets forth rules and procedures applicable to quotas administered by Headquarters, U.S. Customs Service.

Subpart A—General Provisions

§ 132.1 Definitions.

When used in this part, the following terms shall have the meaning indicated:

(a) *Absolute (or quantitative) quotas.* ''Absolute (or quantitative) quotas'' are those which permit a limited number of units of specified merchandise to be entered or withdrawn for consumption during specified periods. Once the quantity permitted under the quota is filled, no further entries or withdrawals for consumption of merchandise subject to quota are permitted. Some absolute quotas limit the entry or withdrawal of merchandise from particular countries (geographic quotas) while others are global quotas and limit the entry or withdrawal of merchandise not by source but by total quantity.

(b) *Tariff-rate quotas.* ''Tariff-rate quotas'' permit a specified quantity of merchandise to be entered or withdrawn for consumption at a reduced duty rate during a specified period.

(c) [Reserved]

(d) *Presentation.* ''Presentation'' is the delivery in proper form to the appropriate Customs officer of:

(1) An entry summary for consumption, which shall serve as both the entry and the entry summary, with estimated duties attached (see § 141.0a(b)); or

(2) An entry summary for consumption, which shall serve as both the

entry and the entry summary, without estimated duties attached, if the entry/entry summary information and a valid scheduled statement date (pursuant to § 24.25 of this chapter) have been successfully received by Customs via the Automated Broker Interface; or

(3) A withdrawal for consumption with estimated duties attached.

(e) *Quota-class merchandise.* ''Quota-class merchandise'' is any imported merchandise subject to limitations under an absolute or a tariff-rate quota.

(f) *Quota priority.* ''Quota priority'' is the precedence granted to one entry or withdrawal for consumption of quota-class merchandise over other entries or withdrawals of merchandise subject to the same quota.

(g) *Quota status.* ''Quota status'' is the standing which entitles quota-class merchandise to admission under an absolute quota, or to a reduced rate of duty under a tariff-rate quota, or to any other quota benefit.

[T.D. 73–203, 38 FR 20230, July 30, 1973, as amended by T.D. 79–221, 44 FR 46814, Aug. 9, 1979; T.D. 89–104, 54 FR 50498, Dec. 7, 1989]

§ 132.2 Enactment and administration of quotas.

(a) *Enactment.* Tariff-rate quotas and absolute quotas are established by Presidential proclamations, Executive orders, and legislative enactments. These documents are published in the Customs Bulletin.

(b) *Administration.* Quotas vary by the type of commodity involved, the country of exportation, the period or periods the quota is open and the type of quota. Quotas are divided into two categories: Quotas administered directly by Headquarters, U.S. Customs Service, and quotas administered by other agencies which are enforced by Headquarters, U.S. Customs Service, and which may require special procedures or special documentation in accordance with the regulations and directives of the particular agency involved.

(c) *Strict construction employed.* The terms of a Presidential proclamation, Executive order, or legislative enactment establishing a quota, and the regulations implementing the quota, must be strictly complied with.

§ 132.3 Observation of official hours.

An entry summary for consumption or a withdrawal for consumption for quota-class merchandise shall be presented only during official office hours, except as provided in §§ 132.12 and 141.62(b) of this chapter. For purposes of administering quotas, ''official office hours'' shall mean 8:30 a.m. to 4:30 p.m. in all time zones.

[T.D. 79–221, 44 FR 46814, Aug. 9, 1979]

§ 132.4 Quota quantity entry limits.

At the opening of the quota no importer shall be permitted to present entries or withdrawals for consumption of quota-class merchandise for a quantity in excess of the quantity admissible under the applicable quota.

§ 132.5 Merchandise imported in excess of quota quantities.

(a) *Absolute quota merchandise.* Absolute quota merchandise imported in excess of the quantity admissible under the applicable quota must be disposed of in accordance with paragraph (c) of this section.

(b) *Tariff-rate quota merchandise.* Merchandise imported in excess of the quantity admissible at the reduced quota rate under a tariff-rate quota is permitted entry at the higher duty rate. However, it may be disposed of in accordance with paragraph (c) of this section.

(c) *Disposition of excess merchandise.* Merchandise imported in excess of either an absolute or a tariff-rate quota may be held for the opening of the next quota period by placing it in a foreign-trade zone or by entering it for warehouse, or it may be exported or destroyed under Customs supervision.

§ 132.6 Exception to reduced rates.

Reduced or modified duty rates under tariff-rate quotas established pursuant to section 350 of the Tariff Act of 1930, as amended and extended (19 U.S.C. 1351), are not applicable to products imported directly or indirectly from the countries or areas listed under General Note 3(b), Harmonized Tariff

Schedule of the United States (19 U.S.C. 1202).

[T.D 73–203, 53 FR 20230, July 30, 1973, as amended by T.D. 89–1, 53 FR 51255, Dec. 21, 1988; T.D. 90–78, 55 FR 40166, Oct. 2, 1990]

Subpart B—Administration of Quotas

§ 132.11 Quota priority and status.

(a) *Determination of quota priority and status.* Quota priority and status are determined as of the time of presentation of the entry summary for consumption, or withdrawal for consumption, in proper form in accordance with § 132.1(d).

(b) *Documentation and deposit of duties in proper form required.* Merchandise covered by an entry summary for consumption, which serves as both the entry and entry summary, or by a withdrawal for consumption, shall be regarded as entered for purposes of quota priority and shall acquire quota status if:

(1) The entry summary or withdrawal for consumption is in proper form, and duties have been attached to the entry summary or withdrawal for consumption in proper form; or

(2) The entry summary for consumption is in proper form, and the entry/entry summary information and a valid scheduled statement date (pursuant to § 24.25 of this chapter) have been successfully received by Customs via the Automated Broker Interface.

See §§ 141.4, 141.63, 141.68, 141.69, and 141.101 of this chapter.

(c) *Informal entries.* Mail entries or informal entries shall be regarded as presented for purposes of quota priority when all requirements have been met for the preparation of such an entry.

(d) *Premature presentation of entry or withdrawal.* Quota status will not attach to merchandise in a quota period by reason of the presentation of an entry or withdrawal for consumption at any time prior to the opening of that period.

[T.D. 73–203, 38 FR 20230, July 30, 1973, as amended by T.D. 79–221, 44 FR 46814, Aug. 9, 1979; T.D. 89–104, 54 FR 50498, Dec. 7, 1989]

§ 132.11a Time of presentation.

(a) *General rule.* Except as provided in paragraph (b) of this section, the time of presentation of an entry/entry summary for quota purposes shall be the time of delivery in proper form of:

(1) An entry summary for consumption, which serves as both the entry and the entry summary, with estimated duties attached; or

(2) An entry summary for consumption, which shall serve as both the entry and the entry summary without estimated duties attached, if the entry/entry summary information and a valid scheduled statement date have been successfully received by Customs via the Automated Broker Interface (see § 132.1(d)(2); payment must be subsequently made by the statement processing method as set forth in § 24.25 of this chapter); or

(3) A withdrawal for consumption with estimated duties attached.

(b) *Before arrival of merchandise.* The entry summary for consumption, without estimated duties attached, may be submitted for preliminary review before the merchandise arrives within the limits of the port where entry is to be made. In that case, the time of presentation of the entry summary for consumption shall be the time estimated duties are deposited after the importing carrier arrives within the port limits.

(c) *Failure to use statement processing method.* If presentation is chosen to be made pursuant to § 132.11a(a)(2) and payment is not made as required through the statement processing method, the port director may require filing of an entry summary for consumption with estimated duties attached as described in § 132.11(a)(1) for future filings.

[T.D. 79–221, 44 FR 46814, Aug. 9, 1979, as amended by T.D. 89–104, 54 FR 50498, Dec. 7, 1989]

§ 132.12 Procedure on opening of potentially filled quotas.

(a) *Preliminary review before opening.* When it is anticipated that a quota will be filled at the opening of the quota period, entry summaries for consumption, or withdrawals for consumption, with estimated duties attached, shall not be presented before 12 noon Eastern

Standard Time in all time zones. However, an entry summary for consumption, or withdrawal for consumption, for merchandise which has arrived within the Customs territory of the United States may be submitted for preliminary review without deposit of estimated duties within a time period before the opening approved by the port director. Submission of these documents before opening will not accord the merchandise quota priority or status.

(b) *Simultaneous presentation.* Special arrangements shall be made so that all entry summaries for consumption, or withdrawals for consumption, for quota merchandise may be presented at the exact moment of the opening of the quota in all time zones. All importers prepared to present entry summaries for consumption, or withdrawals for consumption, when the quota opens shall be given equal opportunity to do so. All entry summaries for consumption, or withdrawals for consumption, presented in proper form (including those submitted for review before opening of the quota period if accompanied by the deposit of estimated duties) shall be considered to have been presented simultaneously.

(c) *Proration of quantities.* (1) The quantities on all entry summaries for consumption, or withdrawals for consumption, submitted simultaneously shall be prorated by Headquarters against the quota quantity admissible to determine the percentage to be allocated to each importer under the quota. Merchandise in excess of the quota shall be disposed of in accordance with § 132.5.

(2) In the event a quota is prorated, entry summaries for consumption, or withdrawals for consumption, with estimated duties attached, shall be returned to the importer for adjustment. The time of presentation for quota purposes, in that event, shall be the exact moment of the opening of the quota provided:

(i) An adjusted entry summary for consumption, or withdrawal for consumption, with estimated duties attached, is deposited within 5 working days after Headquarters authorizes release of the merchandise, and

(ii) The importer takes delivery of the merchandise within 15 working days after release is authorized.

[T.D. 79–221, 44 FR 46814, Aug. 9, 1979]

§ 132.13 Quotas after opening.

(a) *Procedure when nearing fulfillment.* To secure for each importer the rightful quota priority and status for his quota-class merchandise, and to close the quota simultaneously at all ports of entry:

(1) *For release of merchandise*—(i) *Tariff-rate.* When instructed by Headquarters, the port director shall require an importer to present an entry summary for consumption, with estimated duties attached, at the over-quota rate of duty until Headquarters has determined the quantity, if any of the merchandise entitled to the quota rate. If any of the merchandise entered at the over-quota rate is entitled to the quota rate, Customs shall amend the entry summary and refund to the importer any excess duties paid. This section does not prohibit an importer from obtaining release of the merchandise under the immediate delivery procedure. If an importer desires to enter only that quantity entitled to the quota rate, he may request that the merchandise not be released from Customs custody until Headquarters has determined the quantity entitled to the quota rate.

(ii) *Absolute.* Except as provided for in § 142.21 (e)(2) and (g) of this chapter, absolute quota merchandise shall not be released under the immediate delivery procedure. An entry summary for consumption, with estimated duties attached, setting forth the quantity desired to be entered, shall be presented. However, the merchandise shall not be released until Customs has determined the quantity entitled to absolute quota status and priority.

(iii) *Quota Proration.* When it is determined that entry summaries for consumption or withdrawals for consumption must be amended to permit only the quantity of tariff-rate and absolute quota merchandise determined to be within the quota, the entry summaries for consumption or withdrawals for consumption must be returned to the importer for adjustment. The time of presentation for quota purposes in that

event shall be the same as the time of the initial presentation of the entry summaries for consumption or withdrawals for consumption provided:

(A) An adjusted entry summary for consumption, or withdrawals for consumption, with estimated duties attached, is deposited within 5 working days after Headquarters authorizes release of the merchandise, and

(B) The importer takes delivery of the merchandise within 15 working days after release is authorized.

(2) *Report of time of presentation*. The date, hour and minute that an entry summary for consumption or withdrawal for consumption is presented at a port of entry must be indicated on the document by a method deemed acceptable by Customs. The appropriate Customs officer shall report this information to Headquarters.

(b) *Closing of the quota*. Except as provided by §132.12, at the closing of a quota all entries or withdrawals for consumption which have acquired quota status due to priority of presentation shall be entitled to quota benefits. All other entries or withdrawals are without quota status and are not entitled to any quota benefits. All the latter shall be disposed of in accordance with §132.5.

[T.D. 73–203, 38 FR 20230, July 30, 1973, as amended by T.D. 79–221, 44 FR 46815, Aug. 9, 1979; T.D. 80–26, 45 FR 3901, Jan. 21, 1980; T.D. 81–260, 46 FR 49841, Oct. 8, 1981; T.D 88–27, 53 FR 19897, June 1, 1988]

§132.14 Special permits for immediate delivery; entry of merchandise before presenting entry summary for consumption; permits of delivery.

(a) *Effect of issuance of special permit for immediate delivery or filing entry documentation before presentation of entry summary*—(1) *Requirements for release*. Quota-class merchandise shall not be released upon filing entry documentation before the proper presentation of an entry summary for consumption, or a withdrawal for consumption, pursuant to §132.1 of this part. However, quota-class merchandise may be released under a special permit for immediate delivery in accordance with §142.21(e) of this chapter.

(2) *Effect of release under immediate delivery*. Release of quota-class merchandise under a special permit for immediate delivery before proper presentation of an entry summary for consumption, or a withdrawal for consumption, pursuant to §132.1 of this part, shall not accord merchandise any quota priority or status or entitle it to any other quota benefit.

(3) *Effect of inadvertent release*. Inadvertent release under a special permit for immediate delivery, or upon filing entry documentation, before proper presentation of an entry summary for consumption, or a withdrawal for consumption, pursuant to §132.1 of this part, shall not accord the merchandise any quota priority or status or entitle it to any other quota benefit.

(4) *Procedures following inadvertent release*—(i) *Quota nearing fulfillment*. If quota-class merchandise is released inadvertently under a special permit for immediate delivery, or under entry documentation, before the proper presentation of an entry summary for consumption, or a withdrawal for consumption, pursuant to §132.1 of this part, and the quota is nearing fulfillment:

(A) The port director may demand the return to Customs custody of the released merchandise in accordance with §141.113 of this chapter;

(B) The port director shall require the timely presentation of the entry summary for consumption, or a withdrawal for consumption, with the estimated duties attached;

(C) The port director may assess liquidated damages under the bond on Customs Form 301, containing the basic importation and entry bond conditions set forth in §113.62 of this chapter in an amount equal to the value of the merchandise, plus estimated duties (computed at the over-quota rate for tariff-rate quota merchandise), if the merchandise is (*1*) released before presentation of an entry summary for consumption or a withdrawal for consumption, with estimated duties attached; (*2*) the merchandise is not returned to Customs custody within 30 days from the date of demand for redelivery; or (*3*) the entry summary for consumption, or the withdrawal for consumption, with estimated duties attached, is not presented timely; and

(D) The Fines, Penalties, and Forfeitures Officer may cancel the claim for liquidated damages if he is satisfied by the evidence that release was due to causes wholly beyond the control of the importer, that no act or omission on the part of the importer formed the basis for the release, and that there was no intent on the part of the importer to evade any law or regulation. The port director also may cancel the claim for liquidated damages if the merchandise is redelivered to Customs custody within 30 days from the date of the demand, or if the entry summary for consumption, or withdrawal for consumption, with estimated duties attached, is presented timely.

