

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 8, 2000.

Vi L. Lipski,

Acting Manager,, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF COMMERCE**International Trade Administration****DEPARTMENT OF THE TREASURY****Customs Service****15 CFR Part 301**

[Docket No. 000331091-0091-01]

RIN 0625-AA47

Proposed Changes in Procedures for Florence Agreement Program

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule and request for comments.

SUMMARY: This action invites public comment on a proposal to amend the regulations which govern duty-free entry of scientific instruments and apparatus, by educational and nonprofit institutions, into the United States. The amendments are being proposed for the purposes of making the technical changes required by the passage of the Omnibus Trade and Competitiveness Act of 1988 and by passage of the Miscellaneous Trade and Technical Corrections Act of 1999; updating the regulations by specifying the correct court of review, taking into account terminological changes in the scientific community, and by extending the waiver for repair components to maintenance tools as well; and simplifying and clarifying the regulations by the using community by clarifying the commercial use provisions and removing redundant requirements, adding information about procedures for obtaining duty refunds, reducing the number of copies required for resubmissions and permitting performance data obtained in tests or trials as evidence of guaranteed specifications.

DATES: Written comments must be received on or before June 12, 2000.

ADDRESSES: Address written comments to Gerald Zerdy, Program Manager, Statutory Import Programs Staff, Room 4211, U.S. Department of Commerce, Washington D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Gerald Zerdy, (202) 482-1660, same address as above.

SUPPLEMENTARY INFORMATION: The Departments of Commerce and the Treasury are proposing to amend Part 301, Chapter III, Subtitle B of Title 15 of the Code of Federal Regulations relating to their responsibilities under the Educational, Scientific, and Cultural Materials Importation Act of 1966 (the "Act"; Pub. L. 89-651; 80 Stat. 897).

The proposed rule would make the necessary technical changes to reflect the conversion from the Tariff Schedule of the United States (TSUS) to the Harmonized Tariff Schedule of the United States (HTSUS); and the modification made by Proclamation 5978 of May 12, 1989, which was issued pursuant to sections 1121 and 1204 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418) and section 604 of the Trade Act of 1974 (Pub. L. 93-618), as amended; and the statutory amendment made by section 2402 of the Miscellaneous Trade and Technical Corrections Act of 1999 (Pub. L. 106-36). The proposed rule would also make editorial and administrative changes, including updating terminology.

Specifically, we propose amending § 301.2(h) to provide further information about the entry of accessories for existing instruments.

We propose amending paragraph (r) of § 301.2 to permit performance data obtained from a trial or test run of an instrument, under conditions specified by the applicant, to be used as evidence for a guaranteed specification since this is sometimes stipulated as a condition for purchase or provides the basis for selecting one instrument over another. In the past, applicants have regularly cited such ad hoc performance data to support their justification for duty exemption.

We propose removing the language in § 301.4(a)(1) that refers to specific documentation Customs may require to establish the applicant's nonprofit or tax exempt status. The proposed revision leaves the method of this determination to the discretion of Customs.

We propose amending § 301.4(a)(3) to further emphasize that an applicant may not participate in the development and evaluation of an instrument, beyond routine acceptance testing and

calibration, if substantial benefits accrue to the manufacturer as a result of such participation for which the applicant receives a valuable consideration. The purpose of this change is to clarify the conditions of compliance with the statutory prohibition of commercial use within five years of entry (see § 301.1(c)(1)).

We propose amending § 301.5(a)(1) by making copies of applications available for public inspection within five days of receipt from Customs instead of the ten days currently specified in the regulations. This amendment would bring the rule into accord with established practice.

The proposed rule would eliminate § 301.5(a)(7), which relates to the routine sending of copies of applications to interested domestic manufacturers. Use of this service has been extremely limited. While the routine provision of copies would be eliminated, we would continue to provide copies on a case-by-case basis if requested.

We propose amending § 301.5(c)(3) by removing language requesting consultants to provide advice within 30 days. Routine interagency procedures do not require codification. "National Bureau of Standards" would be replaced by "National Institute of Standards and Technology."

We propose to reduce the paperwork burden on applicants by amending § 301.5(e)(3) to permit resubmissions by facsimile, e-mail or other electronic means in addition to posted mail, and to permit resubmissions with an original copy only instead of in quadruplicate. We also propose amending § 301.5(e)(5) to conform with this change.

