

U.S. Customs and Border Protection, DHS; Treasury

§ 4.12

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

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

(4) The port director shall immediately advise the master or agent of those discrepancies which are not reported by the master or agent. Notifi-

cation 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.

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(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*—(1) *General*. 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 are subject to declaration, entry, and payment of ad valorem duty. 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 the 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 CBP interpretations. Duty is based on actual foreign cost. This includes the original foreign purchase price of articles that have been imported into the United States and are later sent abroad for use.

(2) *Expenditures not subject to declaration, entry, or duty*. The following vessel repair expenditures are not subject to declaration, entry, or duty:

(i) Expenditures made in American Samoa, the Guantanamo Bay Naval Station, Guam, Puerto Rico, or the U.S. Virgin Islands because they are considered to have been made in the United States;

(ii) Reimbursements paid to members of the regular crew of a vessel for labor expended in making repairs to vessels; and

(iii) The cost of equipment, repair parts, and materials that are installed on a vessel documented under the laws of the United States and engaged in the foreign or coasting trade, if the installation is done by members of the reg-

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ular crew of such vessel while the vessel is on the high seas, in foreign waters, or in a foreign port, and does not involve foreign shipyard repairs by foreign labor.

(3) *Expenditures subject to declaration and entry but not 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. Furthermore, certain free trade agreements between the United States and other countries also may reduce the duties on vessel repair expenditures made in foreign countries that are parties to those agreements, although the final duty amount may depend on each agreement's schedule for phasing in those reductions. In these situations and others where there is no liability for duty, it is still required, except as otherwise required by law, that all repairs and purchases 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