(ii) *Quota not nearing fulfillment.* If quota-class merchandise is released inadvertently under a special permit for immediate delivery, or under entry documentation, before the proper presentation of an entry summary for consumption, or a withdrawal for consumption, pursuant to §132.1 of this part, and the quota is not nearing fulfillment:

(A) The port director shall require the timely presentation of the entry summary for consumption, or a withdrawal for consumption, with estimated duties attached;

(B) The port director may assess liquidated damages under the bond on Customs Form 301, containing the basic importation and entry bond conditions set forth in §113.62 of this chapter in an amount equal to the value of the merchandise, plus estimated duties (computed at the over quota-rate for tariff-rate quota merchandise), if the merchandise is: (*1*) Released before presentation of an entry summary for consumption, or a withdrawal for consumption, with estimated duties attached; or (*2*) if the entry summary for consumption, or the withdrawal for consumption with estimated duties attached, is not presented timely; and

(C) The Fines, Penalties, and Forfeitures Officer may cancel the claim for liquidated damages if he is satisfied by the evidence that the release was due to causes wholly beyond the control of the importer, that no act or omission on the part of the importer formed the basis for release, and that there was no intent on the part of the importer to evade any law or regulation. The port director also may cancel the claim for liquidated damages if the entry summary for consumption, or withdrawal for consumption, with estimated duties attached, is presented timely.

(b) *Permit of delivery*—(1) *Effect of filing.* The issuance of a permit of delivery shall not accord the merchandise any quota priority or status nor entitle it to any other quota benefit.

(2) *Time of issuance*—(i) *Absolute quota merchandise.* A permit of delivery for merchandise subject to an absolute quota shall not be issued before a determination of the quota status of the merchandise.

(ii) *Tariff-rate, quota merchandise.* A permit delivery for merchandise subject to a tariff-rate quota shall not be issued before a determination of the quota status of the merchandise unless estimated duties are deposited at the over-quota rate of duty.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79–221, 44 FR 46815, Aug. 9, 1979, as amended by T.D. 84–213, 49 FR 41183, Oct. 19, 1984; T.D. 89–104, 54 FR 50498, Dec. 7, 1989; T.D. 99–27, 64 FR 13674–13675, Mar. 22, 1999]

§ 132.15 Export certificate for beef subject to tariff-rate quota.

(a) *Requirement.* In order to claim the in-quota tariff rate of duty on beef, defined in 15 CFR 2012.2(a), that is the product of a participating country, defined in 15 CFR 2012.2(e), the importer must possess a valid export certificate at the time that such beef is entered, or withdrawn from warehouse for consumption. The importer must record the unique identifying number of the export certificate for the beef on the entry summary or warehouse withdrawal for consumption (Customs Form 7501, Column 34), or its electronic equivalent.

(b) *Validity of certificate.* The export certificate, to be valid, must meet the requirements of 15 CFR 2012.3(b), and with respect to the requirement of 15 CFR 2012.3(b)(3) that the certificate be distinct and uniquely identifiable, the certificate must have a distinct and unique identifying number composed of three elements set forth in the following order:

(1) The last digit of the year for which the export certificate is in effect;

(2) The 2-digit ISO country of origin code from Annex B of the HTSUS which identifies the participating country (see § 142.42(d) of this chapter); and

(3) Any 6-digit number issued by the participating country with respect to the export certificate.

(c) *Retention and submission of certificate to Customs*—(1) *Retention*. The export certificate must be retained by the importer for a period of at least 5 years from the date of entry, or withdrawal from warehouse, for consumption (see § 163.4(a) of this chapter).

(2) *Submission to Customs*. The importer shall submit a copy of the export certificate to Customs upon request.

[T.D. 95–58, 60 FR 39109, Aug. 1, 1995, as amended by T.D. 99–87, 64 FR 67483, Dec. 2, 1999; T.D. 00–7, 65 FR 5431, Feb. 4, 2000]

§ 132.16 [Reserved]

§ 132.17 Export certificate for sugar-containing products subject to tariff-rate quota.

(a) *Requirement*. For sugar-containing products described in additional U.S. Note 8 to chapter 17, HTSUS, that are classified in HTSUS subheading 1701.91.54, 1704.90.74, 1806.20.75, 1806.20.95, 1806.90.55, 1901.90.56, 2101.12.54, 2101.20.54, 2106.90.78, or 2106.90.95, and that are products of a participating country, as defined in 15 CFR 2015.2(e), the importer must possess a valid export certificate in order to claim the in-quota tariff rate of duty on the products at the time they are entered or withdrawn from warehouse for consumption. The importer must record the unique identifier of the export certificate for these products on the entry summary or warehouse withdrawal for consumption (Customs Form 7501, column 34), or its electronic equivalent.

(b) *Validity of export certificate*. To be valid, the export certificate must meet the requirements of 15 CFR 2015.3(b), and with respect to the requirement of 15 CFR 2015.3(b)(3) that the certificate have a distinct and uniquely identifiable number, this unique identifier must consist of 8 characters in any alpha/numeric combination.

(c) *Retention and production of certificate to Customs*. The export certificate is subject to the recordkeeping requirements of part 163 of this chapter (19 CFR part 163). Specifically, the certificate must be retained for a period of 5 years in accordance with § 163.4(a) of this chapter, and must be made available to Customs upon request in accordance with § 163.6(a) of this chapter.

[T.D. 00–7, 65 FR 5431, Feb. 4, 2000]

§ 132.18 License for certain worsted wool fabric subject to tariff-rate quota.

(a) *Requirement*. For worsted wool fabric that is entered under HTSUS subheading 9902.51.11 or 9902.51.12, the importer must possess a valid license, or a written authorization from the licensee, pursuant to regulations of the U.S. Department of Commerce (15 CFR 335.5), in order to claim the in-quota rate of duty on the worsted wool fabric at the time it is entered or withdrawn from warehouse for consumption. The importer must record the distinct and unique 9-character number for the license covering the worsted wool fabric on the entry summary or warehouse withdrawal for consumption (Customs Form 7501, column 34), or its electronic equivalent (see paragraph (c)(1) of this section).

(b) *Importer certification*. By entering the worsted wool fabric under HTSUS subheading 9902.51.11 or 9902.51.12, the importer thus certifies that the worsted wool fabric is suitable for use in making suits, suit-type jackets, or trousers, as required under these subheadings.

(c) *Validity of license*—(1) *License number*. To be valid, the license, or written authorization issued under the license and including its unique control number, must meet the requirements of 15 CFR 335.5, and with respect to the requirement in 15 CFR 335.5(a) that the license have a unique control number, the license must have a distinct and unique identifying number consisting of 9 characters comprised of the following three elements:

(i) The first character must be a ''W'';

(ii) The second and third characters must consist of the last 2 digits of the calendar year for which the license is issued and during which it is in effect; and

(iii) The final 6 characters represent the distinct and unique identifier assigned to the license by the Department of Commerce.

(2) *Use of license.* A license covering worsted wool fabric that is entered under HTSUS subheading 9902.51.11 or 9902.51.12 is in effect, and may be used to obtain the applicable in-quota rate of duty for fabric that is entered or withdrawn for consumption, only during the specific calendar year (January 1—December 31, inclusive) for which the license is issued (see 15 CFR 335.2 and 335.5(b) and (d)).

(d) *Retention and production of license or authorization to Customs.* The license and any written authorization from the licensee to the importer are subject to the recordkeeping requirements of part 163 of this chapter (19 CFR part 163). Specifically, the license and any written authorization must be retained for a period of 5 years in accordance with § 163.4(a) of this chapter, and must be made available to Customs upon request in accordance with § 163.6(a) of this chapter.

[T.D. 01–35, 66 FR 21666, May 1, 2001]

Subpart C—Mail Importation of Absolute Quota Merchandise

§ 132.21 Regulations applicable.

In addition to the regulations applicable to all mail importations (see part 145 of this chapter), the regulations in this subpart shall apply to mail importations of absolute quota merchandise.

§ 132.22 When quota is filled.

Any packages containing merchandise subject to an absolute quota which is filled shall be returned to the postmaster for return to the sender immediately as undeliverable mail. The addressee will be notified on Customs Form 3509 or in any other appropriate manner that entry has been denied because the quota is filled.

§ 132.23 Partial release procedure.

(a) *Notification of quota restrictions.* If because of quota restrictions, a mail importation cannot be released, the director of the port of destination shall notify the addressee on Customs Form 3509 of the procedure required by paragraph (b) of this section, and shall inform the addressee that upon return of the Acknowledgement of Delivery by Postal Service, the packages admissible under the absolute quota will be forwarded to him and the restricted packages will be returned to the sender as inadmissible. The port director may at his discretion hold packages if it appears that the absolute quota will reopen in less than 30 days.

(b) *Acknowledgement of delivery.* An Acknowledgement of Delivery by Postal Service shall be sent to the addressee. He shall be advised that if he desires to secure release of less than the total number of packages of the merchandise, the Acknowledgement of Delivery by Postal Service must be signed by him and returned to the port director. Such Acknowledgment of Delivery by Postal Service shall be in the following form:

ACKNOWLEDGMENT OF DELIVERY BY POSTAL SERVICE

In consideration of the fact that certain articles in a mail importation consisting of

_____ (state number) packages mailed to me by _____ (name of sender) of _____ (address) on _____ (date of mailing), are subject to quota restrictions under which only a portion of such articles may be admitted to entry at one time, and the Postal Service permits no division of the importation before delivery thereof, and since I am desirous of receiving the packages of such importation which are admissible to entry under the quota administered by the United States Customs, I hereby agree and acknowledge that delivery of the package or packages to the United States Customs shall be regarded as delivery by the Postal Service to me.

_____
(Signature of addressee)

(c) *Agreement to less than full delivery.* If, in any case, the sender of a mail package has indicated his agreement to

the delivery of less than the entire importation at one time, an Acknowledgment of Delivery by Postal Service need not be secured from the addressee.

(d) *Deposit required.* If a portion of a mail shipment may be released, the port director may require a deposit of an amount sufficient to defray the expenses of repacking merchandise for shipment by mail to the addressee. The shipment shall be under Government frank without new postage.

§ 132.24 Entry.

Unless a formal entry or entry by appraisement is required, a mail entry on Customs Form 3419 shall be issued and forwarded with the package to the postmaster for delivery to the addressee and collection of any duties in the same manner as for any other mail package subject to Customs treatment.

§ 132.25 Undeliverable shipment.

If within a reasonable time, but not to exceed 30 days, the addressee fails to indicate to the port director an intention to receive delivery of the packages or a portion thereof in accordance with the notice on Customs Form 3509 which was sent to him by the port director, the importation shall be treated in the same manner as other undeliverable mail.

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

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AUTHORITY: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

Section 133.1 also issued under 15 U.S.C. 1096, 1124;
Sections 133.2 through 133.7, 133.11 through 133.13, and 133.15 also issued under 15 U.S.C. 1124;
Sections 133.21 through 133.25 also issued under 15 U.S.C. 1124, 19 U.S.C. 1526;
Sections 133.26 and 133.46 also issued under 19 U.S.C. 1623;
Sections 133.27 and 133.52 also issued under 19 U.S.C. 1526;
Section 133.53 also issued under 19 U.S.C. 1558(a).

SOURCE: T.D. 72–266, 37 FR 20678, Oct. 3, 1972, unless otherwise noted.

§ 133.0 Scope.

This part provides for the recordation of trademarks, trade names, and copyrights with the United States Customs Service for the purpose of prohibiting the importation of certain articles. It also sets forth the procedures for the disposition of articles bearing prohibited marks or names, and copyrighted or piratical articles, including release to the importer in appropriate circumstances.

Subpart A—Recordation of Trademarks

§ 133.1 Recordation of trademarks.

(a) *Eligible trademarks.* Trademarks registered by the U.S. Patent and Trademark Office under the Trademark Act of March 3, 1881, the Trademark Act of February 20, 1905, or the Trademark Act of 1946 (15 U.S.C. 1051 *et seq.*) except those registered on the supplemental register under the 1946 Act (15 U.S.C. 1096), may be recorded with the U.S. Customs Service if the registration is current.

(b) *Notice of recordation and other action.* Applicants and recordants will be notified of the approval or denial of an application filed in accordance with §§ 133.2, 133.5, 133.6, and 133.7 of this subpart.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 133.2 Application to record trademark.

An application to record one or more trademarks shall be in writing, addressed to the Intellectual Property Rights Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, and shall include the following information:

(a) The name, complete business address, and citizenship of the trademark owner or owners (if a partnership, the citizenship of each partner; if an association or corporation the State, country, or other political jurisdiction within which it was organized, incorporated, or created);

(b) The places of manufacture of goods bearing the recorded trademark;

(c) The name and principal business address of each foreign person or business entity authorized or licensed to use the trademark and a statement as to the use authorized; and

(d) The identity of any parent or subsidiary company or other foreign company under common ownership or control which uses the trademark abroad. For this purpose:

(1) *Common ownership* means individual or aggregate ownership of more than 50 percent of the business entity; and

(2) *Common control* means effective control in policy and operations and is not necessarily synonymous with common ownership.

(e) *Lever-rule protection.* For owners of U.S. trademarks who desire protection against gray market articles on the basis of physical and material differences (see *Lever Bros. Co. v. United States*, 981 F.2d 1330 (D.C. Cir. 1993)), a description of any physical and material difference between the specific articles authorized for importation or sale in the United States and those not so authorized. In each instance, owners who assert that physical and material differences exist must state the basis for such a claim with particularity, and must support such assertions by competent evidence and provide summaries of physical and material differences for publication. Customs determination of physical and material differences may include, but is not limited to, considerations of:

(1) The specific composition of both the authorized and gray market product(s) (including chemical composition);

(2) Formulation, product construction, structure, or composite product

components, of both the authorized and gray market product;

(3) Performance and/or operational characteristics of both the authorized and gray market product;

(4) Differences resulting from legal or regulatory requirements, certification, etc.;

(5) Other distinguishing and explicitly defined factors that would likely result in consumer deception or confusion as proscribed under applicable law.