We propose to eliminate § 301.5(e)(9), which provides for comment by interested parties on resubmitted applications. Interested parties are afforded ample opportunity to comment on the original applications. Also, applicants are not permitted to introduce new purposes or other material changes in a resubmission. Accordingly, no useful purpose is served by the existing procedure.

We propose to amend § 301.8(d) to inform the applicant that estimated duties levied by U.S. Customs at the time of entry may be refundable, and to instruct the applicant to contact Customs at the port of entry for information and claims status.

Presidential Proclamation 5978 of May 12, 1989, issued pursuant to sections 1121 and 1204 of the Omnibus Trade and Competitiveness Act of 1988 and section 604 of the Trade Act of 1974, as amended, added maintenance tools for scientific instruments to the list

of items eligible for duty-free import under the Act. Accordingly, we propose amending § 301.10 (a) to add maintenance tools to the scope of the waiver already in place for repair tools.

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 proposed rule, if promulgated as final, will not have a significant economic impact on a substantial number of small entities. This is because the rulemaking is primarily to update, clarify, and simplify the regulations, make technical changes and reduce paperwork.

Paperwork Reduction Act

This rulemaking involves information collection activities subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, which are currently approved by the Office of Management and Budget under control number 0625-0037. The proposed amendments reduce the information burden on the public by, among other things, eliminating the need for copies in a resubmission, making provision for resubmissions in electronic formats and eliminating the need to make application for maintenance tools.

Executive Order 12866

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

List of Subjects in 15 CFR Part 301

Administrative practice and procedure, Customs duties and inspection, Educational facilities, Imports, Nonprofit organizations, Scientific equipment.

For reasons set forth above, 15 CFR part 301 is proposed to be amended as follows:

PART 301—[AMENDED]

1. The authority citation for part 301 is revised to read as follows:

Authority: Sec. 6 (c), Pub. L. 89-651, 80 Stat. 897, 899; Sec. 2402, Pub. L. 106-36, 113 Stat. 127, 168.

2. Amend part 301 as follows:

a. Revise all references to “tariff item 851.60”, “item 851.60”, or “item 851.60, TSUS” to read “subheading 9810.00.60, HTSUS”.

b. Revise all references to “item 851.65” or “tariff item 851.65” to read “subheading 9810.00.65, HTSUS”.

3. Amend § 301.1 as follows:

a. Paragraph (b)(1) is amended by removing “, contracted to by approximately 89 countries”;

b. Paragraph (d) is amended by removing “Headnote 6, TSUS” from the first sentence and adding “U.S. Note 6, Subchapter X, Chapter 98, HTSUS” in its place; by removing “and Operations” in the second sentence; and by removing “Deputy” in the third sentence;

c. Revise paragraphs (b)(3), (c)(1) and (c)(2); and

d. Add paragraph (c)(4).

§ 301.1 General provisions.

* * * * *

(b) * * *

(3) The Annex D provisions are implemented for U.S. purposes in Subchapter X, Chapter 98, Harmonized Tariff Schedule of the United States (HTSUS).

(c) Summary of statutory procedures and requirements. (1) U.S. Note 1, Subchapter X, Chapter 98, HTSUS, provides, among other things, that articles covered by subheadings 9810.00.60 (scientific instruments and apparatus), 9810.00.65 (repair components therefor) and 9810.00.67 (tools for maintaining and testing the above therefor), HTSUS, must be exclusively for the use of the institutions involved and not for distribution, sale, or other commercial use within five years after having been entered. These articles may be transferred to another qualified nonprofit institution, but any commercial use within five years of entry shall result in the assessment of applicable duties pursuant to § 301.9(c).

(2) An institution wishing to enter an instrument or apparatus under tariff subheading 9810.00.60, HTSUS, must file an application with the Secretary of the Treasury (U.S. Customs Service) in accordance with these regulations. If the application is made in accordance with the regulations, notice of the application is published in the **Federal Register** to provide an opportunity for interested persons and government agencies to present views. The application is reviewed by the Secretary of Commerce (Director, Statutory Import Programs Staff), who decides whether or not duty-free entry may be accorded the instrument and publishes the decision in the **Federal Register**. An appeal of the final decision may be filed with the U.S. Court of Appeals for the Federal Circuit, on questions of law only, within 20 days after publication in the **Federal Register**.

