

billing for, unordered merchandise constitutes a violation of section 5 of the FTC Act.⁸ Prior cases brought by the Commission to enforce the Postal Reorganization Act and Section 5 of the FTC Act provide guidance to industry regarding the illegality of sending and attempting to collect for unordered merchandise.⁹

Second, guides are particularly useful when they resolve uncertainty over what claims are likely to be considered "unfair or deceptive" under Section 5. Several of the provisions in Guides, however, do little more than advise against making untrue or deceptive claims, or failing to disclose material information where silence would be deceptive.

Moreover, the Commission understands from the comments that the industry is quickly evolving into electronic media and increasingly using licensing techniques to distribute legal publications, which present new technological and intellectual property issues for consideration. Thus, although the Guides provide overly detailed suggestions regarding presale disclosures, they are so narrowly focused that they do not include these or other new and perhaps more important areas of concern to sellers and purchasers.

Third, there appears to be no justification for singling out this

⁸ See 35 FR 14328 (1970). Under this law, sellers, other than charitable organizations soliciting contributions, may not ship unordered merchandise to consumers unless the recipient has expressly agreed to receive it or unless it is clearly identified as a gift, free sample, or the like. In addition, sellers cannot try to obtain payment for or the return of the unordered merchandise. Consumers who receive unordered merchandise are legally entitled to treat the merchandise as a gift. The Postal Reorganization Act refers to "mailing" of unordered merchandise. The Commission, however, has explained that the application of Section 5 of the FTC Act to such practices is not limited to unordered merchandise distributed through the U.S. mail, 43 FR 4113 (1978).

⁹ E.g., *Hachette Book Group USA, Inc.*, No. 39CV00116 (D. Conn. 1994) (settlement in which FTC charged that defendants failed to notify consumers that they would receive yearbooks or supplements unless they returned a mail cancellation card, failed to obtain consumers' agreement to return cancellation cards if they did not want the merchandise, and mailed merchandise and bills to consumers who had not placed orders; settlement included a \$200,000 civil penalty); *Field Publications Ltd. Partnership*, No. H-90-932 PCD (D. Conn. 1990) (settlement in which FTC charged that Field shipped unordered books to subscribers who had agreed to receive another series of books as part of a continuity plan; settlement included a \$175,000 civil penalty); *Standard Reference Library, Inc.* 77 F.T.C. 969, 976 (1970) (consent order prohibited respondents from representing that consumers' failure to return rejection cards or take any affirmative action to prevent the shipment of merchandise constituted a request to receive merchandise where consumers had not agreed to take on that obligation).

particular industry for unusually detailed and specific advice, or why legal reference material purchasers are in greater need of protection than purchasers in other industries. Industry associations, or purchaser associations such as AALL or AALS, can adopt guides of their own to educate sellers and purchasers about the information purchasers of legal reference materials need to make purchasing decisions. Indeed, eliminating the Guides may provide the incentive for these associations to develop their own guides that address their members' most important concerns.

Based on comments, the Commission has concluded that there no longer is a need for the Guides. The Commission, therefore, has rescinded the Guides.

List of Subjects in 16 CFR Part 256

Advertising, Law, Trade practices.

PART 256—[REMOVED]

The Commission, under the authority of Sections 5(a) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a) and 46(g), amends chapter I of title 16 in the Code of Federal Regulations by removing part 256.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00-994 Filed 1-18-00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 00-4]

RIN 1515-AC29

Boarding of Vessels in the United States

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document, as a primary focus, amends the Customs Regulations regarding the boarding of vessels arriving in ports of the United States. These amendments are made to implement amendments to the underlying statutory authority enacted as part of the Customs Modernization Act, as well as to reflect policy determinations necessitated as a result of those amendments. To this same end, certain general amendments are made to the regulations concerning vessel entry and clearance as well as the issuance of

permits to lade and unlade merchandise.

EFFECTIVE DATE: February 18, 2000.

FOR FURTHER INFORMATION CONTACT:

Legal aspects: Larry L. Burton, Office of Regulations and Rulings, 202-927-1287.

Operational aspects: Robert Watt, Office of Field Operations, 202-927-3654.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, amendments to certain Customs and navigation laws became effective as the result of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182), Title VI of which is popularly known as the Customs Modernization Act (the Act). Sections 653 and 656 of the Act significantly amended the statutes governing the entry and the lading and unloading of vessels in the United States. These operations are governed, respectively, by sections 434 and 448 of the Tariff Act of 1930, as amended (19 U.S.C. 1434 and 1448).