(f) Customs will publish in the Customs Bulletin a notice listing any trademark(s) and the specific products for which gray market protection for physically and materially different products has been requested. Customs will examine the request(s) before issuing a determination whether gray market protection is granted. For parties requesting protection, the application for trademark protection will not take effect until Customs has made and issued this determination. If protection is granted, Customs will publish in the Customs Bulletin a notice that a trademark will receive *Lever*-rule protection with regard to a specific product.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991; T.D. 99–21, 64 FR 9062, Feb. 24, 1999; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 133.3 Documents and fee to accompany application.

(a) *Documents*. The application shall be accompanied by:

(1) A status copy of the certificate of registration certified by the U.S. Patent and Trademark Office showing title to be presently in the name of the applicant; and

(2) Five copies of this certificate, or of a U.S. Patent and Trademark Office facsimile. The copies may be reproduced privately and shall be on paper approximately 8″×10½″ in size. If the certificate consists of two or more pages, the copies may be reproduced on both sides of the paper.

(b) *Fee*. The application shall be accompanied by a fee of $190 for each trademark to be recorded. However, if the trademark is registered for more than one class of goods (based on the class, or classes, first stated on the certificate of registration, without consideration of any class, or classes, also stated in parentheses) the fee for recordation shall be $190 for each class for which the applicant desires to record the trademark with the United States Customs Service. For example, to secure recordation of a trademark registered for three classes of goods, a fee of $570 is payable. A check or money order shall be made payable to the United States Customs Service.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 73–174, 38 FR 16850, June 27, 1973; T.D. 75–160, 40 FR 28790, July 9, 1975; T.D. 84–133, 49 FR 26571, June 28, 1984; T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 133.4 Effective date, term, and cancellation of trademark recordation and renewals.

(a) *Effective date*. Recordation of trademark and protection thereunder shall be effective on the date an application for recordation is approved, as shown on the recordation notice issued by the United States Customs Service instructing Customs officers as to the terms and conditions of import protection appropriate.

(b) *Term*. The recordation or renewal of an existing recordation of a trademark shall remain in force concurrently with the 20-year current registration period or last renewal thereof in the U.S. Patent and Trademark Office.

(c) *Cancellation of recordation*. Recordation of a trademark with the United States Customs Service shall be canceled if the trademark registration is finally canceled or revoked.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 133.5 Change of ownership of recorded trademark.

If there is a change in ownership of a recorded trademark and the new owner wishes to continue the recordation with the United States Customs Service, he shall apply therefor by:

(a) Complying with § 133.2;

(b) Describing any time limit on the rights of ownership transferred;

(c) Submitting a status copy of the certificate of registration certified by the U.S. Patent and Trademark Office showing title to be presently in the name of the new owner; and

(d) Paying a fee of $80, which covers all trademarks included in the application which have been previously recorded with the United States Customs Service. A check or money order shall be made payable to the United States Customs Service.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75–160, 40 FR 28791, July 9, 1975; T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 133.6 Change in name of owner of recorded trademark.

If there is a change in the name of the owner of a recorded trademark, but no change in ownership, written notice thereof shall be given to the Intellectual Property Rights Branch, accompanied by:

(a) A status copy of the certificate of registration certified by the U.S. Patent and Trademark Office showing title to be presently in the name as changed; and

(b) A fee of $80, which covers all trademarks included in the application which have been previously recorded with the United States Customs Service. A check or money order shall be made payable to the United States Customs Service.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75–160, 40 FR 28791, July 9, 1975; T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 133.7 Renewal of trademark recordation.

(a) *Application to renew.* To continue uninterrupted Customs protection for trademarks, the trademark owner shall submit a written application to renew Customs recordation to the Intellectual Property Rights Branch not later than 3 months after the date of expiration of the current 20–year trademark registration issued by the U.S. Patent and Trademark Office. A timely application to renew a Customs recordation must include the following:

(1) A status copy of the certificate of registration certified by the U.S. Patent and Trademark Office showing renewal of the trademark and title to be in the name of the applicant;

(2) A statement describing any change of ownership or in the name of owner, in compliance with §§ 133.5 and 133.6 of this part, and any change of addresses of owners or places of manufacture; and

(3) A fee of $80 for each renewal of a trademark recordation. Where the trademark covers several classes, a fee of $80 is required for each class. A check or money order shall be made payable to the United States Customs Service.

(b) *Delayed application.* Upon request made during the grace period of 3 months afforded by paragraph (a) of this section, a trademark owner whose application for renewal of recordation is unavoidably delayed may be afforded a reasonable extended period within which to comply with the requirements of paragraph (a) of this section. The request shall be in writing, addressed to the Intellectual Property Rights Branch, and shall set forth the circumstances due to which application is delayed.

(c) *Untimely application.* Failure of the trademark owner to submit a renewal application within the 3–month grace period afforded in accordance with paragraph (a) of this section or within an extension of time granted in accordance with paragraph (b) of this section, shall deprive the trademark owner of the renewal process. A delinquent applicant will be required to apply anew to record the renewed trademark in accordance with the procedures and requirements of §§ 133.2 and 133.3.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75–160, 40 FR 28791, July 9, 1975; T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

Subpart B—Recordation of Trade Names

§ 133.11 Trade names eligible for recordation.

The name or trade style used for at least 6 months to identify a manufacturer or trader may be recorded with the United States Customs Service. Words or designs used as trademarks, whether or not registered in the U.S. Patent and Trademark Office shall not be accepted for recordation as a trade name. Generally, the complete business name will be recorded unless convincing proof establishes that only a

part of the complete name is customarily used.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 133.12 Application to record a trade name.

An application to record a trade name shall be in writing addressed to the Intellectual Property Rights Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, and shall include the following information:

(a) The name, complete business address, and citizenship of the trade name owner or owners (if a partnership, the citizenship of each partner; if an association or corporation, the State, country, or other political jurisdiction within which it was organized, incorporated or created);

(b) The name or trade style to be recorded;

(c) The name and principal business address of each foreign person or business entity authorized or licensed to use the trade name and a statement as to the use authorized;

(d) The identity of any parent or subsidiary company, or other foreign company under common ownership or control which uses the trade name abroad (see § 133.2(d)); and

(e) A description of the merchandise with which the trade name is associated.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 133.13 Documents and fee to accompany application.

(a) *Documents*. The application shall be accompanied by a statement of the owner, partners, or principal corporate officer, and by statements by at least two other persons not associated with or related to the applicant but having actual knowledge of the facts, stating that to his best knowledge and belief:

(1) The applicant has used the trade name in connection with the class or kind of merchandise described in the application for at least 6 months;

(2) The trade name is not identical or confusingly similar to any other trade name or registered trademark used in connection with such class or kind of merchandise; and

(3) The applicant has the sole and exclusive right to the use of such trade name in connection with the merchandise of that class or kind.

(b) *Fee*. The application shall be accompanied by a fee of $190 for each trade name to be recorded. A check or money order shall be made payable to the United States Customs Service.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75–160, 40 FR 28791, July 9, 1975]

§ 133.14 Publication of trade name recordation.

(a) *Notice of tentative recordation*. Notice of tentative recordation of a trade name shall be published in the FEDERAL REGISTER and the Customs Bulletin. The notice shall specify a procedure and a time period within which interested parties may oppose the recordation.

(b) *Notice of final action*. After consideration of any claims, rebuttals, and other relevant evidence, notice of final approval or disapproval of the application shall be published in the FEDERAL REGISTER and the Customs Bulletin.

§ 133.15 Term of Customs trade name recordation.

Protection for a recorded trade name shall remain in force as long as the trade name is used. The recordation shall be canceled upon request of the recordant or upon evidence of disuse. From time to time, the Intellectual Property Rights Branch may request the trade name owner to advise whether the name is still in use. The failure of a trade name owner to respond to such a request shall be regarded as evidence of disuse.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

Subpart C—Importations Bearing Registered and/or Recorded Trademarks or Recorded Trade Names

SOURCE: T.D. 99–21, 64 FR 9062, Feb. 24, 1999, unless otherwise noted.

§ 133.21 Articles bearing counterfeit trademarks.

(a) *Counterfeit trademark defined.* A ''counterfeit trademark'' is a spurious trademark that is identical to, or substantially indistinguishable from, a registered trademark.

(b) *Seizure.* Any article of domestic or foreign manufacture imported into the United States bearing a counterfeit trademark shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violation of the customs laws.

(c) *Notice to trademark owner.* When merchandise is seized under this section, Customs shall disclose to the owner of the trademark the following information, if available, within 30 days, excluding weekends and holidays, of the date of the notice of seizure:

(1) The date of importation;

(2) The port of entry;

(3) A description of the merchandise;

(4) The quantity involved;

(5) The name and address of the manufacturer;

(6) The country of origin of the merchandise;

(7) The name and address of the exporter; and

(8) The name and address of the importer.

(d) *Samples available to the trademark owner.* At any time following seizure of the merchandise, Customs may provide a sample of the suspect merchandise to the owner of the trademark for examination, testing, or other use in pursuit of a related private civil remedy for trademark infringement. To obtain a sample under this section, the trademark/trade name owner must furnish Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the trademark owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination, testing, or other use in pursuit of a related private civil remedy for trademark infringement. In the event that the sample is damaged, destroyed, or lost while in the possession of the trademark owner, the owner shall, in lieu of return of the sample, certify to Customs that: ''The sample described as [insert description] and provided pursuant to 19 CFR 133.21(d) was (damaged/destroyed/lost) during examination, testing, or other use.''

(e) *Failure to make appropriate disposition.* Unless the trademark owner, within 30 days of notification, provides written consent to importation of the articles, exportation, entry after obliteration of the trademark, or other appropriate disposition, the articles shall be disposed of in accordance with § 133.52, subject to the importer's right to petition for relief from the forfeiture under the provisions of part 171 of this chapter.

§ 133.22 Restrictions on importation of articles bearing copying or simulating trademarks.

(a) *Copying or simulating trademark or trade name defined.* A ''copying or simulating'' trademark or trade name is one which may so resemble a recorded mark or name as to be likely to cause the public to associate the copying or simulating mark or name with the recorded mark or name.

(b) *Denial of entry.* Any articles of foreign or domestic manufacture imported into the United States bearing a mark or name copying or simulating a recorded mark or name shall be denied entry and subject to detention as provided in § 133.25.

(c) *Relief from detention of articles bearing copying or simulating trademarks.* Articles subject to the restrictions of this section shall be detained for 30 days from the date on which the goods are presented for Customs examination, to permit the importer to establish that any of the following circumstances are applicable:

(1) The objectionable mark is removed or obliterated as a condition to entry in such a manner as to be illegible and incapable of being reconstituted, for example by:

(i) Grinding off imprinted trademarks wherever they appear;

(ii) Removing and disposing of plates bearing a trademark or trade name;

(2) The merchandise is imported by the recordant of the trademark or trade name or his designate;

(3) The recordant gives written consent to an importation of articles otherwise subject to the restrictions set forth in paragraph (b) of this section or § 133.23(c) of this subpart, and such consent is furnished to appropriate Customs officials;

(4) The articles of foreign manufacture bear a recorded trademark and the one-item personal exemption is claimed and allowed under § 148.55 of this chapter.

(d) *Exceptions for articles bearing counterfeit trademarks.* The provisions of paragraph (c)(1) of this section are not applicable to articles bearing counterfeit trademarks at the time of importation (see § 133.26).

(e) *Release of detained articles.* Articles detained in accordance with § 133.25 may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark or trade name restriction set forth in paragraph (c) of this section are established.

(f) *Seizure.* If the importer has not obtained release of detained articles within the 30-day period of detention, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be promptly notified of the seizure and liability to forfeiture and his right to petition for relief in accordance with the provisions of part 171 of this chapter.

§ 133.23 Restrictions on importation of gray market articles.

(a) *Restricted gray market articles defined.* ''Restricted gray market articles'' are foreign-made articles bearing a genuine trademark or trade name identical with or substantially indistinguishable from one owned and recorded by a citizen of the United States or a corporation or association created or organized within the United States and imported without the authorization of the U.S. owner. ''Restricted gray market goods'' include goods bearing a genuine trademark or trade name which is:

(1) *Independent licensee.* Applied by a licensee (including a manufacturer) independent of the U.S. owner, or

(2) *Foreign owner.* Applied under the authority of a foreign trademark or trade name owner other than the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner (see §§ 133.2(d) and 133.12(d) of this part), from whom the U.S. owner acquired the domestic title, or to whom the U.S. owner sold the foreign title(s); or

(3) ''*Lever-rule*''. Applied by the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner (see §§ 133.2(d) and 133.12(d) of this part), to goods that the Customs Service has determined to be physically and materially different from the articles authorized by the U.S. trademark owner for importation or sale in the U.S. (as defined in § 133.2 of this part).

(b) *Labeling of physically and materially different goods.* Goods determined by the Customs Service to be physically and materially different under the procedures of this part, bearing a genuine mark applied under the authority of the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner (see §§ 133.2(d) and 133.12(d) of this part), shall not be detained under the provisions of paragraph (c) of this section where the merchandise or its packaging bears a conspicuous and legible label designed to remain on the product until the first point of sale to a retail consumer in the United States stating that: ''This product is not a product authorized by the United States trademark owner for importation and is physically and materially different from the authorized product.'' The label must be in close proximity to the trademark as it appears in its most prominent location on the article itself or the retail package or container. Other information designed to dispel consumer confusion may also be added.

(c) *Denial of entry.* All restricted gray market goods imported into the United States shall be denied entry and subject to detention as provided in § 133.25, except as provided in paragraph (b) of this section.

