

Controlling agency. FAA Salt Lake City, ARTCC.

Using agency. USAF, 366th Wing, Mountain Home AFB, ID.

R-3204B Juniper Buttes, ID [New]

Boundaries. The airspace within a 5-NM radius centered on (lat. 42°18'00" N., long. 115°20'00" W.:)

Designated altitudes. 100 feet AGL to but not including FL 180.

Times of use. 0730–2200 local time, Monday through Friday, other times by NOTAM.

Controlling agency. FAA Salt Lake City, ARTCC.

Using agency. USAF, 366th Wing, Mountain Home AFB, ID.

R-3204C Juniper Buttes, ID [New]

Boundaries. The airspace within a 5-NM radius centered on (lat. 42°18'00" N., long. 115°20'00" W.:)

Designated altitudes. FL 180 to FL 290.

Times of use. 0730–2200 local time, Monday through Friday, other times by NOTAM.

Controlling agency. FAA Salt Lake City, ARTCC.

Using agency. USAF, 366th Wing, Mountain Home AFB, ID.

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Issued in Washington, DC, on June 26, 2001.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

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DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Insular Affairs

15 CFR Part 303

[Docket No. 991228350-1118-02]

RIN: 0625-AA57

Changes in the Insular Possessions Watch, Watch Movement and Jewelry Program

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: The Departments amend their regulations governing watch duty-exemption allocations and the watch and jewelry duty-refund benefits for producers in the United States insular possessions (the U.S. Virgin Islands, Guam, American Samoa and the

Commonwealth of the Northern Mariana Islands). The rule amends ITA regulations by further clarifying the range of documents that may be needed for verification of duty-free shipments of jewelry into the United States and by clarifying which wages qualify as creditable and which do not for purposes of calculating the duty-refund for watches and jewelry. Also, the regulations were amended by making minor editorial changes within the definition of new firm for watches. Finally, we amend the duty refund process by dividing the amount of the annual duty refund certificate into two installments. These amendments make grammatical changes, clarify a portion of the regulations, update methods of documentation and help producers receive benefits in a more timely fashion.

DATES: July 2, 2001.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482-3526.

SUPPLEMENTARY INFORMATION: We published proposed regulatory revisions on May 23, 2001 (66 FR 28404) and invited comments. We received two letters with comments. Both letters pertained to the clarification of the definition of creditable wages. Both pointed out that the watch and jewelry factories have machinery that require plumbers, electricians and machine and maintenance people and that these people are integral to their assembly and manufacturing processes. It was also pointed out that security personnel were essential to the operations of some factories. We agree that wages paid to employees who maintain equipment essential to the assembly and manufacturing operations at the factories should be creditable towards the duty refund even if the employees include plumbers or electricians. We also agree wages paid to security staff should be creditable towards the duty refund and decided that specific language regarding security activities should be included in the regulations. In the proposed language we were trying to convey that wages paid for the construction of a building, an addition to an existing building or office construction within the shell of a building is beyond the scope of the program and the wages for those workers are not creditable. We thank the commenters for their input and we have revised the language to more clearly articulate which wages are creditable.

The insular possessions watch industry provision in Sec. 110 of Pub. L. No. 97-446 (96 Stat. 2331) (1983), as amended by Sec. 602 of Pub. L. No. 103-465 (108 Stat. 4991) (1994);

additional U.S. Note 5 to chapter 91 of the Harmonized Tariff Schedule of the United States ("HTSUS"), as amended by Pub.L. 94-241 (90 Stat. 263)(1976) requires the Secretary of Commerce and the Secretary of the Interior, acting jointly, to establish a limit on the quantity of watches and watch movements which may be entered free of duty during each calendar year. The law also requires the Secretaries to establish the shares of this limited quantity which may be entered from the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands ("CNMI"). After the Departments have verified the data submitted on the annual application (Form ITA-334P), the producers' duty-exemption allocations are calculated from the territorial share in accordance with 15 CFR 303.14 and each producer is issued a duty-exemption license. The law further requires the Secretaries to issue duty-refund certificates to each territorial watch and watch movement producer based on the company's duty-free shipments and creditable wages paid during the previous calendar year.