Prior to the subject amendments, the entry of vessels of the United States and vessels of foreign countries had been governed by separate statutes (19 U.S.C. 1434 and 1435), neither of which included elements concerning preliminary vessel entry or the boarding of vessels. The Act repealed 19 U.S.C. 1435 and amended 19 U.S.C. 1434 to provide for the entry of American and foreign-documented vessels under the same statute. Additionally, the amended 19 U.S.C. 1434 now provides authority for the promulgation of regulations regarding preliminary vessel entry, and while neither mandating boarding for all vessels nor specifying that optional boarding must be accomplished at any particular stage of the vessel entry process, the amended law does require that a sufficient number of vessels be boarded to ensure compliance with the laws enforced by the Customs Service.

The general authority provided for Customs to board vessels is found in section 581, Tariff Act of 1930, as amended (19 U.S.C. 1581). Prior to amendment, 19 U.S.C. 1448 as previously cited had linked the granting of preliminary vessel entry to a mandatory boarding requirement and physical presentation of manifest documents to a Customs boarding officer. The amended 19 U.S.C. 1448 no longer contains provisions regarding preliminary vessel entry, vessel boarding, or manifest presentation, all of which are now provided for in other statutes. The statute now provides that Customs may electronically issue permits to lade or unlade merchandise

pursuant to an authorized data interchange system, as an alternative to physical document presentation.

Accordingly, on July 6, 1998, a notice of proposed rulemaking was published in the **Federal Register** (63 FR 36379) soliciting comments to amend the Customs Regulations in order to properly implement the foregoing statutory amendments, as well as certain other statutory changes and revised Customs interpretations, governing the boarding of vessels arriving in ports of the United States, vessel entry and clearance, and the issuance of permits to lade and unlade merchandise. The specific Customs Regulations affected were §§ 4.1, 4.3, 4.8, 4.9, 4.16, 4.30, 4.60, 4.61, 4.68 and 4.70 (19 CFR 4.1, 4.3, 4.8, 4.9, 4.16, 4.30, 4.60, 4.61, 4.68 and 4.70).

Discussion of Comments

Nine comments were received in response to the notice of proposed rulemaking. There were two comments received from representatives of Federal Government agencies, four from trade associations representing vessel owners and operators, one from a vessel operating company, one from an interested individual, and one from a Member of Congress. A discussion of the comments follows.

Comment

Three commenters suggested, in connection with proposed § 4.1, that Customs board every vessel arriving in a United States port, whether directly from a foreign location or pursuant to a permit to proceed from another domestic port. Each of the commenters believes that Customs has been boarding and searching every vessel and that ceasing the practice would compromise our enforcement mission.

Customs Response

Customs has never boarded and searched every vessel, which presently number approximately 95,000 arrivals a year. Confusion concerning this matter could be the result of certain procedures which were followed regarding vessel arrivals. Prior to the most recent amendments, statute and regulations required every vessel to be boarded by Customs for the purpose of receiving a vessel's cargo declaration, and Customs Form 1300 (Master's Oath of Vessel in Foreign Trade). Once Customs received the named documents, preliminary entry was granted that would permit the vessel to unlade prior to completing formal entry. Customs might also have performed formal entry on board a vessel. Neither procedure entailed a search of a vessel nor an examination of

cargo. Both procedures were ministerial acts involving the routine review of documents and the collection of fees.

At the time, the outlined procedures were important aspects of the Customs enforcement mission since there was no alternative means to obtain a vessel's cargo declaration. Customs needs cargo declarations, in part, to ensure that importers make proper entry of each shipment of goods aboard a vessel. With the advent of advanced technology including automation, facsimile transmission, and express delivery service, Customs now regularly requires submission of cargo declarations in advance of vessel arrival for prescreening enforcement purposes.

The present amendments are replacing the outdated procedures outlined above, which were resource intensive and lacked significant enforcement results. Resources conserved by eliminating the prior boarding policy will enable Customs to allocate more toward doing meaningful comprehensive boardings with examination of high risk vessels and cargoes.

Comment

Four commenters expressed the opinion that allowing only 24 hours following arrival to make formal entry, as set forth in proposed § 4.3, was restrictive and unnecessary.