(d) *Relief from detention of gray market articles.* Gray market goods subject to the restrictions of this section shall be detained for 30 days from the date on which the goods are presented for Customs examination, to permit the importer to establish that any of the following exceptions, as well as the circumstances described above in § 133.22(c), are applicable:

(1) The trademark or trade name was applied under the authority of a foreign trademark or trade name owner who is the same as the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner (in an instance covered by §§ 133.2(d) and 133.12(d) of this part); and/or

(2) For goods bearing a genuine mark applied under the authority of the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner, that the merchandise as imported is not physically and materially different, as described in § 133.2(e), from articles authorized by the U.S. owner for importation or sale in the United States; or

(3) Where goods are detained for violation of § 133.23(a)(3), as physically and materially different from the articles authorized by the U.S. trademark owner for importation or sale in the U.S., a label in compliance with § 133.23(b) is applied to the goods.

(e) *Release of detained articles.* Articles detained in accordance with § 133.25 may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark restriction set forth in § 133.22(c) of this subpart or in paragraph (d) of this section are established.

(f) *Seizure.* If the importer has not obtained release of detained articles within the 30-day period of detention, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be notified of the seizure and liability of forfeiture and his right to petition for relief in accordance with the provisions of part 171 of this chapter.

§ 133.24 Restrictions on articles accompanying importer and mail importations.

(a) *Detention.* Articles accompanying an importer and mail importations subject to the restrictions of §§ 133.22 and 133.23 shall be detained for 30 days from the date of notice that such restrictions apply, to permit the establishment of whether any of the circumstances described in § 133.22(c) or 133.23(d) are applicable.

(b) *Notice of detention.* Notice of detention shall be given in the following manner:

(1) *Articles accompanying importer.* When the articles are carried as accompanying baggage or on the person of persons arriving in the United States, the Customs inspector shall orally advise the importer that the articles are subject to detention.

(2) *Mail importations.* When the articles arrive by mail in noncommercial shipments, or in commercial shipments valued at $250 or less, notice of the detention shall be given on Customs Form 8.

(c) *Release of detained articles*—(1) *General.* Articles detained in accordance with paragraph (a) of this section may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark or trade name restriction(s) set forth in § 133.22(c) or 133.23(d) of this subpart are established.

(2) *Articles accompanying importer.* Articles arriving as accompanying baggage or on the person of the importer may be exported or destroyed under Customs supervision at the request of the importer, or may be released if:

(i) The importer removes or obliterates the marks in a manner acceptable to the Customs officer at the time of examination of the articles; or

(ii) The request of the importer to obtain skillful removal of the marks is granted by the port director under such conditions as he may deem necessary, and upon return of the article to Customs for verification, the marks are found to be satisfactorily removed.

(3) *Mail importations.* Articles arriving by mail in noncommercial shipments, or in commercial shipments valued at

$250 or less, may be exported or destroyed at the request of the addressee or may be released if:

(i) The addressee appears in person at the appropriate Customs office and at that time removes or obliterates the marks in a manner acceptable to the Customs officer; or

(ii) The request of the addressee appearing in person to obtain skillful removal of the marks is granted by the port director under such conditions as he may deem necessary, and upon return of the article to Customs for verification, the marks are found to be satisfactorily removed.

(d) *Seizure*. If the importer has not obtained release of detained articles within the 30-day period of detention, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be promptly notified of the seizure and liability to forfeiture and his right to petition for relief in accordance with the provisions of part 171 of this chapter.

§ 133.25 Procedure on detention of articles subject to restriction.

(a) *In general*. Articles subject to the restrictions of §§ 133.22 and 133.23 shall be detained for 30 days from the date on which the merchandise is presented for Customs examination. The importer shall be notified of the decision to detain within 5 days of the decision that such restrictions apply. The importer may, during the 30-day period, establish that any of the circumstances described in § 133.22(c) or § 133.23(d) are applicable. Extensions of the 30-day time period may be freely granted for good cause shown.

(b) *Notice of detention and disclosure of information*. From the time merchandise is presented for Customs examination until the time a notice of detention is issued, Customs may disclose to the owner of the trademark or trade name any of the following information in order to obtain assistance in determining whether an imported article bears an infringing trademark or trade name. Once a notice of detention is issued, Customs shall disclose to the owner of the trademark or trade name the following information, if available, within 30 days, excluding weekends and holidays, of the date of detention:

(1) The date of importation;

(2) The port of entry;

(3) A description of the merchandise;

(4) The quantity involved; and

(5) The country of origin of the merchandise.

(c) *Samples available to the trademark or trade name owner*. At any time following presentation of the merchandise for Customs examination, but prior to seizure, Customs may provide a sample of the suspect merchandise to the owner of the trademark or trade name for examination or testing to assist in determining whether the article imported bears an infringing trademark or trade name. To obtain a sample under this section, the trademark/trade name owner must furnish Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the trademark owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination or testing. In the event that the sample is damaged, destroyed, or lost while in the possession of the trademark or trade name owner, the owner shall, in lieu of return of the sample, certify to Customs that: ''The sample described as [insert description] and provided pursuant to 19 CFR 133.25(c) was (damaged/destroyed/lost) during examination or testing for trademark infringement.''

(d) *Form of notice*. Notice of detention of articles found subject to the restrictions of § 133.22 or § 133.23 shall be given the importer in writing.

§ 133.26 Demand for redelivery of released merchandise.

If it is determined that merchandise which has been released from Customs custody is subject to the restrictions of § 133.22 or § 133.23 of this subpart, the port director shall promptly make demand for the redelivery of the merchandise under the terms of the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in accordance with

§ 141.113 of this chapter. If the merchandise is not redelivered to Customs custody, a claim for liquidated damages shall be made in accordance with § 141.113(h) of this chapter.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 99–64, 64 FR 43266, Aug. 10, 1999]

§ 133.27 Civil fines for those involved in the importation of merchandise bearing a counterfeit mark.

In addition to any other penalty or remedy authorized by law, CBP may impose a civil fine under 19 U.S.C. 1526(f) on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that bears a counterfeit mark resulting in a seizure of the merchandise under 19 U.S.C. 1526(e) (see § 133.21 of this subpart), as follows:

(a) *First violation*. For the first seizure of merchandise under this section, the fine imposed will not be more than the value the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price in the United States at the time of seizure.

(b) *Subsequent violations:* For the second and each subsequent seizure under this section, the fine imposed will not be more than twice the value the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price in the United States at the time of seizure.

[CBP Dec. 03–12, 68 FR 43637, July 24, 2003]

Subpart D—Recordation of Copyrights

§ 133.31 Recordation of copyrighted works.

(a) *Eligible works*. Claims to copyright which have been registered in accordance with the Copyright Act of July 30, 1947, as amended, or the Copyright Act of 1976, as amended, may be recorded with Customs for import protection.

(b) *Persons eligible to record*. The copyright owner, including any person who has acquired copyright ownership through an exclusive license, assignment, or otherwise, and claims actual or potential injury because of actual or contemplated importations of copies (or phonorecords) of eligible works, may file an application to record a copyright. ''Copyright owner,'' with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

(c) *Notice of recordation and other action*. Applicants and recordants will be notified of the approval or denial of an application filed in accordance with § 133.32, § 133.35, § 133.36, or § 133.37.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 73–212, 38 FR 21397, Aug. 8, 1973; T.D. 87–40, 52 FR 9474, Mar. 25, 1987]

§ 133.32 Application to record copyright.

An application to record a copyright to secure Customs protection against the importation of infringing copies or phonorecords shall be in writing addressed to the Intellectual Property Rights Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, Washington, DC 20229, and shall include the following information:

(a) The name and complete address of the copyright owner or owners;

(b) If the applicant is a person claiming actual or potential injury by reason of actual or contemplated importations of copies or phonorecords of the eligible work, a statement setting forth the circumstances of such actual or potential injury;

(c) The country of manufacture of genuine copies or phonorecords of the protected work;

(d) The name and principal address of any foreign person or business entity authorized or licensed to use the protected work, and a statement as to the exclusive rights authorized;

(e) The foreign title of the work, if different from the U.S. title; and

(f) In the case of an application to record a copyright in a sound recording, a statement setting forth the name(s) of the performing artist(s), and any other identifying names appearing on the surface of reproduction of the sound recording, or its label or container.

[T.D. 87–40, 52 FR 9474, Mar. 25, 1987, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 133.33 Documents and fee to accompany application.

(a) *Documents*. The application for recordation shall be accompanied by the following documents:

(1) An ''additional certificate'' of copyright registration issued by the U.S. Copyright Office. If the name of the applicant differs from the name of the copyright owner identified in the certificate, the application shall be accompanied by a certified copy of any assignment, exclusive license, or other document recorded in the U.S. Copyright Office showing that the applicant has acquired copyright ownership in the copyright.

(2) Five photographic or other likenesses reproduced on paper approximately 8″ × 10½″ in size of any copyrighted work. An application shall be excepted from this requirement if it covers a work such as a book, magazine, periodical, or similar copyrighted matter readily identifiable by title and author or if it covers a sound recording. Five likenesses of a component part of a copyrighted work, together with the name or title, if any, by which the part depicted is identifiable, may accompany an application covering an entire copyrighted work.

(b) *Fee*. Each application shall be accompanied by a fee of $190 for each copyright to be recorded. A check or money order shall be made payable to the United States Customs Service.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1973, as amended by T.D. 75–160, 40 FR 28791, July 9, 1975; T.D. 84–133, 49 FR 26571, June 28, 1984; T.D. 87–40, 52 FR 9475, Mar. 25, 1987]

§ 133.34 Effective date, term, and cancellation of recordation.

(a) *Effective date*. Recordation of copyright and protection thereunder shall be effective on the date an application for recordation is approved, as shown on the recordation notice issued by the United States Customs Service instructing Customs officers as to the terms and conditions of import protection appropriate.

(b) *Term*. The recordation of copyright shall remain in effect for 20 years unless the copyright ownership of the recordant expires before that time. If the ownership expires in less than 20 years, recordation shall remain in effect until the ownership expires. If the ownership has not expired after 20 years, recordation may be renewed as provided in § 133.37.

(c) *Cancellation*. Recordation of a copyright with the United States Customs Service shall be canceled upon request of the recordant, or if the registration in the U.S. Copyright Office is finally canceled or revoked.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 87–40, 52 FR 9475, Mar. 25, 1987]

§ 133.35 Change of ownership of recorded copyright.

(a) *Application*. If the ownership of a recorded copyright is transferred and the owner wishes to continue the recordation with the United States Customs Service, he shall make written application to the Intellectual Property Rights Branch as follows:

(1) Comply, as appropriate, with § 133.32; and

(2) Describe any time limit on the rights of ownership transferred.

(b) *Document and fee*. The application shall be accompanied by:

(1) A certified copy of any assignment, exclusive license, or other document recorded in the U.S. Copyright Office showing the applicant has acquired an ownership interest in the copyright; and

(2) A fee of $80, which covers all copyrights included in the application which have been previously recorded with the United States Customs Service. A check or money order shall be made payable to the United States Customs Service.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75–160, 40 FR 28791, July 9, 1975; T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 133.36 Change in name of owner of recorded copyright.

If there is a change in the name of the owner of a recorded copyright, but no transfer of ownership, written notice specifying the change shall be given to the Intellectual Property Rights Branch accompanied by the following:

(a) A certified copy of any document recorded in the U.S. Copyright Office showing the change in the name of the owner; and

(b) Payment of a fee of $80, which covers all copyrights included in the application which have been previously recorded with the United States Customs Service. A check or money order shall be made payable to the United States Customs Service.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75–160, 40 FR 28791, July 9, 1975; T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 133.37 Renewal of copyright recordation.

(a) *Term of renewal.* If a recorded copyright has a term which exceeds the original 20-year recordation, continued Customs protection may be obtained by renewing the recordation. The renewed recordation shall remain in effect for 20 years, unless the recordant's copyright ownership expires sooner, in which case it shall remain in effect until the ownership expires. There is no limit to the number of times recordation of a subsisting copyright may be renewed.

(b) *Application for renewal.* An application to renew recordation shall be made no later than 3 months before the date the recordation then in effect expires. The application shall be in writing addressed to the Intellectual Property Rights Branch.

(c) *Materials to be submitted with application.* An application to renew Customs recordation shall include:

(1) Proof that the recordant's copyright ownership is valid. The proof required shall vary with the date that the work was first copyrighted as follows:

(i) *Works in which copyright subsists on or after January 1, 1978.* An affidavit signed by the recordant attesting to the continued validity of the copyright, stating the date the copyright was registered with the U.S. Copyright Office, whether the author of the work is still alive and, if not, the date of his death, and any additional information that Customs may require of the recordant.

(ii) *Works under statutory copyright on December 31, 1977.* If the copyright is still in its first term when recordation expires, a certificate of registration issued by the U.S. Copyright Office or, if the copyright has been renewed, a certificate of renewal registration issued by the U.S. Copyright Office.

(2) A statement describing any change of ownership or name of owner, in compliance with §§ 133.35 and 133.36, and any change of address of the owner.

(3) Payment of a fee of $80. A check or money order shall be made payable to the U.S. Customs Service.

(d) *Untimely application.* If the recordant fails to submit a renewal application at least 3 months before the recordation expires, he may not renew the recordation. The recordant shall be required to reapply to record the copyright in accordance with the procedures and requirements of §§ 133.32 and 133.33.

[T.D. 87–40, 52 FR 9475, Mar. 25, 1987, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

Subpart E—Importations Violating Copyright Laws

§ 133.41 [Reserved]

§ 133.42 Infringing copies or phonorecords.

(a) *Definition.* Infringing copies or phonorecords are ''piratical'' articles, i.e., copies or phonorecords which are unlawfully made (without the authorization of the copyright owner).

(b) *Importation prohibited.* The importation of infringing copies or phonorecords of works copyrighted in the U.S. is prohibited by Customs. The importation of lawfully made copies is not a Customs violation.

(c) *Seizure and forfeiture.* The port director shall seize any imported article which he determines is an infringing copy or phonorecord of a copyrighted work protected by Customs. The port director also shall seize an imported article if the importer does not deny a representation that the article is an infringing copy or phonorecord as provided in § 133.43(a). In either case, the port director also shall institute forfeiture proceedings in accordance with part 162 of this chapter. Lawfully made copies are not subject to seizure and forfeiture by Customs.

(d) *Disclosure.* When merchandise is seized under this section, Customs

shall disclose to the owner of the copyright the following information, if available, within 30 days, excluding weekends and holidays, of the date of the notice of seizure:

(1) The date of importation;

(2) The port of entry;

(3) A description of the merchandise;

(4) The quantity involved;

(5) The name and address of the manufacturer;

(6) The country of origin of the merchandise;

(7) The name and address of the exporter; and

(8) The name and address of the importer.