Pub. L. 106-36 (113 Stat. 127) (1999) authorizes the issuance of a duty-refund certificate to each territorial jewelry producer for any article of jewelry provided for in heading 7113 of the HTSUS which is the product of any such territory. The value of the certificate is based on creditable wages paid and duty-free units shipped into the United States during the previous calendar year. Although the law specifically mentions the U.S. Virgin Islands, Guam and American Samoa, the issuance of the duty-refund certificate would also apply to the CNMI due to the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Pub. L. 94-241), which states that goods from the CNMI are entitled to the same tariff treatment as imports from Guam. *See also* 19 CFR 7.2(a). The law provides that during the first two years, beginning August 9, 1999, jewelry that is assembled in the territories shall be treated as a product of such territories. Thereafter, in order to be considered a product of such territories, the jewelry must meet the U.S. Customs Service substantial transformation requirements (the jewelry must become a new and different article of commerce as a result of production or manufacture performed in the territory). To receive duty-free treatment, the jewelry must also satisfy the requirements of General Note 3(a)(iv) of the HTSUS and applicable Customs Regulations (19 CFR 7.3).

The law specifies, in addition, that watch producer benefits shall not be diminished as a consequence of extending duty-refund benefits to jewelry manufacturers. In the event that the aggregate amount of the calculated duty refunds for both watches and jewelry exceeds the total amount available under Pub. L. 97-446, as amended by Pub. L. 103-465, the watch producers shall receive their calculated amounts; the jewelry producers would then receive amounts proportionately reduced from the remainder. *See* Pub. L. 106-36.

Amendments

We amend Subpart A § 303.2(a)(5), *see* 65 FR 8049 (Feb. 17, 2000), by making grammatical changes.

We also amend Subpart A § 303.2(a)(13) and Subpart B § 303.16(a)(9) to explain further what is meant by special services under the definition of wages excluded from being creditable towards the duty-refund in response to requests for additional clarification of this language. The new language on wages not creditable towards the duty refund includes wages paid for outside consultants or other professional personnel or those persons not involved in the day to day assembly operations or servicing and maintenance of equipment and fixtures necessary for the assembly or manufacturing operations or administrative work and security activities directly related to the operation of the company. Examples of wages that would not be creditable toward the duty refund would be wages paid to gardeners, construction workers or outside lawyers and accountants. A producer also wanted to know if two producers worked on the same single piece of jewelry, would each producer's wages for their portion of the work be creditable towards each producer's duty refund. The jewelry producer explained that the casting of precious metal is a highly technical process which is very capital intensive and expensive to set up. The producer explained that it would be very helpful if some companies could subcontract such work to a producer who was willing to make the capital investment. The producer also pointed out that having a local caster available would be an added inducement to other jewelry companies to locate in the insular possessions. We agree that given this unique two-step manufacturing process in the production of jewelry, that this request has merit. Therefore, we include specific language to address this situation. The regulatory language would allow two separate jewelry producers to have their portion of the

wages credited toward their own duty refund for work on a single piece of jewelry which had entered the U.S. free of duty under the program if the companies demonstrate that they worked on the same piece of jewelry, the jewelry received duty-free treatment into the U.S., the companies maintained production and payroll records for dutiable as well as duty-free jewelry shipments into the U.S. or other destinations so that creditable as well as non-creditable wages may be determined, and the records are sufficient for the Departments' verification of the creditable wages and duty-free units shipped into the United States.

The rule adds alternative documents which may be needed or used during the verification of the amount of duty-free jewelry which entered the United States under the insular program. New shipping methods and the fact that jewelry, unlike watches, does not require a permit (Form ITA-340P), necessitate new ways to document duty-free entry into the United States. Therefore, we amend Subpart B § 303.17(b)(4) to include methods of verification such as requiring the consignee (receiver of goods in the U.S.) to certify that shipments which are otherwise unsupported by Customs entry documents or a certificate of origin did, in fact, receive duty-free treatment. These alternative reporting requirements are necessary in order to provide the Departments' auditors with sufficient documentation to verify duty-free shipments.