Customs Response

Customs agrees with this comment and will retain the current 48-hour time limit to make formal entry in § 4.3(a).

Comment

With reference to proposed § 4.3, two commenters expressed concern about potentially being charged both "expenses incurred," meaning reimbursable expenses, and Commercial Vessel User Fees in connection with a single vessel arrival.

Customs Response

The phrase "expenses incurred," found in § 4.3(b)(2), as proposed, is stated in the context of a port director allowing the provision of services outside the limits of a port of entry. Current user fee law under 19 U.S.C. 58c(a)(1) and 19 U.S.C. 58c(c)(2) requires the collection of user fees to cover costs of services provided to vessels which arrive at a port of entry. Any services provided outside of a port of entry are considered extraordinary and involve expending resources beyond those expected to be recovered through user fee collections (19 CFR 24.17). Therefore, Customs may collect both user fees and other expenses

during a calendar year if services are requested both within and outside of port boundaries. It may even be necessary to collect both fees during the same voyage if a vessel requests services outside of the limits of a port and then moves inside the port limits to unlade or request additional services such as vessel clearance.

Comment

Two commenters expressed concern with the prescribed time periods allowed for presentation of necessary documents for preliminary entry, and stated that if the time periods are not met, parties would have to request formal entry on board vessels at time of arrival in order to avoid delays in the unloading of cargoes. Concern was expressed here with reference to the discretionary authority vested in port directors to deny requests for formal entry aboard a vessel at time of arrival. The discretion is expressed in proposed § 4.3(b)(2), which would allow port directors to take local resources into consideration when determining whether to allow formal entry of a vessel at a place other than the customhouse. The vessel operating public has become accustomed to the routine meeting of vessels upon arrival and may consider that any reduction in this service will cause unnecessary delays. One of the commenters suggested that the current entry procedures around the country work well and should not be changed.

Customs Response

It is necessary to first address the current procedures employed around the country regarding vessel entry. Those procedures caused Customs to review the entire vessel entry process. There is a substantial lack of uniformity around the country when it comes to the entry of vessels. At many locations, it is the rare circumstance where Customs performs formal entry aboard a vessel while at other locations formal entry is performed aboard nearly every vessel which arrives in port.

In addition, the procedures for granting preliminary entry vary widely. At many locations preliminary entry is granted merely by submitting a CF 3171 and reporting arrival. At other locations, an inspector has to board a vessel and receive those documents required by § 4.7. We have designed the new policy to create more uniformity. With the new procedures at all Customs locations, except in those instances where Customs boards a vessel for compliance or enforcement reasons, if a vessel operator can supply required documentation within prescribed time

limits the vessel will obtain permission to unlade upon arrival without the requirement that an inspector board the vessel. Evidence suggests that most vessels currently present required documents within prescribed time limits. Once preliminary entry is granted the 48-hour entry period will allow ample opportunity for a vessel operator to come into the customhouse to conduct formal entry.

There may be circumstances when the Customs office is closed and a vessel operator cannot provide the CF 3171 or CF 1302 within the prescribed times in order to obtain preliminary entry. In such cases, the port director has the discretion to perform formal entry not only aboard vessels at time of arrival, but at other locations and outside of normal business hours. This might be accomplished by assigning a Customs employee outside normal business hours to locations near places of arrival. Vessel operators might then come to that location in order to obtain formal entry. To the extent possible, ports will attempt to accommodate legitimate needs to allow entry outside of normal business hours.

Comment

A separate concern was also expressed in connection with proposed § 4.3(b)(2) about a port director's discretion to permit vessel entry at places other than the customhouse including locations outside actual port limits. The commenter states that the regulation as written gives the public and the maritime industry the false impression that Customs entry outside the designated port of entry relieves them of other federal agency clearance requirements. The commenter believes that the proposed procedures could lead parties to either unwittingly or intentionally avoid the clearance requirements of other federal agencies.

Customs Response

The proposed regulation was written to formalize a practice which had become standard at many Customs port locations. Customs currently permits the procedure because many locations where vessels unlade cargo happen to be outside the boundaries of ports of entry. To deny entry and unlading at such locations could unduly burden commerce. Customs does recognize the legitimate missions fulfilled by other federal agencies, and our final regulations make it clear that we are not supplanting the roles of those other entities. The United States Immigration and Naturalization Service (INS), as well as the United States Department of Agriculture's Animal Plant Health

Inspection Service (APHIS), and Plant Protection and Quarantine (PPQ) are notable examples of such entities. Accordingly, we are amending the language as proposed in § 4.3(b)(2) to make it clear that fulfillment of Customs requirements does not relieve parties of complying with requirements which are enforced by other agencies.