(e) *Samples available to the copyright owner*. At any time following seizure of the merchandise, Customs may provide a sample of the suspect merchandise to the owner of the copyright for examination, testing, or any other use in pursuit of a related private civil remedy for copyright infringement. To obtain a sample under this section, the copyright owner must furnish to Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the copyright owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination, testing, or other use in pursuit of a related private civil remedy for copyright infringement. In the event that the sample is damaged, destroyed, or lost while in the possession of the copyright owner, the owner shall, in lieu of return of the sample, certify to Customs that: ''The sample described as [insert description] provided pursuant to 19 CFR 133.42(e) was (damaged/destroyed/lost) during examination, testing, or other use.''

(f) *Referral to the U.S. Attorney*. In the event that phonorecords or copies of motion pictures arrive in the U.S. bearing counterfeit labels, Customs officers should consider referring the violation to the U.S. Attorney, Department of Justice, for possible criminal prosecution pursuant to the ''Piracy and Counterfeiting Amendments Act of 1982'' (18 U.S.C. 2318). This law provides a minimum fine of $25,000 or imprisonment for not more than one year, or both, for willful infringement of a copyright for commercial advantage, and a maximum fine of $250,000 or imprisonment for not more than 5 years, or both, where trafficking in counterfeit labels for phonorecords or copies of motion pictures or other audiovisual works is involved.

[T.D. 87–40, 52 FR 9475, Mar. 25, 1987; 52 FR 10668, Apr. 2, 1987, as amended by T.D. 97–30, 62 FR 19493, Apr. 22, 1997; T.D. 98–21, 63 FR 12000, Mar. 12, 1998]

§ 133.43 Procedure on suspicion of infringing copies.

(a) *Notice to the importer*. If the port director has any reason to believe that an imported article may be an infringing copy or phonorecord of a recorded copyrighted work, he shall withhold delivery, notify the importer of his action, and advise him that if the facts so warrant he may file a statement denying that the article is in fact an infringing copy and alleging that the detention of the article will result in a material depreciation of its value, or a loss or damage to him. The port director also shall advise the importer that in the absence of receipt within 30 days of a denial by the importer that the article constitutes an infringing copy or phonorecord, it shall be considered to be such a copy and shall be subject to seizure and forfeiture.

(b) *Notice to copyright owner*. If the importer of suspected infringing copies or phonorecords files a denial as provided in paragraph (a) of this section, the port director shall furnish to the copyright owner the following information, if available, within 30 days, excluding weekends and holidays, of the receipt of the importer's denial:

(1) The date of importation;

(2) The port of entry;

(3) A description of the merchandise;

(4) The quantity involved;

(5) The country of origin of the merchandise; and

(6) Notice that the imported article will be released to the importer unless, within 30 days from the date of the notice, the copyright owner files with the port director:

(i) A written demand for the exclusion from entry of the detained imported article; and

(ii) A bond, in the form and amount specified by the port director, conditioned to hold the importer or owner of the imported article harmless from any loss or damage resulting from Customs detention in the event the Commissioner or his designee determines that the article is not an infringing copy prohibited importation under section 602 of the Copyright Act of 1976 (17 U.S.C. 602) (See part 113 of this chapter).

(c) *Samples available to the copyright owner.* At any time following presentation of the merchandise for Customs examination, but prior to seizure, Customs may provide a sample of the suspect merchandise to the owner of the copyright for examination or testing to assist in determining whether the article imported is a piratical copy. To obtain a sample under this section, the copyright owner must furnish Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the copyright owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination or testing. In the event that the sample is damaged, destroyed, or lost while in the possession of the copyright owner, the owner shall, in lieu of return of the sample, certify to Customs that: ''The sample described as [insert description] provided pursuant to 19 CFR 133.43(c) was (damaged/destroyed/lost) during examination or testing for copyright infringement.

(d) *Result of action or inaction by copyright owner.* After notice to the copyright owner that delivery is being withheld for imported articles suspected of being infringing copies of his recorded copyrighted work, the port director shall proceed in accordance with the following procedures:

(1) *Demand and bond; exchange of briefs.* If the copyright owner files a written demand for exclusion of the suspected infringing copies together with a proper bond, the port director shall promptly notify the importer and copyright owner that, during a specified time limited to not more than 30 days, they may submit any evidence, legal briefs or other pertinent material to substantiate the claim or denial of infringement. The burden of proof shall be upon the party claiming that the article is in fact an infringing copy.

(i) *Exchange of briefs.* Before timely submitting the additional evidence, legal briefs, or other pertinent material to Customs, pursuant to paragraph (c)(1) of this section, in regard to the disputed claim of infringement, the importer and the copyright owner shall first provide each other with a copy of all such information, including the importer's denial of infringement and the copyright owner's demand for exclusion. The subsequent submission of this information to Customs shall be accompanied by a written statement confirming that a copy has already been provided to the opposing party. The port director shall notify the importer and the copyright owner that they shall have additional time, not to exceed 30 days, in which to provide a response to the arguments submitted by the opposing party, and that rebuttal arguments, timely submitted, shall be fully considered in the decision-making process. During this rebuttal period and before timely submitting the rebuttal arguments to Customs, the importer and the copyright owner shall first provide each other with a copy of all such material. The submission of this rebuttal material to Customs shall be accompanied by a written statement confirming that a copy has been provided to the opposing party. The port director shall not accept any additional material from the parties to substantiate the claim or denial of infringement after the final 30-day rebuttal period expires.

(ii) *Decision.* Upon receipt of rebuttal arguments, or 30 days after notification if no rebuttal arguments are submitted, the port director shall forward the entire file, together with a sample of each style that is considered possibly infringing, to Customs Headquarters, (Attention: International Trade Compliance Division, Office of

Regulations and Rulings), for decision on the disputed claim of infringement. The final decision on the disputed claim of infringement shall be forwarded to the port director who shall send a copy thereof to the copyright owner as well as to the importer.

(2) *Infringement disclaimed or unsupported.* If the copyright owner disclaims that the specified imported article is an infringing copy of his recorded copyrighted work, or fails to present sufficient evidence or proof to substantiate a claim of infringement, the port director shall release the detained shipment to the importer and all further importations of the same article, by whomever imported, without further notice to the copyright owner.

(3) *Failure to file demand or bond.* If the copyright owner fails to file a written demand for exclusion and bond as required by paragraph (b) of this section, the port director shall release the detained articles to the importer and notify the copyright owner of the release.

(4) *Withdrawal of bond.* Where the copyright owner has posted a bond on the grounds that the imported article is infringing, the copyright owner may not withdraw the bond until a decision on the issue of infringement has been reached.

(e) *Alternative procedure: court action.* As an alternative to the administrative procedure described in this section, the copyright owner, whether or not he has recorded his copyright with Customs, may seek a court order enjoining importation of the article. To obtain Customs enforcement of an injunction, the copyright owner shall submit a certified copy of the court order to the Commissioner of Customs, Attention: Office of the Chief Counsel, Washington, DC 20229. In addition, if the copyright in question is not recorded with Customs, the copyright owner shall submit the $190 fee required by § 133.33(b) and, if the work is a three-dimensional or other work not readily identifiable by title and author, 5 photographic or other likenesses reproduced on paper approximately 8″ × 10½″ in size.

[T.D. 87–40, 52 FR 9475, Mar. 25, 1987, as amended by T.D. 93–87, 58 FR 57740, Oct. 27, 1993; T.D. 98–21, 63 FR 12000, Mar. 12, 1998; 63 FR 15088, Mar. 30, 1998]

§ 133.44 Decision of disputed claim of infringement.

(a) *Claim of infringement sustained.* Upon determination by the Commissioner of Customs or his designee that the detained article forwarded in accordance with § 133.43(c)(1) is an infringing copy, the port director shall seize the imported article and institute forfeiture proceedings in accordance with part 162 of this chapter. The bond of the copyright owner shall be returned.

(b) *Denial of infringement sustained.* Upon determination by the Commissioner of Customs or his designee that the detained article forwarded in accordance with § 133.43(c)(1) is not an infringing copy, the port director shall release all detained merchandise and transmit the copyright owner's bond to the importer.

[T.D. 87–40, 52 FR 9476, Mar. 25, 1987, as amended by T.D. 97–30, 62 FR 19493, Apr. 22, 1997]

§ 133.45 [Reserved]

§ 133.46 Demand for redelivery of released articles.

If it is determined that articles which have been released from Customs custody are subject to the prohibitions or restrictions of this subpart, the director of the port of entry shall promptly make demand for redelivery of the articles under the terms of the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in accordance with § 141.113 of this chapter. If the articles are not redelivered to Customs custody, a claim for liquidated damages shall be made in accordance with § 141.113(h) of this chapter.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 73–175, 38 FR 17447, July 2, 1973; T.D. 74–227, 39 FR 32023, Sept. 4, 1974; T.D. 84–213, 49 FR 41183, Oct. 19, 1984; T.D. 99–64, 64 FR 43266, Aug. 10, 1999]

Subpart F—Procedure Following Forfeiture or Assessment of Liquidated Damages

§ 133.51 Relief from forfeiture or liquidated damages.

(a) *Petition for relief.* The importer may petition in accordance with parts 171 and 172 of this chapter for relief from, or cancellation of, a forfeiture incurred for violation of the trademark or copyright laws, or a claim for liquidated damages for failure to redeliver released merchandise incurred under the provisions of § 133.24 or § 133.46.

(b) *Conditioned relief.* In appropriate cases, except for articles bearing a counterfeit trademark, relief from a forfeiture may be granted pursuant to a petition for relief upon the following conditions and such other conditions as may be specified by the appropriate Customs authority:

(1) The unlawfully imported or prohibited articles are exported or destroyed under Customs supervision and at no expense to the Government;

(2) All offending trademarks or trade names are removed or obliterated prior to release of the articles:

(3) In the case of books or periodicals manufactured abroad contrary to the terms of the ''American manufacturing clause'' of the Copyright Act of 1976 (17 U.S.C. 602, 603):

(i) Satisfactory evidence is submitted that a statement of abandonment has been filed and recorded in the Copyright Office by the copyright owner in accordance with the procedures of the Copyright Office; and

(ii) The notice of copyright is completely obliterated prior to release of the books or periodicals.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 79–159, 44 FR 31968, June 4, 1979; T.D. 87–40, 52 FR 9476, Mar. 25, 1987]

§ 133.52 Disposition of forfeited merchandise.

(a) *Trademark (other than counterfeit) or trade name violations.* Articles forfeited for violation of the trademark laws, other than articles bearing a counterfeit trademark, shall be disposed of in accordance with the procedures applicable to forfeitures for violation of the Customs laws, after the removal or obliteration of the name, mark, or trademark by reason of which the articles were seized.

(b) *Copyright violations.* Articles forfeited for violation of the copyright laws shall be destroyed.

(c) *Articles bearing a counterfeit trademark.* Merchandise forfeited for violation of the trademark laws shall be destroyed, unless it is determined that the merchandise is not unsafe or a hazard to health and the Commissioner of Customs or his designee has the written consent of the U.S. trademark owner, in which case the Commissioner of Customs or his designee may dispose of the merchandise, after obliteration of the trademark, where feasible, by:

(1) Delivery to any Federal, State, or local government agency that, in the opinion of the Commissioner or his designee, has established a need for the merchandise; or

(2) Gift to any charitable institution that, in the opinion of the Commissioner or his designee, has established a need for the merchandise; or

(3) Sale at public auction, if more than 90 days has passed since the forfeiture and Customs has determined that no need for the merchandise has been established under paragraph (c)(1) or (c)(2) of this section.

[T.D. 79–159, 44 FR 31969, June 4, 1969, as amended by T.D. 94–90, 59 FR 55997, Nov. 10, 1994; T.D. 97–91, 62 FR 61232, Nov. 17, 1997]

§ 133.53 Refund of duty.

If a violation of the trademark or copyright laws is not discovered until after entry and deposit of estimated duty, the entry shall be endorsed with an appropriate notation and the duty refunded as an erroneous collection upon exportation or destruction of the prohibited articles in accordance with § 158.41 or § 158.45 of this chapter.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 73–175, 38 FR 17447, July 2, 1973]

PART 134—COUNTRY OF ORIGIN MARKING

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AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1304, 1624.

SOURCE: T.D. 72–262, 37 FR 20318, Sept. 29, 1972, unless otherwise noted.

§ 134.0 Scope.

This part sets forth regulations implementing the country of origin marking requirements and exceptions of section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), together with certain marking provisions of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). The consequences and procedures to be followed when articles are not legally marked are set forth in this part. The consequences and procedures to be followed when articles are falsely marked are set forth in § 11.13 of this chapter. Special marking and labeling requirements are covered elsewhere. Provisions regarding the review and appeal rights of exporters and producers resulting from adverse North American Free Trade Agreement marking decisions are contained in subpart J of part 181 of this chapter.

[T.D. 81–290, 46 FR 58070, Nov. 30, 1981, as amended by T.D. 89–1, 53 FR 51255, Dec. 21, 1988; T.D. 94–1, 58 FR 69471, Dec. 30, 1993]

Subpart A—General Provisions

§ 134.1 Definitions.

When used in this part, the following terms shall have the meaning indicated:

(a) *Country*. ''Country'' means the political entity known as a nation. Colonies, possessions, or protectorates outside the boundaries of the mother country are considered separate countries.

(b) *Country of origin*. ''Country of origin'' means the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the ''country of origin''

within the meaning of this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

(c) *Foreign origin*. ''Foreign origin'' refers to a country of origin other than the United States, as defined in paragraph (e) of this section, or its possessions and territories.

(d) *Ultimate purchaser*. The ''ultimate purchaser'' is generally the last person in the United States who will receive the article in the form in which it was imported; however, for a good of a NAFTA country, the ''ultimate purchaser'' is the last person in the United States who purchases the good in the form in which it was imported. It is not feasible to state who will be the ''ultimate purchaser'' in every circumstance. The following examples may be helpful:

(1) If an imported article will be used in manufacture, the manufacturer may be the ''ultimate purchaser'' if he subjects the imported article to a process which results in a substantial transformation of the article, even though the process may not result in a new or different article, or for a good of a NAFTA country, a process which results in one of the changes prescribed in the NAFTA Marking Rules as effecting a change in the article's country of origin.