Finally, we amend Subpart A, § 303.2(b)(1) and § 303.12(a), and Subpart B, § 303.16(b)(1) and § 303.19(a)(1) by providing for the issuance of an interim duty refund certificate which would authorize a producer to receive a portion of the total amount of the annual duty refund certificate. The interim amount will be based on reported duty-free shipments and creditable wages paid during the first six months of the same calendar year in which the wages were paid. The interim duty refund certificate will be issued after the required company data are received and the calculations for each company are completed. We require the receipt of each producer's data by the end of July if the producer wishes to receive an interim duty refund certificate. The interim duty refund certificate will be issued by the end of August to all producers who have provided the Departments with the data necessary to calculate the duty refund by the end of July. The verification process and the calculation for the annual duty refund certificate will

remain the same. However, that portion of the duty refund that has already been issued via the interim duty free certificate to each producer will be deducted from each producer's annual total duty refund amount. This amendment provides duty refund benefits to producers in a more timely fashion.

Under the Administrative Procedure Act, 5 U.S.C. 553(d)(1), the effective date of this rule need not be delayed for 30 days because this rule relieves a restriction by allowing each producer to receive a duty refund certificate in two installments instead of one.

Administrative Law Requirements

Regulatory Flexibility Act. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chief Counsel for Regulation at the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant economic impact on a substantial number of small entities. This rulemaking will make minor editorial changes and clarify current language regarding creditable wages neither of which will impose any cost or have any other adverse economic effect on the producers. The rulemaking will also divide the total annual amount of the duty refund certificate into two installments, thereby allowing producers to receive benefits in a more timely fashion. Although the total amount of a duty refund certificate will not change, the rule is intended to have a positive effect on the insular economies by helping the producers improve their cash flows. Finally, the rulemaking includes an alternative method of verification of duty-free shipments of jewelry into the United States for those entries that did not receive Customs entry documents or a certificate of origin for each shipment. If producers want credit for these duty-free shipments, once a year the consignee (receiver of the jewelry shipped into the United States) or producer (if the producer knows that the shipment received duty-free entry into the United States) will prepare a written certification for the Departments' auditors that the shipments received duty-free treatment into the United States. The certification is expected to have little, if any, economic impact on a company that did not receive Customs entry documentation. We estimate the certification statement, if used, would create a burden of about ten minutes to complete at a cost of approximately \$20 annually.

Paperwork Reduction Act. This rulemaking involves new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This collection has been approved by OMB. Changing the duty refund certificate from an annual to a biannual basis requires the use of three of the current forms, modified to accommodate the change. The public reporting burden for these collection-of-information requirements includes the time for reviewing instructions, searching existing data bases, gathering and maintaining the data needed, and completing and reviewing the collection of information. The issuance of payments under the duty refund certificate on a biannual bases requires the collection of data through the use of a modified version of the annual application, Form ITA-334P. We estimate this will involve a burden of about one hour per producer. One more certificate of entitlement to a duty refund, Form ITA-360P, will also need to be issued to each producer per year. This form is completed by the Department of Commerce and imposes no burden hours on the producers. Form ITA-361P, the request for refund of duties, is currently used once or twice a year per producer and takes about 10 minutes to complete. Because of the biannual duty refund, we anticipate that most producers will only complete the form between two to three times a year in order to receive such refunds in a more timely manner. We expect Form ITA-361P will only increase the burden by about 10 minutes per producer. Finally, the rulemaking will include an alternative method of verification of the duty-free shipments of jewelry into the United States for those entries that did not receive Customs entry documents or the country of origin certificates for each shipment. This alternative will be in the form of a written certification by the consignee or, if he or she knows, by the producer, that the shipments received duty-free treatment. Because the jewelry portion of the program is new, it is difficult at this time to determine whether this alternative certification will be needed by the new companies or whether they will be able to produce standard Customs entry documents or certificates of origin. The certification by the consignee or producer will be in the form of an annual statement prepared for the auditor. We estimate that it will take about ten minutes to complete at a cost of approximately \$20. Collection activities are currently approved by the Office of Management

and Budget under control numbers 0625-0040 and 0625-0134. Send comments regarding any of these burden estimates or any other aspect of the collection-of-information to U.S. Department of Commerce, ITA Information Officer, Washington, DC 20230 and Office of Information and Regulations Officer, Office of Management and Budget, Washington, DC 20503 (Att: OMB Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information unless it displays a currently valid OMB Control Number.

