

might result in a more favorable competitive position for itself vis-a-vis other territorial producers relying on the same supplier. Disputes under this paragraph may be resolved under the appeals procedures contained in § 303.13(b).

(c) *Calculation of the value of the mid-year production incentive certificates.* (1) The value of each producer's certificate shall equal the producer's average creditable wage per unit shipped during the first six months of the calendar year multiplied by the sum of:

- (i) The number of units shipped up to 300,000 units times a factor of 90%; plus
- (ii) Incremental units shipped up to 450,000 units times a factor of 85%; plus
- (iii) Incremental units shipped up to 600,000 units times a factor of 80%; plus
- (iv) Incremental units shipped up to 750,000 units times a factor of 75%.

(2) *Calculation of the value of the annual production incentive certificates.* The value of each producer's certificate shall equal the producer's average creditable benefit per unit based on creditable wages, health insurance, life insurance and pension benefits plus any duty differential, if applicable, averaged from the amount of duty free units shipped during the calendar year multiplied by the sum of the following to obtain the total verified amount of the annual duty-refund per company. This amount would then be adjusted by deducting the amount of the mid-year duty-refund already issued.

- (i) The number of units shipped up to 300,000 units times a factor of 90%; plus
- (ii) Incremental units shipped up to 450,000 units times a factor of 85%; plus
- (iii) Incremental units shipped up to 600,000 units times a factor of 80%; plus
- (iv) Incremental units shipped up to 750,000 units times a factor of 75%.

(3) The Departments may make adjustments for these data in the manner set forth in § 303.5(c).

(d) *New entrant invitations.* Applications from new firms are invited for any unused portion of any territorial share.

(e) *Territorial shares.* The shares of the total duty exemption are 1,866,000 for the Virgin Islands, 500,000 for Guam,

500,000 for American Samoa, and 500,000 for the Northern Mariana Islands.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 53 FR 17825, May 19, 1988; 53 FR 52679, Dec. 29, 1988; 53 FR 52994, Dec. 30, 1988; 56 FR 9622, Mar. 7, 1991; 58 FR 21348, Apr. 21, 1993; 59 FR 8847, 8848, Feb. 24, 1994; 61 FR 55885, Oct. 30, 1996; 63 FR 49667, Sept. 17, 1998; 65 FR 8049, Feb. 17, 2000; 69 FR 51533, Aug. 20, 2004; 72 FR 16714, Apr. 5, 2007]

Subpart B—Jewelry

SOURCE: 64 FR 67150, Dec. 1, 1999, unless otherwise noted.

§ 303.15 Purpose.

(a) This subpart implements the responsibilities of the Secretaries of Commerce and the Interior ("the Secretaries") under Pub. L. 106-36, enacted 25 June 1999 which substantially amended Pub. L. 97-446, enacted 12 January 1983, amended by Pub. L. 89-805, enacted 10 November 1966, amended by Pub. L. 94-88, enacted 8 August 1975, amended by Pub. L. 94-241, enacted 24 March 1976, and amended by Pub. L. 103-465, enacted 8 December 1994, and Public Law 108-429, enacted on 3 December 2004.

(b) The amended law provides for the issuance of certificates to insular jewelry producers who have met the requirements of the laws and regulations, entitling the holder (or any transferee) to obtain refunds of duties on any article imported into the customs territory of the United States duty paid except for any article containing a material which is the product of a country to which column 2 rates of duty apply. The amounts of these certificates may not exceed specified percentages of the producers' verified creditable wages in the insular possessions (90% of wages paid for the production of the first 300,000 duty-free units and declining percentages, established by the Secretaries, of wages paid for incremental production up to 10,000,000 units by each producer) nor an aggregate annual amount for all certificates exceeding \$5,000,000 adjusted for growth by the ratio of the previous year's gross national product to the gross national product in 1982. However, the law specifies that watch producer benefits are not to be diminished as a consequence

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of extending the duty refund to jewelry manufacturers. In the event that the amount of the calculated duty refunds for watches and jewelry exceeds the total aggregate annual amount that is available, the watch producers shall receive their calculated amounts and the jewelry producers would receive amounts proportionately reduced from the remainder. Refund requests are governed by regulations issued by the Department of Homeland Security (see 19 CFR 7.4).

(c) Section 2401(a) of Pub. L. 106-36 and additional U.S. note 5 to chapter 91 of the HTSUS authorize the Secretaries to issue regulations necessary to carry out their duties. The Secretaries may cancel or restrict the certificate of any insular manufacturer found violating the regulations.

[49 FR 17740, Apr. 25, 1984, as amended at 70 FR 67648, Nov. 8, 2005; 72 FR 16715, Apr. 5, 2007; 73 FR 34857, June 19, 2008]

§ 303.16 Definitions and forms.

(a) *Definitions.* For purposes of the subpart, unless the context indicates otherwise:

(1) *Act* means Pub. L. 97-446, enacted 12 January 1983 (19 U.S.C. 1202), 96 Stat. 2329, as amended by Pub. L. 103-465, enacted on 8 December 1994, 108 Stat. 4991 and, as amended by Pub. L. 106-36, enacted on 25 June 1999, and Public Law 108-429, enacted on 3 December 2004.

(2) *Secretaries* means the Secretary of Commerce and the Secretary of the Interior or their delegates, acting jointly.

(3) *Director* means the Director of the Statutory Import Programs Staff, International Trade Administration, U.S. Department of Commerce.

(4) *Sale or transfer of a business* means the sale or transfer of control, whether temporary or permanent, over a firm which is eligible for a jewelry program duty-refund to any other firm, corporation, partnership, person or other legal entity by any means whatsoever, including, but not limited to, merger and transfer of stock, assets or voting trusts.

(5) *New firm* means a jewelry company which has requested in writing to the Secretaries permission to participate in the program. In addition to any other information required by the Sec-

retaries, new firm requests shall include a representation that the company agrees to abide by the laws and regulations of the program, an outline of the company's anticipated economic contribution to the territory (including the number of employees) and a statement as to whether the company is affiliated by ownership or control with any other watch or jewelry company in the insular possessions. The Secretaries will then review the request and make a decision based on the information provided and the economic contribution to the territory. A new jewelry firm may not be affiliated through ownership or control with any other jewelry duty-refund recipient. In assessing whether persons or parties are affiliated, the Secretaries will consider the following factors, among others: stock ownership; corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretaries may not find that control exists on the basis of these factors unless the relationship has the potential to affect decisions concerning production, pricing, or cost. Also, no jewelry duty-refund recipient may own or control more than one watch duty-refund recipient.

(6) *Jewelry producer* means a company, located in one of the insular territories (see paragraph (a)(8) of this section), that produces jewelry provided for in heading 7113, HTSUS, which meets all the Bureau of Customs and Border Protection requirements for duty-free entry set forth in General Note 3(a)(iv), HTSUS, and 19 CFR 7.3, and has maintained its eligibility for duty refund benefits by complying with these regulations.

(7) *Unit of Jewelry* means a single article (e.g., ring, bracelet, necklace), pair (e.g., cufflinks), gram for links which are sold in grams and stocked in grams, and other subassemblies and components in the customary unit of measure they are stocked and sold within the industry.

(8) *Territories, territorial and insular possessions* refers to the insular possessions of the United States (i.e., the U.S. Virgin Islands, Guam, American Samoa and the Northern Mariana Islands).