(2) If the manufacturing process is merely a minor one which leaves the identity of the imported article intact, the consumer or user of the article, who obtains the article after the processing, will be regarded as the ''ultimate purchaser.'' With respect to a good of a NAFTA country, if the manufacturing process does not result in one of the changes prescribed in the NAFTA Marking Rules as effecting a change in the article's country of origin, the consumer who purchases the article after processing will be regarded as the ultimate purchaser.

(3) If an article is to be sold at retail in its imported form, the purchaser at retail is the ''ultimate purchaser.''

(4) If the imported article is distributed as a gift the recipient is the ''ultimate purchaser'', unless the good is a good of a NAFTA country. In that case, the purchaser of the gift is the ultimate purchaser.

(e) *United States*. ''United States'' includes all territories and possessions of the United States, except the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the island of Guam.

(f) *Customs territory of the United States*. ''Customs territory of the United States,'' as used in this chapter includes the States, the District of Columbia, and the Commonwealth of Puerto Rico.

(g) *Good of a NAFTA country*. A ''good of a NAFTA country'' is an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.

(h) *NAFTA*. ''NAFTA'' means the North American Free Trade Agreement entered into by the United States, Canada and Mexico on August 13, 1992.

(i) *NAFTA country*. ''NAFTA country'' means the territory of the United States, Canada or Mexico, as defined in Annex 201.1 of the NAFTA.

(j) *NAFTA Marking Rules*. The ''NAFTA Marking Rules'' are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country.

(k) *Conspicuous*. ''Conspicuous'' means capable of being easily seen with normal handling of the article or container.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 94–1, 58 FR 69471, Dec. 30, 1993; T.D. 95–68, 60 FR 46362, Sept. 6, 1995]

§ 134.2 Additional duties.

Articles not marked as required by this part shall be subject to additional duties of 10 percent of the final appraised value unless exported or destroyed under Customs supervision prior to liquidation of the entry, as provided in 19 U.S.C. 1304(f). The 10 percent additional duty is assessable for failure either to mark the article (or container) to indicate the English name of the country of origin of the article or to include words or symbols required to prevent deception or mistake.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 90–51, 55 FR 28190, July 10, 1990]

§ 134.3 Delivery withheld until marked and redelivery ordered.

(a) Any imported article (or its container) held in Customs custody for inspection, examination, or appraisement shall not be delivered until marked with its country of origin, or until estimated duties payable under 19 U.S.C. 1304(f), or adequate security for those duties (see § 134.53(a)(2)), are deposited.

(b) The port director may demand redelivery to Customs custody of any article (or its container) previously released which is found to be not marked legally with its country of origin for the purpose of requiring the article (or its container) to be properly marked. a demand for redelivery shall be made, as required under § 141.113(a) of this chapter, not later than 30 days after—

(1) The date of entry, in the case of merchandise examined in public stores and places of arrival, such as docks, wharfs, or piers; or

(2) The date of examination, in the case of merchandise examined at the importer's premises or such other appropriate places as determined by the port director.

(c) Nothing in this part shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law.

[T.D. 80–88, 45 FR 18921, Mar. 24, 1980, as amended by T.D. 90–51, 55 FR 28190, July 10, 1990]

§ 134.4 Penalties for removal, defacement, or alteration of marking.

Any intentional removal, defacement, destruction, or alteration of a marking of the country of origin required by section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), and this part in order to conceal this information may result in criminal penalties of up to $5,000 and/or imprisonment for 1 year, as provided in 19 U.S.C. 1304(h).

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 90–51, 55 FR 28191, July 10, 1990]

Subpart B—Articles Subject to Marking

§ 134.11 Country of origin marking required.

Unless excepted by law, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article, at the time of importation into the Customs territory of the United States. Containers of articles excepted from marking shall be marked with the name of the country of origin of the article unless the container is also excepted from marking.

§ 134.12 Foreign articles reshipped from a U.S. possession.

Articles of foreign origin imported into any possession of the United States outside its Customs territory and reshipped to the United States are subject to all marking requirements applicable to like articles of foreign origin imported directly from a foreign country to the United States.

§ 134.13 Imported articles repacked or manipulated.

(a) *Marking requirement*. An article within the provisions of this section shall be marked with the name of the country of origin at the time the article is withdrawn for consumption unless the article and its container are exempted from marking under provisions of subpart D of this part at the time of importation.

(b) *Applicability*. The provisions of this section are applicable to the following articles:

(1) Articles repacked in a bonded warehouse under § 19.8 of this chapter;

(2) Articles manipulated under section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), and § 19.11 of this chapter;

(3) Articles manipulated, but not manufactured, in a foreign-trade zone under § 146.32 of this chapter.

§ 134.14 Articles usually combined.

(a) *Articles combined before delivery to purchaser*. When an imported article is of a kind which is usually combined with another article after importation but before delivery to an ultimate purchaser and the name indicating the country of origin of the article appears in a place on the article so that the name will be visible after such combining, the marking shall include, in addition to the name of the country of origin, words or symbols which shall clearly show that the origin indicated is that of the imported article only and not that of any other article with which the imported article may be combined after importation.

(b) *Example*. Labels and similar articles so marked that the name of the country of origin of the label or article is visible after it is affixed to another article in this country shall be marked with additional descriptive words such as ''Label made (or printed) in (name of country)'' or words of similar meaning. See subpart C of this part for marking of bottles, drums, or other containers.

(c) *Applicability*. This section shall not apply to articles of a kind which are ordinarily so substantially changed in the United States that the articles in their changed condition become products of the United States. An article excepted from marking under subpart D of this part is not within the scope of section 304(a)(2), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)(2)), and is not subject to the requirements of this section.

Subpart C—Marking of Containers or Holders

§ 134.21 Special marking.

This subpart includes only country of origin marking requirements and exceptions under section 304(b), Tariff Act of 1930, as amended (19 U.S.C. 1304(b)), for containers or holders. Special marking may be required by the Internal Revenue Service on alcoholic beverage bottles and other requirements may be imposed by reason of the nature of the contents by other Government agencies.

§ 134.22 General rules for marking of containers or holders.

(a) *Contents excepted from marking*. When an article is excepted from the marking requirements by subpart D of this part, the outermost container or holder in which the article ordinarily reaches the ultimate purchaser shall be marked to indicate the country of origin of the article whether or not the article is marked to indicate its country of origin.

(b) *Containers or holders treated as imported articles*. Containers or holders for imported merchandise which are subject to treatment as imported articles under the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall be marked to indicate clearly the country of their own origin in addition to any marking which may be required to show the country of origin of their contents; however, no marking is required for any good of a NAFTA country which is a usual container.

(c) *Containers or holders bearing a U.S. address*. Containers or holders of imported merchandise bearing the name and address of an importer, distributor, or other person or company in the United States shall be marked in close proximity to the U.S. address to indicate clearly the country of origin of the contents with a marking such as ''Contents made in France'' or ''Contents Product of Spain.''

(d) *Usual containers*—(1) *''Usual container'' defined*. For purposes of this subpart, a usual container means the container in which a good will ordinarily reach its ultimate purchaser. Containers which are not included in the price of the goods with which they are sold, or which impart the essential character to the whole, or which have significant uses, or lasting value independent of the contents, will generally not be regarded as usual containers. However, the fact that a container is sturdy and capable of repeated use with its contents does not preclude it from being considered a usual container so long as it is the type of container in which its contents are ordinarily sold. A usual container may be any type of container, including one which is specially shaped or fitted to contain a specific good or set of goods such as a camera case or an eyeglass case, or

packing, storage and transportation materials.

(2) *A good of a NAFTA country which is a usual container*. A good of a NAFTA country which is a usual container, whether or not disposable and whether or not imported empty or filled, is not required to be marked with its own country of origin. If imported empty, the importer must be able to provide satisfactory evidence to Customs at the time of importation that it will be used only as a usual container (that it is to be filled with goods after importation and that such container is of a type in which these goods ordinarily reach the ultimate purchaser).

(e) *Exceptions*. Containers or holders of imported articles are not required to be marked if:

(1) *Excepted articles*. They are containers or holders of articles within the exceptions set forth in paragraph (f), (g), or (h) in § 134.32 or they are containers of a good of a NAFTA country within the exceptions set forth in paragraph (e), (f), (g), (h), (i), (p) or (q) of § 134.32.

(2) *Excepted containers or holders*. The container or holder itself is within an exception set forth in subpart D of this part.

(3) *To be filled by the importer*. The container or holder is within the exception set forth in § 134.24(c).

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 94–1, 58 FR 69471, Dec. 30, 1993]

§ 134.23 Containers or holders designed for or capable of reuse.

(a) *Usual and ordinary reusable containers or holders*. Except for goods of a NAFTA country which are usual containers, containers or holders designed for or capable of reuse after the contents have been consumed, whether imported full or empty, must be individually marked to indicate the country of their own origin with a marking such as, ''Container Made in (name of country).'' Examples of the containers or holders contemplated are heavy duty steel drums, tanks, and other similar shipping, storage, transportation containers or holders capable of reuse. These containers or holders are subject to the treatment specified in General Rule of Interpretation 5(b), Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(b) *Other reusable containers or holders*. Containers or holders which give the whole importation its essential character, as described in General Rule of Interpretation 5(a) (19 U.S.C. 1202), must be individually marked to clearly indicate their own origin with a marking such as, ''Container made in (name of country).'' Examples of the containers contemplated are mustard jars reusable as beer mugs; shaving soap containers reusable as shaving mugs; fancy cologne bottles reusable as flower vases, and other containers which have a lasting value or decorative use.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 89–1, 53 FR 51256, Dec. 21, 1988; T.D. 94–1, 58 FR 69471, Dec. 30, 1993]

§ 134.24 Containers or holders not designed for or capable of reuse.

(a) *Containers ordinarily discarded after use*. Disposable containers or holders subject to the provisions of this section are the usual ordinary types of containers or holders, including cans, bottles, paper or polyethylene bags, paperboard boxes, and similar containers or holders which are ordinarily discarded after the contents have been consumed.

(b) *Imported empty*. Disposable containers or holders imported for distribution or sale are subject to treatment as imported articles in accordance with the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), and shall be marked to indicate clearly the country of their own origin. However, when the containers are packed and sold in multiple units (dozens, gross, etc.), this requirement ordinarily may be met by marking the outermost container which reaches the ultimate purchaser.

(c) *Imported to be filled*—(1) *If unmarked*. When disposable containers or holders or usual containers which are goods of a NAFTA country are imported by persons or firms who fill or package them with various products which they sell, these persons or firms are the ''ultimate purchasers'' of these containers or holders or usual containers which are goods of a NAFTA country and they may be excepted from individual marking pursuant to 19

U.S.C. 1304(a)(3)(D). The outside wrappings or packages containing the containers shall be clearly marked to indicate the country of origin.

(2) *If marked.* If the disposable containers or holders or the usual containers which are goods of a NAFTA country are marked with the country of origin at the time of importation and the marking will be visible after they are filled, the marking shall clearly indicate that the container only and not the contents were made in the named country. For example, bottles, drums, or other containers imported empty, to be filled in the United States, shall be marked with such words as ''Bottle (or container) made in (name of country).''

(d) *Imported full*—(1) *When contents are excepted from marking.* Usual disposable containers in use as such at the time of importation shall not be required to be marked to show the country of their own origin, but shall be marked to indicate the origin of their contents regardless of the fact that the contents are excepted from marking requirements; however, such marking is not required if the contents are excepted from marking requirements under paragraph (f), (g), or (h) of § 134.32 or, in the case of a good of a NAFTA country, under paragraph (e), (f), (g), (h), (i), (p) or (q) of that section.

(2) *Sealed containers or holders.* Disposable containers or holders of imported merchandise, which are sold without normally being opened by the ultimate purchaser (e.g., individually wrapped soap bars or tennis balls in a vacuum sealed can), shall be marked to indicate the country of origin of their contents.

(3) *Unsealed containers.* Unsealed disposable containers of imported merchandise normally unopened by the ultimate purchaser, may be excepted from marking if the article is so marked that the country of origin is clearly visible without unpacking the container. However, if the container is normally opened by the ultimate purchaser prior to purchase, only the article need be marked.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 89–1, 53 FR 51255, Dec. 21, 1988; T.D. 94–1, 58 FR 69471, Dec. 30, 1993]

§ 134.25 Containers or holders for repacked J-list articles and articles incapable of being marked.

(a) *Certification requirements.* If an article subject to these requirements is intended to be repacked in new containers for sale to an ultimate purchaser after its release from Customs custody, or if the port director having custody of the article, has reason to believe such article will be repacked after its release, the importer shall certify to the port director that: (1) If the importer does the repacking, the new container shall be marked to indicate the country of origin of the article in accordance with the requirements of this part; or (2) if the article is intended to be sold or transferred to a subsequent purchaser or repacker, the importer shall notify such purchaser or transferee, in writing, at the time of sale or transfer, that any repacking of the article must conform to these requirements. The importer, or his authorized agent, shall sign the following statement.

CERTIFICATE OF MARKING—REPACKED J-LIST ARTICLES AND ARTICLES INCAPABLE OF BEING MARKED

(Port of entry) _____

I, of , certify that if the article(s) covered by this entry (entry no.(s) dated), is (are) repacked in a new container(s), while still in my possession, the new containers, unless excepted, shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the container(s) will permit, in such manner as to indicate the country of origin of the article(s) to the ultimate purchaser(s) in accordance with the requirements of 19 U.S.C. 1304 and 19 CFR part 134. I further certify that if the article(s) is (are) intended to be sold or transferred by me to a subsequent purchaser or repacker, I will notify such purchaser or transferee, in writing, at the time of sale or transfer, of the marking requirements.

Date _____

Importer _____

The certification statement may appear as a typed or stamped statement on an appropriate entry document or commercial invoice, or on a preprinted attachment to such entry or invoice; or it may be submitted in blanket form to cover all importations of a particular product for a given period (e.g., calendar year). If the blanket procedure is

used, a certification must be filed at each port where the article is entered.

(b) *Facsimile signatures*. The certification statement may be signed by means of an authorized facsimile signature.

(c) *Time of filing*. The certification statement shall be filed with the port director at the time of entry summary. If the certification is not available at that time, a bond shall be given for its production in accordance with § 141.66, Customs Regulations (19 CFR 141.66). In case of repeated failure to timely file the certification required under this section, the port director may decline to accept a bond for the missing document and demand redelivery of the merchandise under § 134.51, Customs Regulations (19 CFR 134.51).