Plain English. The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this rule.

Executive Order 12866. It has been determined that this rulemaking is not significant for purposes of Executive Order 12866.

List of Subjects in 15 CFR Part 303

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and recordkeeping requirements, Virgin Islands, Watches and jewelry.

For reasons set forth above, The Departments amend 15 CFR Part 303 as follows:

PART 303—WATCHES, WATCH MOVEMENTS AND JEWELRY PROGRAM

1. The authority citation for 15 CFR Part 303 continues to read as follows:

Authority: Pub. L. 97-446, 96 Stat. 2331 (19 U.S.C. 1202, note); Pub. L. 103-465, 108 Stat. 4991; Pub. L. 94-241, 90 Stat. 263 (48 U.S.C. 1681, note); Pub. L. 106-36, 113 Stat. 127,167.

2. Section 303.2 is amended as follows:

A. The first sentence of § 303.2(a)(5) is amended by removing “which may not be” and adding in its place “not”.

B. The second sentence of § 303.2(a)(13) is revised as set forth below.

C. The last sentence of § 303.2(b)(1) is amended by adding “and by producers who wish to receive the duty refund in installments on a biannual basis” at the end of the sentence.

§ 303.2 Definitions and forms.

(a) * * *

(13) * * * Excluded, however, are wages paid to any outside consultants or other professional personnel, such as lawyers and accountants, or to those persons not involved in the day-to-day assembly operations or servicing and maintenance of equipment and fixtures necessary for the assembly or manufacturing operations or administrative work and security activities directly related to the operations of the company, such as gardeners or construction workers, and for the repair of non-91/5 watches and movements to the extent that such wages exceed the foregoing percentage.

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* * * * *

3. Section 303.12(a)(1) is revised to read as follows:

§ 303.12 Issuance and use of production incentive certificates.

(a) *Issuance of certificates.* (1) The total annual amount of the Certificate of Entitlement, Form ITA-360, may be divided and issued on a biannual basis. The first portion of the total annual certificate amount will be based on reported duty-free shipments and creditable wages paid during the first six months of the calendar year, using the formula in § 303.14(c). The Departments require the receipt of the data by July 31 for each producer who wishes to receive an interim duty refund certificate. The interim duty refund certificate will be issued on or before August 31 of the same calendar year in which the wages were earned unless the Departments have unresolved questions. The process of determining the total annual amount of the duty refund will remain the same. The completed annual application (Form ITA-334P) shall be received by the Departments on or before January 31 and the annual verification of data and the calculation of each producer's total annual duty refund, based on the verified data, will continue to take place in February. Once the calculations for each producer's duty refund has been completed, the portion of the duty refund that has already been issued to each producer will be deducted from the total amount of each producer's annual duty refund amount. The duty refund certificate will continue to be issued by March 1 unless the Departments have unresolved questions.

* * * * *

4. Section 303.16 is amended as follows:

A. The second sentence of § 303.16(a)(9) is removed and three sentences are added in its place as set forth below.

B. The last sentence of § 303.16(b)(1) is amended by adding “and , with special instructions for its completion, by producers who wish to receive the total annual amount of the duty refund in installments on a biannual basis’ at the end of the sentence.

§ 303.16 Definitions and forms.

(a) * * *

(9) * * * Excluded, however, are wages paid for outside consultants or other professional personnel, such as lawyers and accountants, or those persons not involved in the day-to-day assembly operations or servicing and maintenance of equipment and fixtures necessary for the assembly or manufacturing operations or the administrative work and security activities directly related to the operations of the company, such as gardeners or construction workers, plus any wages paid for the assembly of dutiable jewelry or for the repair of dutiable jewelry to the extent that such wages exceed the percentage set forth above. No more than two insular producers may have their wages credited for their portion of the wages paid for work on a single piece of jewelry which entered the U.S. free of duty under the program. Wages paid by the two producers will be credited proportionally provided both producers demonstrate to the satisfaction of the Secretaries that they worked on the same piece of jewelry, the jewelry received duty-free treatment into the U.S., and the producers maintained production and payroll records sufficient for the Departments’ verification of the creditable wage portion (see § 303.17(b)).* * *

* * * * *

§ 303.17 [Amended]

5. Section 303.17(b)(4) is amended by adding “, or the certificate of origin for the shipment, or, if a company did not receive such documents from Customs, a certification from the consignee that the jewelry shipment received duty-free treatment, or a certification from the producer, if the producer can attest that the jewelry shipment received duty-free treatment” at the end of the paragraph.