* * * * *

(4) Tools specifically designed to be used for the maintenance, checking,

gauging or repair of instruments or apparatus admitted under subheadings 9810.00.65 and 9810.00.67, HTSUS, require no application and may be entered duty-free in accordance with the procedures prescribed in § 301.10.

* * * * *

§ 301.2 [Amended]

4. Amend § 301.2 as follows:

a. Paragraph (f) is amended by removing “only” in the first sentence; by removing “classifiable under the tariff items specified in headnote 6(a) of part 4 of Schedule 8” and adding in its place “specified in U.S. Note 6(a), Subchapter X, Chapter 98, HTSUS”; and by adding the following after the second sentence: “The term “instrument” also covers separable components of an instrument that are imported for assembly in the United States in such instrument where that instrument, due to its size, cannot feasibly be imported in its assembled state. The components, as well as the assembled instrument itself, must be classifiable under the tariff provisions listed in U.S. Note 6(a), Subchapter X, Chapter 98, HTSUS. See § 301.2(k) and § 301.3(f).”;

b. Paragraph (f)(5) is amended by removing all that follows “under bond under” and adding in its place the following: “subheading 9813.00.30, HTSUS, subject to the provisions of U.S. Note 1(a), Subchapter XIII, Chapter 98, HTSUS, and must be exported or destroyed within the time period specified in that U.S. Note.”;

c. Paragraph (h) is amended by adding a new sentence to the end of the paragraph to read: “The existing instrument, for which the accessory is being purchased, may be domestic or, if foreign, it need not have entered duty free under subheading 9810.00.60, HTSUS.”;

d. Paragraph (k) is amended by adding the following at the end of the paragraph: “The above notwithstanding, separable components of some instruments may be eligible for duty-free treatment. See § 301.2(f).”;

e. Paragraph (r) is amended by removing “angstroms” in the second sentence and adding “nanometers” in its place, and by adding a sentence at the end of the paragraph to read: “Performance results on a test sample run at the applicant’s request may be cited as evidence for or against a guaranteed specification.”;

f. Paragraph(s) is amended by removing “and/” from the first sentence, removing the last sentence and adding in its place the following: “Also, characteristics such as size, weight, appearance, durability, reliability, complexity (or simplicity), ease of

operation, ease of maintenance, productivity, versatility, "state of the art" design, specific design and compatibility with currently owned or ordered equipment are not pertinent unless the applicant demonstrates that the characteristic is necessary for the accomplishment of its scientific purposes."

5. Amend § 301.3 as follows:

a. Paragraph (d) is amended by removing "One copy of the form" from the second sentence and adding in its place "One of these copies";

b. Redesignate paragraph (f) as paragraph (g); and

c. Add a new paragraph (f).

§ 301.3 Application for duty-free entry of scientific instruments.

* * * * *

(f) An application for components of an instrument to be assembled in the United States as described in § 301.2(f) may be filed provided that all of the components for the complete, assembled instrument are covered by, and fully described in, the application. See also § 301.2(k).

* * * * *

6. In § 301.4, paragraphs (a)(1), (a)(2) and the first two sentences of (a)(3) are revised to read as follows:

§ 301.4 Processing of applications by the Department of the Treasury (U.S. Customs Service).

(a) * * *

(1) Whether the institution is a nonprofit private or public institution established for research and educational purposes and therefore authorized to import instruments into the U.S. under subheading 9810.00.60, HTSUS. In making this determination, the Commissioner may require applicants to document their eligibility under this paragraph;

(2) Whether the instrument or apparatus falls within the classes of instruments eligible for duty-free entry consideration under subheading 9810.00.60, HTSUS. For eligible classes, see U.S. Note 6(a), Subchapter X, Chapter 98, HTSUS; and

(3) Whether the instrument or apparatus is for the exclusive use of the applicant institution and is not intended to be used for commercial purposes. For the purposes of this section, commercial uses would include, but not necessarily be limited to: distribution, lease or sale of the instrument by the applicant institution; any use by, or for the primary benefit of, a commercial entity; or use of the instrument for demonstration purposes in return for a fee, price discount or other valuable consideration. Evaluation, modification

or testing of the foreign instrument, beyond normal, routine acceptance testing and calibration, to enhance or expand its capabilities primarily to benefit the manufacturer in return for a discount or other valuable consideration, may be considered a commercial benefit. * * *