(d) *Notice to subsequent purchaser or repacker*. If the article is sold or transferred to a subsequent purchaser or repacker the following notice shall be given to the purchaser or repacker:

NOTICE TO SUBSEQUENT PURCHASER OR REPACKER

These articles are imported. The requirements of 19 U.S.C. 1304 and 19 CFR part 134 provide that the articles or their containers must be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article or container will permit, in such a manner as to indicate to an ultimate purchaser in the United States, the English name of the country of origin of the article.

(e) *Duties and penalties*. Failure to comply with the certification requirements in paragraph (a) may subject the importer to a demand for liquidated damages under § 134.54(a) and for the additional duty under 19 U.S.C. 1304. Fraud or negligence by any person in furnishing the required certification may also result in a penalty under 19 U.S.C. 1592.

[T.D. 83–155, 48 FR 33863, July 26, 1983]

§ 134.26 Imported articles repacked or manipulated.

(a) *Certification requirements*. If an article subject to these requirements is intended to be repacked in retail containers (e.g., blister packs) after its release from Customs custody, or if the port director having custody of the article, has reason to believe such article will be repacked after its release, the importer shall certify to the port director that: (1) If the importer does the repacking, he shall not obscure or conceal the country of origin marking appearing on the article, or else the new container shall be marked to indicate the country of origin of the article in accordance with the requirements of this part; or (2) if the article is intended to be sold or transferred to a subsequent purchaser or repacker, the importer shall notify such purchaser or transferee, in writing, at the time of sale or transfer, that any repacking of the article must conform to these requirements. The importer, or his authorized agent, shall sign the following statement.

CERTIFICATE OF MARKING BY IMPORTER—REPACKED ARTICLES SUBJECT TO MARKING

(Port of entry) _____

I, _____ of _____, certify that if the article(s) covered by this entry (entry no.(s) ____ dated ____), is (are) repacked in retail container(s) e.g., blister packs), while still in my possession, the new container(s) will not conceal or obscure the country of origin marking appearing on the article(s), or else the new container(s), unless excepted, shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the container(s) will permit, in such manner as to indicate the country of origin of the article(s) to the ultimate purchaser(s) in accordance with the requirements of 19 U.S.C. 1304 and 19 CFR part 134. I further certify that if the article(s) is (are) intended to be sold or transferred by me to a subsequent purchaser or repacker, I will notify such purchaser or transferee, in writing, at the time of sale or transfer, of the marking requirements.

Date _____

Importer _____

The certification statement may appear as a typed or stamped statement on an appropriate entry document or commercial invoice, or on a preprinted attachment to such entry or invoice; or it may be submitted in blanket form to cover all importations of a particular product for a given period (e.g., calendar year). If the blanket procedure is used, a certification must be filed at each port where the article(s) is entered.

(b) *Facsimile signatures*. The certification statement may be signed by means of an authorized facsimile signature.

(c) *Time of filing*. The certification statement shall be filed with the port director at the time of entry summary. If the certification is not available at that time, a bond shall be given for its production in accordance with § 141.66, Customs Regulations (19 CFR 141.66). In case of repeated failure to timely file the certification required under this subsection, the port director may decline to accept a bond for the missing document and demand redelivery of the merchandise under § 134.51, Customs Regulations (19 CFR 134.51).

(d) *Notice to subsequent purchaser or repacker*. If the article is sold or transferred to a subsequent purchaser or repacker the following notice shall be given to the purchaser or repacker:

NOTICE TO SUBSEQUENT PURCHASER OR REPACKER

These articles are imported. The requirements of 19 U.S.C. 1304 and 19 CFR part 134 provide that the articles in their containers must be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article or container will permit, in such a manner as to indicate to an ultimate purchaser in the United States, the English name of the country of origin of the article.

(e) *Duties and penalties*. Failure to comply with the certification requirements in paragraph (a) may subject the importer to a demand for liquidated damages under § 134.54(a) and for the additional duty under 19 U.S.C. 1304. Fraud or negligence by any person in furnishing the required certification may also result in a penalty under 19 U.S.C. 1592.

(f) *Exceptions*. The requirements of this section do not apply to repackaging in a container that can readily be opened for inspection by the ultimate purchaser in the United States, unless such container bears a U.S. address or other potentially misleading marking.

[T.D. 84–127, 49 FR 22795, June 1, 1984]

Subpart D—Exceptions to Marking Requirements

§ 134.31 Requirements of other agencies.

Nothing in this subpart shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of any law, such as those of the Federal Trade Commission, Food and Drug Administration, and other agencies.

§ 134.32 General exceptions to marking requirements.

The articles described or meeting the specified conditions set forth below are excepted from marking requirements (see subpart C of this part for marking of the containers):

(a) Articles that are incapable of being marked;

(b) Articles that cannot be marked prior to shipment to the United States without injury;

(c) Articles that cannot be marked prior to shipment to the United States except at an expense economically prohibitive of its importation;

(d) Articles for which the marking of the containers will reasonably indicate the origin of the articles;

(e) Articles which are crude substances;

(f) Articles imported for use by the importer and not intended for sale in their imported or any other form;

(g) Articles to be processed in the United States by the importer or for his account otherwise than for the purpose of concealing the origin of such articles and in such manner that any mark contemplated by this part would necessarily be obliterated, destroyed, or permanently concealed;

(h) Articles for which the ultimate purchaser must necessarily know, or in the case of a good of a NAFTA country, must reasonably know, the country of origin by reason of the circumstances of their importation or by reason of the character of the articles even though they are not marked to indicate their origin;

(i) Articles which were produced more than 20 years prior to their importation into the United States;

(j) Articles entered or withdrawn from warehouse for immediate exportation or for transportation and exportation;

(k) Products of American fisheries which are free of duty;

(l) Products of possessions of the United States;

(m) Products of the United States exported and returned;

(n) Articles exempt from duty under §§ 10.151 through 10.153, 145.31 or 145.32 of this chapter;

(o) Articles which cannot be marked after importation except at an expense that would be economically prohibitive unless the importer, producer, seller, or shipper failed to mark the articles before importation to avoid meeting the requirements of the law;

(p) Goods of a NAFTA country which are original works of art; and

(q) Goods of a NAFTA country which are provided for in subheading 6904.10 or heading 8541 or 8542 of the Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202).

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 73–135, 38 FR 13369, May 21, 1973; T.D. 73–175, 38 FR 17447, July 2, 1973; T.D. 94–1, 58 FR 69471, Dec. 30, 1993; T.D. 94–4, 59 FR 140, Jan. 3, 1994; T.D. 96–48, 61 FR 28980, June 6, 1996]

§ 134.33 J-List exceptions.

Articles of a class or kind listed below are excepted from the requirements of country of origin marking in accordance with the provisions of section 304(a)(3)(J), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)(3)(J)). However, in the case of any article described in this list which is imported in a container, the outermost container in which the article ordinarily reaches the ultimate purchaser is required to be marked to indicate the origin of its contents in accordance with the requirements of subpart C of this part. All articles are listed in Treasury Decisions 49690, 49835, and 49896. A reference different from the foregoing indicates an amendment.

Articles	References
Art, works of.	
Articles classified under subheadings 9810.00.15, 9810.00.25, 9810.00.40 and 9810.00.45, Harmonized Tariff Schedule of the United States.	T.D. 66–153.
Articles entered in good faith as antiques and rejected as unauthentic.	
Bagging, waste.	
Bags, jute.	
Bands, steel.	
Beads, unstrung.	
Bearings, ball, ⅝–inch or less in diameter.	
Blanks, metal, to be plated.	
Bodies, harvest hat.	
Bolts, nuts, and washers.	
Briarwood in blocks.	
Briquettes, coal or coke.	
Buckles, 1 inch or less in greatest dimension.	
Burlap.	
Buttons.	
Cards, playing.	
Cellophane and celluloid in sheets, bands, or strips.	
Chemicals, drugs, medicinal, and similar substances, when imported in capsules, pills, tablets, lozenges, or troches.	
Cigars and cigarettes.	
Covers, straw bottle.	
Dies, diamond wire, unmounted.	
Dowels, wooden.	
Effects, theatrical.	
Eggs.	
Feathers.	
Firewood.	
Flooring, not further manufactured than planed, tongued and grooved.	T.D.s 49750; 50366(6).
Flowers, artificial, except bunches.	
Flowers, cut.	
Glass, cut to shape and size for use in clocks, hand, pocket, and purse mirrors, and other glass of similar shapes and sizes, not including lenses or watch crystals.	
Glides, furniture, except glides with prongs.	
Hairnets.	
Hides, raw.	
Hooks, fish (except snelled fish hooks).	T.D. 50205(3).
Hoops (wood), barrel.	
Laths.	
Leather, except finished.	
Livestock.	
Lumber, sawed	T.D.s 49750; 50366(6).
Metal bars, except concrete reinforcement bars; billets, blocks, blooms; ingots; pigs; plates; sheets, except galvanized sheets; shafting; slabs; and metal in similar forms.	
Mica not further manufactured than cut or stamped to dimensions, shape or form.	
Monuments.	
Nails, spikes, and staples.	
Natural products, such as vegetables, fruits, nuts, berries, and live or dead animals, fish and birds; all the foregoing which are in their natural state or not advanced in any manner further than is necessary for their safe transportation.	
Nets, bottle, wire.	
Paper, newsprint.	
Paper, stencil.	
Paper, stock.	
Parchment and vellum.	
Parts for machines imported from same country as parts.	
Pickets (wood).	
Pins, tuning.	

Articles	References
Plants, shrubs and other nursery stock.	
Plugs, tie.	
Poles, bamboo.	
Posts (wood), fence.	
Pulpwood.	
Rags (including wiping rags)	
Rails, joint bars, and tie plates covered by subheadings 7302.10.10 through 7302.90.00, Harmonized Tariff Schedule of the United States.	
Ribbon.	
Rivets.	
Rope, including wire rope; cordage; cords; twines, threads, and yarns.	
Scrap and waste.	
Screws.	
Shims, track.	
Shingles (wood), bundles of (except bundles of red-cedar shingles).	T.D. 49750.
Skins, fur, dressed or dyed.	
Skins, raw fur.	
Sponges.	
Springs, watch.	
Stamps, postage and revenue, and other articles covered in subheadings 9704.00.00 and 4807.00.00, Harmonized Tariff Schedule of the United States.	T.D. 66–153.
Staves (wood), barrel.	
Steel, hoop.	
Sugar, maple.	
Ties (wood), railroad.	
Tides, not over 1 inch in greatest dimension.	
Timbers, sawed.	
Tips, penholder.	
Trees, Christmas.	
Weights, analytical and precision in sets	T.D.s 49750; 51802.
Wicking, candle.	
Wire, except barbed.	

[T.D. 72–262, 35 FR 20318, Sept. 29, 1972, as amended by T.D. 85–123, 50 FR 29954, July 23, 1985; T.D. 89–1, 53 FR 51256, Dec. 21, 1988; T.D. 95–79, 60 FR, 49752, Sept. 27, 1995]

§ 134.34 Certain repacked articles.

(a) *Exception for repacked articles*. An exception under § 134.32(d) may be authorized in the discretion of the port director for imported articles which are to be repacked after release from Customs custody under the following conditions:

(1) The containers in which the articles are repacked will indicate the origin of the articles to an ultimate purchaser in the United States.

(2) The importer arranges for supervision of the marking of the containers by Customs officers at the importer's expense or secures such verification, as may be necessary, by certification and the submission of a sample or otherwise, of the marking prior to the liquidation of the entry.

(b) *Liquidation of entries*. The liquidation of such entries may be deferred for a period of not more than 60 days from the date that a request for repacking is granted. Extensions of the 60-day deferral period may be granted by the port director in his discretion upon written application by the importer.

[T.D. 84–127, 49 FR 22795, June 1, 1984]

§ 134.35 Articles substantially changed by manufacture.

(a) *Articles other than goods of a NAFTA country*. An article used in the United States in manufacture which results in an article having a name, character, or use differing from that of the imported article, will be within the principle of the decision in the case of United States v. Gibson-Thomsen Co., Inc., 27 C.C.P.A. 267 (C.A.D. 98). Under this principle, the manufacturer or processor in the United States who converts or combines the imported article into the different article will be considered the ''ultimate purchaser'' of the imported article within the contemplation of section 304(a), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)), and the article shall be excepted from marking. The outermost containers of the imported articles shall be marked in accord with this part.

(b) *Goods of a NAFTA country*. A good of a NAFTA country which is to be processed in the United States in a manner that would result in the good becoming a good of the United States under the NAFTA Marking Rules is excepted from marking. Unless the good is processed by the importer or on its behalf, the outermost container of the good shall be marked in accord with this part.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 94–1, 58 FR 69472, Dec. 30, 1993]

§ 134.36 Inapplicability of marking exception for articles processed by importer.

An article which is to be processed in the United States by the importer or for his account shall not be considered to be within the specifications of section 304(a)(3)(G), of the Tariff Act of

1930, as amended (19 U.S.C. 1304(a)(3)(G)), if there is a reasonable method of marking which will not be obliterated, destroyed, or permanently concealed by such processing.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 97–72, 62 FR 44214, Aug. 20, 1997]

Subpart E—Method and Location of Marking Imported Articles

§ 134.41 Methods and manner of marking.

(a) *Suggested methods of marking*. Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that the marking of the country of origin be legible, indelible, and permanent. Definite methods of marking are prescribed only for articles provided for in § 134.43 and for articles which are the objects of special rulings by the Commissioner of Customs. As a general rule, marking requirements are best met by marking worked into the article at the time of manufacture. For example, it is suggested that the country of origin on metal articles be die sunk, molded in or etched; on earthenware or chinaware be glazed on in the process of firing; and on paper articles be imprinted.

(b) *Degree of permanence and visibility*. The degree of permanence should be at least sufficient to insure that in any reasonably foreseeable circumstance, the marking shall remain on the article (or its container) until it reaches the ultimate purchaser unless it is deliberately removed. The marking must survive normal distribution and store handling. The ultimate purchaser in the United States must be able to find the marking easily and read it without strain.

§ 134.42 Specific method may be required.