Comment

Three commenters expressed concern about the requirement in proposed § 4.8 that a complete manifest, as prescribed in § 4.7, be presented in order to obtain a grant of preliminary entry at the time of or subsequent to vessel arrival. Concern was also expressed that the same section requires the submission of Customs Form 3171 and the CF 1302, or their electronic equivalent, 48 hours in advance in order to obtain a grant of preliminary entry prior to vessel arrival. For vessels on voyages shorter than two days, submission is allowed at any time prior to arrival in order to receive preliminary entry in advance of arrival. It is the opinion of the commenters that vessel operators may not always have required information available within the prescribed time limitations.

Customs Response

With respect to the requirement that a complete manifest be available in connection with granting preliminary entry at or subsequent to arrival, it must be pointed out that § 4.7 currently requires that every arriving vessel have on board a complete manifest. A complete manifest includes such documents as the crew list, ships store's list, passenger list, cargo declaration, and crew effect's list. Since these documents have been and continue to be required, no additional burden is placed upon vessel operators if preliminary entry is conditioned upon presentation of these documents to Customs. Further, the submission of these documents allows Customs to combine preliminary and formal entry, and many ports have been combining preliminary and formal entry which would entail presentation of all of the named documents. There has been no evidence of any significant delays in vessel unloadings as a result.

The CF 1302 and CF 3171 information is required 48 hours prior to arrival in order to be granted advanced preliminary entry because Customs needs advance notification of a vessel's arrival and an adequate description of the cargo on board in order to expedite entry of the vessel and release of the cargo. This amendment is merely requiring by regulation something which has been in practice by much of

the vessel carrier community. Due to this practice, Customs has been able to conduct needed pre-arrival review of manifest information, enabling Customs to identify, in advance of arrival, which cargo needs to be examined. The benefit to the trade community is that vessel operators are immediately informed as to which shipments need to be examined, instead of waiting several days after vessel arrival for examination requirements to be fulfilled.

It may be that some carriers will have to modify their procedures in order to obtain grants of advanced preliminary entry. One of the commenters suggested that non-automated carriers may not be able to participate in the electronic submission of documents. If a particular carrier does not wish to automate, there are designated service centers across the United States which are available to transmit the cargo declaration information to Customs for them. Interested parties may obtain a list of service centers by contacting Ms. Becky Lally, Customs Office of Information Technology, at (301) 210-6368. Customs has no information regarding any fees which these service centers may charge.

Comment

Two commenters had many and varied observations regarding the entry and clearance requirements for American-flag vessels with in-bond cargoes aboard, as set forth in proposed §§ 4.9 and 4.61, respectively. Both commenters stated that Customs should not require such vessels to have to enter and clear, with one suggesting that the requirements would serve no practical purpose. One stated that the Customs laws and regulations have never before imposed such requirements, and that not imposing any changes to in-bond control procedures regarding similar rail or truck movements amounts to unequal protection under the law.

It was suggested that the proposed requirements were contrary to the amended statutory law in that Congress intended that an in-bond control transaction would meet the definition of entered merchandise. Concern was also expressed regarding the procedural requirements which would be imposed upon vessels to present in-bond or bill of lading numbers for in-bond cargo, stating that a carrier may not even know whether in-bond cargo is aboard a vessel. It was emphasized that the initial bonded carrier already provides cargo information to Customs through existing in-bond procedures, and that asking for it again would be contrary to the Paperwork Reduction Act. Finally, the point was made that the new procedures would place an undue financial burden

on American vessels carrying in-bond shipments, such as the payment of user fees and the cost of hiring vessel agents to deal with Customs.

Customs Response

By amending the laws concerning vessel entry and clearance, the Congress, not Customs, for the first time placed the requirements under discussion on American-flag vessels carrying merchandise on in-bond movements. No laws applicable to rail or truck traffic were either enacted or amended in a similar fashion; thus, the focus of our regulatory amendments is on vessels.