6. Section 303.19(a)(1) is revised to read as follows:

§ 303.19 Issuance and use of production incentive certificates.

(a) *Issuance of certificates.* (1) The total annual amount of the Certificate of Entitlement, Form ITA-360, may be divided and issued on a biannual basis. The first portion of the total annual certificate amount will be based on reported duty-free shipments and

creditable wages paid during the first six month of the calendar year, using the formula in § 303.20(b). The Departments require the receipt of the data by July 31 for each producer who wishes to receive an interim duty refund certificate. The interim duty refund certificate will be issued on or before August 31 of the same year in which the wages were earned unless the Departments have unresolved questions. The process of determining the total annual amount of the duty refund will remain the same. The completed annual application (Form ITA-334P) shall be received by the Departments on or before January 31 and the annual verification of data and calculation of each producer’s total annual duty refund, based on the verified data, will continue to take place in February. Once the calculations for each producer’s duty refund has been completed, the portion of the duty refund that has already been issued to each producer will be deducted from the total amount of each producer’s annual duty refund amount. The duty refund certificate will continue to be issued by March 1 unless the Departments have unresolved questions.

* * * * *

Richard W. Moreland,

Acting Assistant Secretary for Import Administration, Department of Commerce.

Nikolao Pula,

Acting Director, Office of Insular Affairs, Department of the Interior.

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

[T.D. 01-46]

RIN 1515-AC64

Time Limitation for Requesting Refunds of Harbor Maintenance Fees

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to establish a one year time limit within which a refund request must be filed for overpayments of Harbor Maintenance Fees that were paid on a quarterly basis. The time limit will provide an efficient and reasonable final resolution of claims against Customs, including claims for refunds of export harbor maintenance fees that

were held unconstitutional by the United States Supreme Court in 1998. Refund requests for harbor maintenance fee payments that are more than a year old must be filed by the effective date of this document.

EFFECTIVE DATE: December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Deborah Thompson, Revenue Branch, National Finance Center (317) 298-1200 (ext. 4003).

SUPPLEMENTARY INFORMATION:

Background

The Harbor Maintenance Fee was created by the Water Resources Development Act of 1986 (Pub. L. 99-622; codified at 26 U.S.C. 4461 *et seq.*) (the Act) and is implemented by § 24.24 of the Customs Regulations (19 CFR 24.24). Pursuant to the Act, the harbor maintenance fee became effective on April 1, 1987.

Imposition of the fee is intended to require those who benefit from the maintenance of U.S. ports and harbors to share in the cost of that maintenance. The fee has been assessed on port use associated with imports, exports, imported merchandise admitted into a foreign trade zone, passengers, and movements of cargo between domestic ports. Since April of 1998, based on the U.S. Supreme Court’s decision that harbor maintenance fees applied to exports of merchandise are unconstitutional (*United States Shoe Corporation v. United States*, 118 S. Ct. 1290, No. 97-372 (March 31, 1998)), Customs has not collected export harbor maintenance fees. Currently, except for export shipments, the fee is assessed based on 0.125 percent of the value of commercial cargo loaded or unloaded at certain identified ports or, in the case of passengers, on the value of the actual charge paid for the transportation.

*Notice of Proposed Rulemaking
Published on December 15, 2000*

On December 15, 2000, Customs published a notice of proposed rulemaking (NPRM) in the **Federal Register** (65 FR 78430) proposing to amend § 24.24(e)(4) of the Customs Regulations (19 CFR 24.24(e)) to require the filing of a refund request for harbor maintenance fees paid on a quarterly basis within one year of the date of payment of the fee, except for fees paid relative to imported merchandise admitted into a foreign trade zone and subsequently withdrawn from the zone under 19 U.S.C. 1309, for which the refund request would have to be filed within one year of the date of withdrawal. The NPRM also proposed to amend § 24.73 of the Customs