Marking merchandise by specific methods, such as die stamping, cast-in-the-mold lettering, etching, or engraving, or cloth labels may be required by the Commissioner of Customs in accordance with section 304(a), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)). Notices of such rulings shall be published in the FEDERAL REGISTER and the Customs Bulletin.

§ 134.43 Methods of marking specific articles.

(a) *Marking previously required by certain provisions of the Tariff Act of 1930*. Except for goods of a NAFTA country, articles of a class or kind listed below shall be marked legibly and conspicuously by die stamping, cast-in-the-mold lettering, etching (acid or electrolytic), engraving, or by means of metal plates which bear the prescribed marking and which are securely attached to the article in a conspicuous place by welding, screws, or rivets: knives, forks, steels, cleavers, clippers, shears, scissors, safety razors, blades for safety razors, surgical instruments, dental instruments, scientific and laboratory instruments, pliers, pincers, nippers and hinged hand tools for holding and splicing wire, vacuum containers, and parts of the above articles. Goods of a NAFTA country shall be marked by any reasonable method which is legible, conspicuous and permanent as otherwise provided in this part.

(b) *Watch, clock, and timing apparatus*. The country of origin marking requirements on watches, clocks, and timing apparatus are intensive and require special methods. (See § 11.9 of this chapter and Chapter 91, Additional U.S. Note 4, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202)).

(c) *Native American-style jewelry*—(1) *Definition*. For the purpose of this provision, Native American-style jewelry is jewelry which incorporates traditional Native American design motifs, materials and/or construction and therefore looks like, and could possibly be mistaken for, jewelry made by Native Americans.

(2) *Method of marking*. Except as provided in 19 U.S.C. 1304(a)(3) and in paragraph (c)(3) of this section, Native American-style jewelry must be indelibly marked with the country of origin by cutting, die-sinking, engraving, stamping, or some other permanent method. The indelible marking must appear legibly on the clasp or in some other conspicuous location, or alternatively, on a metal or plastic tag indelibly marked with the country of origin and permanently attached to the article.

(3) *Exception*. If it is technically or commercially infeasible to mark in the manner specified in paragraph (c)(2) of this section, or in the case of a good of a NAFTA country, the article may be marked by means of a string tag or adhesive label securely affixed, or some other similar method.

(d) *Native American-style arts and crafts*—(1) *Definition*. For the purpose of this provision, Native American-style arts and crafts are arts and crafts, such as pottery, rugs, kachina dolls, baskets and beadwork, which incorporate traditional Native American design motifs, materials and/or construction and therefore look like, and could possibly be mistaken for, arts and crafts made by Native Americans.

(2) *Method of Marking*. Except as provided for in 19 U.S.C. 1304(a)(3) and § 134.32 of this part, Native American-style arts and crafts must be indelibly marked with the country of origin by means of cutting, die-sinking, engraving, stamping, or some other equally permanent method. On textile articles, such as rugs, a sewn in label is considered to be an equally permanent method.

(3) *Exception*. Where it is technically or commercially infeasible to mark in the manner specified in paragraph (d)(2) of this section, or in the case of a good of a NAFTA country, the article may be marked by means of a string tag or adhesive label securely affixed, or some other similar method.

(e) *Assembled articles*. Where an article is produced as a result of an assembly operation and the country of origin of such article is determined under this chapter to be the country in which the article was finally assembled, such article may be marked, as appropriate, in a manner such as the following:

(1) Assembled in (country of final assembly);

(2) Assembled in (country of final assembly) from components of (name of country or countries of origin of all components); or

(3) Made in, or product of, (country of final assembly).

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 89–1, 53 FR 51255, Dec. 21, 1988; T.D. 89–88, 54 FR 39524, Sept. 27, 1989; T.D. 90–75, 55 FR 38317, Sept. 18, 1990; T.D. 90–78, 55 FR 40166, Oct. 2, 1990; T.D. 94–1, 58 FR 69472, Dec. 30, 1993; T.D. 94–4, 59 FR 140, Jan. 3, 1994; T.D. 96–48, 61 FR 28980, June 6, 1996]

§ 134.44 Location and other acceptable methods of marking.

(a) *Other acceptable methods*. Except for articles described in § 134.43 of this part or the subject of a ruling by the Commissioner of Customs, any method of marking at any location insuring that country of origin will conspicuously appear on the article shall be acceptable. Such marking must be legible and sufficiently permanent so that it will remain on the article (or its container when the container and not the article is required to be marked) until it reaches the ultimate purchaser unless deliberately removed.

(b) *Articles marked with paper sticker labels*. If paper sticker or pressure sensitive labels are used, they must be affixed in a conspicuous place and so securely that unless deliberately removed they will remain on the article while it is in storage or on display and until it is delivered to the ultimate purchaser.

(c) *Articles marked with tags*. When tags are used, they must be attached in a conspicuous place and in a manner which assures that unless deliberately removed they will remain on the article until it reaches the ultimate purchaser.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 94–1, 58 FR 69472, Dec. 30, 1993]

§ 134.45 Approved markings of country name.

(a) *Language*. (1) Except as otherwise provided in paragraph (a)(2) of this section, the markings required by this part shall include the full English name of the country of origin, unless another marking to indicate the English name of the country of origin is specifically authorized by the Commissioner of Customs. Notice of acceptable markings other than the full English name of the country of origin

shall be published in the FEDERAL REGISTER and the Customs Bulletin.

(2) A good of a NAFTA country may be marked with the name of the country of origin in English, French or Spanish.

(b) *Abbreviations and variant spellings.* Abbreviations which unmistakably indicate the name of a country, such as ''Gt. Britain'' for ''Great Britain'' or ''Luxemb'' and ''Luxembg'' for ''Luxembourg'' are acceptable. Variant spellings which clearly indicate the English name of the country of origin, such as ''Brasil'' for ''Brazil'' and ''Italie'' for ''Italy,'' are acceptable.

(c) *Adjectival form.* The adjectival form of the name of a country shall be accepted as a proper indication of the name of the country of origin of imported merchandise provided the adjectival form of the name does not appear with other words so as to refer to a kind or species of product. For example, such terms as ''English walnuts'' or ''Brazil nuts'' are unacceptable.

(d) *Colonies, possessions, or protectorates.* The name of a colony, possession, or protectorate outside the boundaries of the mother country shall usually be considered acceptable marking. When the Commissioner of Customs finds that the name is not sufficiently well known to insure that the ultimate purchasers will be fully informed of the country of origin, or where the name appearing alone may cause confusion, deception, or mistake, clarifying words shall be required. In such cases, the Commissioner of Customs shall specify in decisions published in the FEDERAL REGISTER and the Customs Bulletin the additional wording to be used in conjunction with the name of the colony, possession, or protectorate.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 94–1, 58 FR 69472, Dec. 30, 1993]

§ 134.46 Marking when name of country or locality other than country of origin appears.

In any case in which the words ''United States,'' or ''American,'' the letters ''U.S.A.,'' any variation of such words or letters, or the name of any city or location in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced appear on an imported article or its container, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin of the article, there shall appear legibly and permanently in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by ''Made in,'' ''Product of,'' or other words of similar meaning.

[T.D. 97–72, 62 FR 44214, Aug. 20, 1997]

§ 134.47 Souvenirs and articles marked with trademarks or trade names.

When as part of a trademark or trade name or as part of a souvenir marking, the name of a location in the United States or ''United States'' or ''America'' appear, the article shall be legibly, conspicuously, and permanently marked to indicate the name of the country of origin of the article preceded by ''Made in,'' ''Product of,'' or other similar words, in close proximity or in some other conspicuous location.

Subpart F—Articles Found Not Legally Marked

§ 134.51 Procedure when importation found not legally marked.

(a) *Notice to mark or redeliver.* When articles or containers are found upon examination not to be legally marked, the port director shall notify the importer on Customs Form 4647 to arrange with the port director's office to properly mark the article or containers, or to return all released articles to Customs custody for marking, exportation, or destruction.

(b) *Identification of articles.* When an imported article which is not legally marked is to be exported, destroyed, or marked under Customs supervision, the identity of the imported article shall be established to the satisfaction of the port director.

(c) *Supervision.* Verification of marking, exportation, or destruction of articles found not to be legally marked shall be at the expense of the importer and shall be performed under Customs

supervision unless the port director accepts a certificate of marking as provided for in § 134.52 in lieu of marking under Customs supervision.

§ 134.52 Certificate of marking.

(a) *Applicability*. Port directors may accept certificates of marking supported by samples of articles required to be marked, for which Customs Form 4647 was issued, from importers or from actual owners complying with the provision of § 141.20 of this chapter, to certify that marking of the country of origin on imported articles as required by this part has been accomplished.

(b) *Filing of certificates of marking*. The certificates of marking shall be filed in duplicate with the port director, and a sample of the marked merchandise shall accompany the certificate. The port director may waive the production of the marked sample when he is satisfied that the submission of such sample is impracticable.

(c) *Notice of acceptance*. The port director shall notify the importer or actual owner when the certificate of marking is accepted. Such notice of acceptance may be granted on the duplicate copy of the certificate of marking by use of a stamped notation of acceptance. The port director is authorized to spot check the marking of articles on which a certificate has been filed. If a spot check is performed, the approved copy of the certificate, if approval is granted, shall be returned to the importer or actual owner after the spot check is completed.

(d) *Filing of false certificate of marking*. If a false certificate of marking is filed with the port director indicating that goods have been properly marked when in fact they have not been so marked, a seizure shall be made or claim for monetary penalty reported under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592). In addition, in cases involving, willful deceit, a criminal case report may be made charging a violation of section 1001, title 18, United States Code, which provides for a fine up to $10,000 and/or imprisonment up to 5 years for anyone who willfully conceals a material fact or uses any document knowing the same to contain any false or fraudulent statement in connection with any matter within the jurisdiction of an agency of the United States.

(e) *Authority to require physical supervision when deemed necessary*. The port director may require physical supervision of marking as specified in § 134.51(c) in those cases in which he determines that such action is necessary to insure compliance with this part. In such cases the expenses of the Customs officer shall be reimbursed to the Government as provided for in § 134.55.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 73–175, 38 FR 17447, July 2, 1973; T.D. 84–18, 49 FR 1678, Jan. 13, 1984]

§ 134.53 Examination packages.

(a) *Site of marking*—(1) *Customs custody*. Articles (or containers) in examination packages may be marked by the importer at the place where they have been discharged from the importing or bonded carrier or in the public stores.

(2) *Importer's premises or elsewhere*. If it is impracticable to mark the articles (or containers) in examination packages as provided in paragraph (a)(1) of this section, the merchandise may be turned over to the importer after the amount of duty, estimated to be payable under 19 U.S.C. 1304(f) has been deposited to insure compliance with the marking requirements and the payment of any additional expense which will be incurred on account of Customs supervision. (See § 134.55.) The port director may at his discretion accept the bond on Customs Form 301, containing the basic importation and entry bond conditions set forth in § 113.62 of this chapter as security for the requirements of 19 U.S.C. 1304 (f) and (g).

(b) *Failure to export, destroy, or properly mark merchandise in examination packages*. If the articles (or containers) in examination packages are not exported, destroyed, or properly marked by the importer within a reasonable time (not more than 30 days), they shall be sent to general-order stores for disposition in accordance with part 127 of this chapter, unless covered by a warehouse entry. If covered by a warehouse entry, they shall be sent to the warehouse containing the rest of the

shipment for marking prior to withdrawal.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 78–99, 43 FR 13061, Mar. 29, 1978; T.D. 84–213, 49 FR 41183, Oct. 19, 1984; T.D. 90–51, 55 FR 28191, July 10, 1990]

§ 134.54 Articles released from Customs custody.

(a) *Demand for liquidated damages*. If within 30 days from the date of the notice of redelivery, or such additional period as the port director may allow for good cause shown, the importer does not properly mark or redeliver all merchandise previously released to him, the port director shall demand payment of liquidated damages incurred under the bond in an amount equal to the entered value of the articles not properly marked or redelivered.

(b) *Failure to petition for relief*. A written petition addressed to the Commissioner of Customs for relief from the payment of liquidated damages may be filed with the Fines, Penalties, and Forfeitures Officer in accord with part 172 of this chapter.

(c) *Relief from full liquidated damages*. Any relief from the payment of the full liquidated damages incurred will be contingent upon the deposit of the marking duty required by 19 U.S.C. 1304(f), and the satisfaction of the Fines, Penalties, and Forfeitures Officer that the importer was not guilty of bad faith in permitting the illegally marked articles to be distributed, has been diligent in attempting to secure compliance with the marking requirements, and has attempted by all reasonable means to effect redelivery of the merchandise.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 79–159, 44 FR 31969, June 4, 1979; T.D. 83–217, 48 FR 48659, Oct. 20, 1983; T.D. 90–51, 55 FR 28191, July 10, 1990; T.D. 99–27, 64 FR 13675, Mar. 22, 1999; T.D. 00–57, 65 FR 53575, Sept. 5, 2000]

§ 134.55 Compensation of Customs officers and employees.

(a) *Time for which compensation is charged*. The time for which compensation is charged shall include all periods devoted to supervision and all periods during which Customs officers or employees are away from their regular posts of duty by reason of such assignment and for which compensation to such officers and employees is provided for by law.

(b) *Applicability*—(1) *Official hours*. The compensation of Customs Officers or employees assigned to supervise the exportation, destruction, or marking of articles so as to exempt them from the application of marking duties shall be computed in accordance with the provisions of §§ 24.16 or 24.17(a)(3), respectively, of this chapter when such supervision is performed during a regularly-scheduled tour of duty.

(2) *Overtime*. When such supervision is performed by a Customs Officer or employee in an overtime status, the compensation with respect to the overtime shall be computed in accordance with the provisions of § 24.16 or § 24.17, respectively, of this chapter.

(c) *Expenses included*. In formulating charges for expenses pertaining to supervision of exportation, destruction, or marking, there shall be included all expenses of transportation, per diem allowance in lieu of subsistence, and all other expenses incurred by reason of such supervision from the time the Customs officer leaves his official station until he returns thereto.

(d) *Services rendered for more than one importer*. If the importations of more than one importer are concurrently supervised, the service rendered for each importer shall be regarded as a separate assignment, but the total amount of the compensation, and any expenses properly applicable to more than one importer, shall be equitably apportioned among the importers concerned.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 94–74, 59 FR 46757, Sept. 12, 1994]

PARTS 135–140 [RESERVED]