Customs agrees with the commenter that the production of bills of lading or Immediate Transportation documents should not be required under the entry and clearance procedures. Instead, the documentary requirements for entry and clearance for these vessels will be satisfied by presenting to Customs a completed Customs Form 1301 (General Declaration). The General Declaration is primarily required to provide Customs with the necessary information to record all vessel entries and clearances on the Customs Forms 1400 and 1401, respectively, and to make that record available for public inspection.

Accordingly, §§ 4.9(b) and 4.61(b) are changed to reflect that the completed Customs Form 1301 (General Declaration) will be acceptable instead of requiring the production bills of lading or Immediate Transportation documents. However, this in no way limits the authority of a Customs officer to demand production of any documents or papers considered necessary for the proper inspection and examination of a vessel and its cargo or passengers as provided in 19 U.S.C. 1581(a). Sections 4.9(b) and 4.61(b) are further changed to make this clear.

With respect to perceived financial burdens, 19 U.S.C. 58(c) specifically requires that Customs collect fees for services in connection with the arrival of a vessel. Customs, through this rulemaking, is affording the domestic vessel industry as much relief as possible given the constraints of the statutes. For American-flag vessels transporting in-bond merchandise, all that will be necessary is for such vessels to report arrival or departure, supply Customs with completed Customs Form 1301 (General Declaration), and pay Customs user fees if applicable. As to the user fee collection, vessel operators need only present payment to Customs at the time of arrival. Payment upon each arrival may be avoided by prepayment of the annual fee maximum, as presently allowed.

Comment

One commenter asked that the term "merchandise" be defined by Customs, for purposes of proposed § 4.9, to mean foreign merchandise for which entry has not been made.

Customs Response

The term "merchandise", for Customs purposes, is already defined by statute (19 U.S.C. 1401(c)) as meaning goods, wares, and chattels of every description.

Comment

One commenter urged that the requirement for deposit of a vessel's document with Customs or a foreign consular office be removed from proposed § 4.9(c) as no longer needed.

Customs Response

Prior to amendments made by the Customs Modernization Act, there had been authority under 19 U.S.C. 1434 and 1435 to require operators of American and foreign vessels to deposit their ship's registers or documents with Customs until vessel clearance. Section 1437 of title 19, United States Code (19 U.S.C. 1437), which had provided for the return to the master or owner of an American or foreign vessel's register or document upon vessel clearance, was repealed without replacement by that same Act. Still operative, however, is section 1438 of title 19, United States Code (19 U.S.C. 1438), which was amended by the Act. As amended, section 1438 provides for a penalty to be issued against any foreign consul returning to the master the register or document of a foreign vessel deposited with the consul prior to the vessel receiving clearance from Customs. The result of the amendments and repeals affecting sections 1434, 1435, 1437, and 1438 is that Customs will require an operator of a foreign-flag vessel to surrender the register or document to either Customs or the foreign consul of that country.

Comment

One commenter inquired as to whether the collection of shipping articles agreements for American-flag vessels under proposed § 4.61(c)(9) is still necessary.

Customs Response

The requirement that shipping articles be presented before the grant of clearance to such vessels is statutory (46 U.S.C. App. 10314(d)) and must continue to be complied with.

Conclusion

In view of the foregoing, and following careful consideration of the

comments received and further review of the matter, Customs has concluded that the proposed amendments with the modifications discussed above should be adopted.

Additional Changes

In addition, the requirement for a master's oath on Customs Form 1300 is removed from §§ 4.9(a) and 4.61(a), inasmuch as the underlying statutory authority for this, 19 U.S.C. 282, was repealed by section 690(a)(2) of the Customs Modernization Act, Pub. L. 103-182. Also, § 4.60(a)(4) is changed, consistent with statutory law (46 U.S.C. App. 91), to fully reflect those vessels for which Customs clearance must be obtained.

Regulatory Flexibility Act and Executive Order 12866

This final rule amends the Customs Regulations principally in order to accurately reflect and implement changes to the underlying statutory authority regarding the boarding of vessels arriving in ports of the United States. To this same end, certain general amendments are made to the regulations concerning vessel entry and clearance as well as those concerning issuance of permits to lade and unlade merchandise. As such, under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor does this document meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

The collections of information referenced in this final rule have previously been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned the following OMB Control Numbers:

1515-0013—Application-Permit-Special License, Unlading-Lading-Overtime Services (Customs Form 3171);

1515-0062—General Declaration (Customs Form 1301);

1515-0078—Cargo Declaration (inward and outward) (Customs Form 1302); and 1515-0144—Customs Bond Structure (Customs Form 301 and Customs Form 5297).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless the collection of information displays a valid control number assigned by OMB. This document restates the collections of information without substantive change.