* * * * *

7. Amend § 301.5 as follows:

a. Paragraph (a)(1) is amended by removing "10" from the first sentence and adding "5" in its place;

b. Paragraph (a)(2) is amended by removing "contained in Question 11 of the form" in the second sentence and adding "on the form" in its place, and by adding "pursuant to paragraph (e) of this section" at the end of the last sentence;

c. Paragraph (a)(3) is amended by removing the last sentence;

d. Paragraph (a)(4)(v) is amended by removing "submitted a formal" and adding "issued an" in its place;

e. Paragraph (a)(5) is amended by removing "on an application" from the first sentence, by removing "in his discretion, may entertain comments filed untimely to the extent that they contain factual information, as opposed to arguments, explanations, or recommendations" from the second sentence and by adding "at his discretion, may take into account factual information contained in untimely comments" in its place;

f. Paragraph (a)(6) is amended by removing "apprise" from the first sentence and adding "inform" in its place, by removing "routinely" from the second sentence, removing "commentor's" from the last sentence and adding "provider's" in its place, and by removing "on a particular application" from the last sentence;

g. Paragraph (a)(7) is removed;

h. Paragraph (b) is revised;

i. Paragraph (c)(2), is amended by removing the word "the" between "to" and "appropriate" and by removing "written";

j. Paragraph (c)(3) is amended by removing the first sentence, by removing "may" from the second sentence, and by removing "National Bureau of Standards" and adding "National Institute of Standards and Technology" in its place in the second sentence;

k. Paragraph (d)(1)(i) is amended by removing "combines" from the fourth sentence and adding "brings together" in its place, and by removing "instrument(s)" in the last sentence and adding "instrument" in its place;

l. Paragraph (d)(1)(ii) is amended by removing "conversion" from the last

sentence and adding "adaptation" in its place, and by removing "for such programs" from the last sentence;

m. Add a paragraph (d)(5); and

n. Revise paragraphs (e) introductory text, (e)(2) and (e)(3); add a sentence to the end of paragraph (e)(5); and remove paragraph (e)(9).

§ 301.5 Processing of applications by the Department of Commerce.

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(b) *Additions to the record.* The Director may solicit from the applicant, from foreign or domestic manufacturers, their agents, or any other person or Government agency considered by the Director to have related competence, any additional information the Director considers necessary to make a decision. The Director may attach conditions and time limitations upon the provision of such information and may draw appropriate inferences from a person's failure to provide the requested information.

* * * * *

(d) * * *

(5) Processing of applications for components. (i) The Director may process an application for components which are to be assembled in the United States into an instrument or apparatus which, due to its size, cannot be imported in its assembled state (see § 301.2(k)) as if it were an application for the assembled instrument. A finding by the Director that no equivalent instrument is being manufactured in the United States shall, subject to paragraph (d)(5)(ii) of this section, qualify all the associated components, provided they are entered within the period established by the Director, taking into account both the scientific needs of the importing institution and the potential for development of related domestic manufacturing capacity.

(ii) Notwithstanding a finding under paragraph (d)(5)(i) of this section that no equivalent instrument is being manufactured in the United States, the Director shall disqualify a particular component for duty-free treatment if the Director finds that the component is being manufactured in the United States.

(e) *Denial without prejudice to resubmission (DWOP).* The Director may, at any stage in the processing of an application by the Department of Commerce, DWOP an application if it contains any deficiency which, in the Director's judgment, prevents a determination on its merits. The Director shall state the deficiencies of the application in the DWOP letter to the applicant.

* * * * *

(2) If granted, extensions of time will generally be limited to 30 days.

(3) Resubmissions must reference the application number of the earlier submission. The resubmission may be made by letter to the Director. The record of a resubmitted application shall include the original submission on file with the Department. Any new material or information contained in a resubmission, which should address the specific deficiencies cited in the DWOP letter, should be clearly labeled and referenced to the applicable question on the application form. The resubmission must be for the instrument covered by the original application unless the DWOP letter specifies to the contrary. The resubmission shall be subject to the certification made on the original application.

