

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 24 and 101

RIN 1515-AC77

Reimbursable Customs Inspectional Services: Increase in Hourly Rate Charge

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to increase the rate of charge for reimbursable Customs inspectional services. The present amount charged for the services of a Customs employee on a regular work week is computed at a rate per hour equal to 137 percent of the hourly rate of an employee's regular pay. A recent audit of Customs inspectional services charges by the Treasury's Office of the Inspector General determined that this rate does not represent full reimbursement to Customs for actual inspectional service costs, and that increasing the rate to 158 percent would recover the actual costs incurred by Customs for these services. This document proposes to increase the rate in accordance with the Inspector General's recommendation.

DATES: Comments must be received on or before April 2, 2001.

ADDRESSES: Written comments may be addressed to, and inspected at, U.S. Customs Service, Office of Regulations and Rulings—Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Dennis Lomax, Accounting Services Division, Office of Finance, Indianapolis, IN 46278; telephone (317) 298-1200, ext. 1404.

SUPPLEMENTARY INFORMATION:

Background

Under certain circumstances, Customs provides inspectional and supervisory services to parties-in-interest who

require such Customs services during regular hours of duty or on Customs overtime assignments. However, under these circumstances, the private interest is required to reimburse the Government for the Customs employee's compensation. The amounts of the compensation and expenses chargeable to these parties-in-interest are determined based on a computational charge. The computational charge is provided at § 24.17(d) of the Customs Regulations (19 CFR 24.17(d)). Currently, the computational charge for reimbursable services is at a per hour rate that is equal to 137 percent of the hourly rate of regular pay of the employee performing the inspectional services.

A recent audit of Customs inspectional services charges by the Treasury's Office of the Inspector General (OIG) has determined that this computational rate does not represent full reimbursement to Customs for actual inspectional service costs and recommends that increasing the rate to 158 percent would recover the actual costs incurred by Customs for these services. The OIG noted that the formula used to determine the current computational charge of 137 percent now contains two outdated cost factors (the number of legal public holidays and the ratio of employer paid benefits to an employee's salary). The current 137 percent computational charge was calculated using 9 legal public holidays and an 11½ percent benefits ratio. However, there are now 10 legal public holidays (Martin Luther King Day was declared a legal public holiday in 1986), and the OIG has determined that the current benefit ratio is 28.55 percent instead of 11½ percent.

This document proposes to implement the recommended computational rate. Accordingly, the provisions of § 24.17(d) are proposed to be revised.

As a result of the proposed change to § 24.17(d), a corresponding change is proposed to § 101.6, which provides for the hours of business of Customs offices. Customs lists the legal public holidays as national holidays at § 101.6(a). The present provisions of § 101.6(a) enumerate only nine national holidays, when there are in fact ten national holidays observed. On November 2, 1983, the President signed into law a bill making the third Monday in

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January, starting in 1986, a legal public holiday honoring the Rev. Martin Luther King, Jr. Pub. L. 98-144, 97 Stat. 917, 5 U.S.C. 6103. While the Federal government has honored this date as indicated, the Customs Regulations have not been amended to incorporate this change. This document proposes to correct that oversight by adding the third Monday in January (Martin Luther King, Jr. Day) as a recognized national holiday.

Lastly, a typographical error (the word "hours" was type-set as "hgurs") has been discovered in the heading of paragraph (b) of § 101.6. This error is proposed to be corrected in this document.

Comments

Before adopting these proposed regulations as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Suite 3000, Washington, DC.

The Regulatory Flexibility Act and Executive Order 12866

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities, because the proposed amendments will only effect those parties-in-interest who require Customs reimbursable inspectional services. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Further, these proposed amendments do not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch, Office of Regulations and Rulings. However, personnel from other offices participated in its development.

List of Subjects**19 CFR Part 24**

Accounting, Customs duties and inspection, Fees, Financial and accounting procedures, Reporting and recordkeeping requirements, User fees, Wages.

19 CFR Part 101

Customs duties and inspection, Organization and functions (Government agencies), Reporting and recordkeeping requirements, User fees, Wages.

Proposed Amendments to the Regulations

For the reasons set forth above, it is proposed to amend parts 24 and 101 of the Customs Regulations (19 CFR parts 24 and 101), as set forth below:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for part 24 continues to read, and the specific authority for § 24.17 is revised to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461; 4462; 31 U.S.C. 9701.

* * * * *

Section 24.17 also issued under 5 U.S.C. 6103; 19 U.S.C. 261, 267, 1450,

1451, 1452, 1456, 1524, 1557, 1562; 46 U.S.C. 2110, 2111, 2112;

* * * * *

2. Section 24.17(d) is revised to read as follows:

§ 24.17 Reimbursable services of Customs employees.

* * * * *

(d) *Computation charge for reimbursable services.* The charge for the services of a Customs employee on a regular workday during a basic 40-hour workweek will be computed at a rate per hour equal to 158 percent of the hourly rate of regular pay of the employee performing the services with an additional charge equal to any night pay differential actually payable under 5 U.S.C. 5545. The rate per hour equal to 158 percent of the hourly rate of regular pay will be computed as follows:

	<i>Hours</i>
Gross number of working hours in 52 40-hour weeks
Less:	
10 Legal Public Holidays—New Year's Day, Martin Luther King, Jr. Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day	80
Annual Leave—26 days	208
Sick Leave—13 days	104

Net number of working hours	392
Gross number of working hours in 52 40-hour weeks
Working hour equivalent of government contributions for employee uniform allowance, retirement, life insurance and health care benefits computed at 28.55 percent of annual rate of pay of employee (2,080 × .2855) ...	594
Equivalent annual working hours charged to Customs appropriation (2,080 + 594)	2,674
Ratio of annual number of working hours charged to Customs appropriation to net number of annual working hours (2,674 ÷ 1,688)	158%

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PART 101—GENERAL PROVISIONS

1. The general authority citation for part 24 is revised to read as follows:

Authority: 5 U.S.C. 301, 6103; 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

* * * * *

2. In § 101.6:

- Paragraph (a) is revised; and
- Paragraph (b) is amended by removing the word “hgurs” in the heading and adding, in its place, the word “hours”.

The revision reads as follows:

§ 101.6 Hours of business.

* * * * *

(a) *Saturdays, Sundays, and national holidays.*—(1) *National holidays.* In addition to Saturdays, Sundays, and any other calendar day designated as a holiday by Federal statute or Executive

Order, Customs offices will be closed on the following national holidays:

- (i) January 1, New Year's Day;
- (ii) The third Monday in January, Birthday of Martin Luther King, Jr.;
- (iii) The third Monday in February, Washington's Birthday;
- (iv) The last Monday in May, Memorial Day;
- (v) July 4, Independence Day;
- (vi) The first Monday in September, Labor Day;
- (vii) The second Monday in October, Columbus Day;
- (viii) November 11, Veterans Day;
- (ix) The fourth Thursday in November, Thanksgiving Day; and
- (x) December 25, Christmas Day.

(2) *Observance of national holidays.* If a national holiday falls on a Saturday, then the Friday preceding that Saturday will be observed as the national holiday for work purposes. If a national holiday falls on a Sunday, then the Monday following that Sunday will be observed

as the national holiday for work purposes.

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Raymond W. Kelly,

Commissioner of Customs.

Approved: December 4, 2000.

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury.

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FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 51**

[CC Docket No. 96-98; DA 01-169]

Comments Sought On the Use of Unbundled Network Elements To Provide Exchange Access Service

AGENCY: Federal Communications Commission.