Comments concerning suggestions for reducing the burden of collections of information should be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C. 20229. A copy should also be sent to U.S. Customs Service, Information Services Group, Attention: J. Edgar Nichols, Room 3.2-C, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C. 20229.

Drafting Information

The principal author of this document was Larry L. Burton, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Entry, Inspection, Merchandise, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

Part 4, Customs Regulations (19 CFR part 4), is amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 as well as the specific authority citations for §§ 4.3, 4.7, 4.8 and 4.30 continue to read as follows, while the specific authority citations for §§ 4.1, 4.9 and 4.68 are revised, and a specific authority citation for § 4.61 is added in appropriate numerical order, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91;

Section 4.1 also issued under 19 U.S.C. 1581(a); 46 U.S.C. App. 163;

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Section 4.3 also issued under 19 U.S.C. 288, 1441; 46 U.S.C. App. 111;

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Section 4.7 also issued under 19 U.S.C. 1581(a); 46 U.S.C. App. 883a, 883b;

* * * * *

Section 4.8 also issued under 19 U.S.C. 1448, 1486;

Section 4.9 also issued under 42 U.S.C. 269;

* * * * *

Section 4.30 also issued under 19 U.S.C. 288, 1446, 1448, 1450–1454, 1490;

* * * * *

Section 4.61 also issued under 46 U.S.C. App. 883;

* * * * *

Section 4.68 also issued under 46 U.S.C. App. 817d, 817e;

* * * * *

2. Section 4.1 is amended by revising paragraph (a) to read as set forth below; and by removing paragraph (b) and redesignating paragraphs (c), (d), (e), (f), and (g), as paragraphs (b), (c), (d), (e) and (f), respectively:

§ 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.

* * * * *

3. Part 4 is amended by removing and reserving Footnote 1.

4. Section 4.3 is revised to read as follows:

§ 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 customs house, 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 customs house 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 customs house, 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.

5. Section 4.8 is revised to read as follows:

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

6. Section 4.9 is revised to read as follows:

§ 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

1301 (General Declaration). Report of arrival as provided in § 4.2 of this part, together with presenting a completed Customs Form 1301 (General Declaration), 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.

§ 4.16 [Reserved]

7. Part 4 is amended by removing and reserving § 4.16.

8. Section 4.30 is amended by adding the word "fees" between the words "clearance" and "under" in introductory paragraph (a); and by revising paragraph (b) to read as follows:

§ 4.30 Permits and special licenses for unloading and lading.

* * * * *

(b) Application for a permit or special license will be made by the master,

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

* * * * *

9. Section 4.60 is amended by revising paragraph (a) to read as follows:

§ 4.60 Vessels required to clear.

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

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

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

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

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

* * * * *

10. Section 4.61 is revised to read as follows:

§ 4.61 Requirements for clearance.

(a) *Application for clearance.*

Application for clearance for a vessel will be made by filing a General Declaration, Customs Form 1301, by or on behalf of the master at the customs house. The master, licensed deck officer, or purser may appear in person to clear the vessel, or documents properly executed by the master or other proper officer may be delivered at the customs house 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 either on Customs Form 1378 or by approved electronic means. Customs port directors may permit the clearance of vessels at locations other than the customs house, 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 1301 (General Declaration). 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.
- (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.

11. Part 4 is amended by removing and reserving Footnotes 97, 99 and 100a through 101.

12. Section 4.68 is revised to read as follows:

§ 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.

13. Section 4.70 is revised to read as follows:

§ 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.

Raymond W. Kelly,

Commissioner of Customs.

Approved: December 22, 1999.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 203, 250, 251, 253, 254, and 256

Outer Continental Shelf Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Technical amendments.

SUMMARY: This document makes minor technical changes to regulations that were published in various **Federal Register** documents and are codified in the Code of Federal Regulations. These changes will correct the name of form MMS-126; correct a citation in 30 CFR 250, subpart N; and correct the instructions in 30 CFR parts 203, 251, 253, 254, and 256 for commenting on information collection burdens.