* * * * *

(5) * * * Resubmission by fax, e-mail or other electronic means is acceptable provided an appropriate return number or address is provided in the transmittal. Resubmissions must clearly indicate the date of transmittal to the Director.

8. Amend § 301.6 by revising paragraphs (a) and (c) to read as follows:

§ 301.6 Appeals.

(a) An appeal from a final decision made by the Director under § 301.5(f) may be taken in accordance with U.S. Note 6(e), Subchapter X, Chapter 98, HTSUS, only to the U.S. Court of Appeals for the Federal Circuit and only on questions of law, within 20 days after publication of the decision in the **Federal Register**. If at any time while its application is under consideration by the Court of Appeals on an appeal from a finding by the Director an institution cancels an order for the instrument to which the application relates or ceases to have a firm intention to order such instrument, the institution shall promptly notify the court.

* * * * *

(c) Questions regarding appeal procedures should be addressed directly to the U.S. Court of Appeals for the Federal Circuit, Clerk's Office, Washington, DC 20439.

§ 301.7 [Amended]

9. Amend § 301.7 by removing "(see § 301.6(a))" from the first sentence of paragraph (a).

10. Amend § 301.8 as follows:

a. Amend paragraph (a)(1) by adding "(as defined in 19 CFR 101.1)" after "Customs territory of the United States";

b. Amend the second sentence of paragraph (a)(5) by adding the words

"either by delaying importation or by placing the instrument in a bonded warehouse or foreign trade zone," after the words "duty-free entry of the instrument,";

c. Amend paragraph (b) by removing "above" and "mentioned" from the first sentence;

d. Amend paragraph (c) by removing "of § 301.8" in the first sentence and adding a comma after "provisions";

e. Revise paragraph (d) to read as follows:

§ 301.8 Instructions for entering instruments through U.S. Customs under subheading 9810.00.60, HTSUS.

* * * * *

(d) *Payment of duties.* The importer of record will be billed for payment of duties when Customs determines that such payment is due. If a refund of a deposit made pursuant to paragraph (a)(4) of this section is due, the importer should contact Customs officials at the port of entry, not the Department of Commerce.

§ 301.9 [Amended]

11. Amend § 301.9 by removing "latter" from the first sentence of the introductory text of paragraph (a) and adding "receiving" in its place.

12. § 301.10 is revised to read as follows:

§ 301.10 Importation of repair components and maintenance tools under HTSUS subheadings 9810.00.65 and 9810.00.67 for instruments previously the subject of an entry liquidated under subheading 9810.00.60, HTSUS.

(a) An institution owning an instrument that was the subject of an entry liquidated duty-free under subheading 9810.00.60, HTSUS, that wishes to enter repair components or maintenance tools for that instrument may do so without regard to the application procedures required for entry under subheading 9810.00.60, HTSUS. The institution must certify to Customs officials at the port of entry that such components are repair components for that instrument under subheading 9810.00.65, HTSUS, or that the tools are maintenance tools necessary for the repair, checking, gauging or maintenance of that instrument under subheading 9810.00.67, HTSUS.

(b) Instruments entered under subheading 9810.00.60, HTSUS, and subsequently returned to the foreign manufacturer for repair, replacement or modification are not covered by subheading 9810.00.65 or 9810.00.67, HTSUS, although they may, upon return to the United States, be eligible for a

reduced duty payment under subheading 9802.00.40 or 9802.00.50, HTSUS (covering articles exported for repairs or alterations) or may be made the subject of a new application under subheading 9810.00.60, HTSUS.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Raymond W. Kelly,

Commissioner of Customs.

Dated: May 3, 2000.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00-916, MM Docket No. 00-69, RM-9850]

Radio Broadcasting Services; Cheboygan and Rogers City, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Escanaba License Corp. proposing the allotment of Channel 260C2 at Cheboygan, Michigan. The coordinates for Channel 260C2 at Cheboygan are 45-33-53 and 84-07-54. There is a site restriction 28.7 kilometers (17.8 miles) east of the community. To accommodate the new allotment at Cheboygan, we shall also propose to substitute Channel 292C2 for Channel 260C2 at Rogers City, Michigan, and modification of the license for Station WHAK to specify operation on Channel 292C2. The coordinates for Channel 292C2 at Rogers City are 45-23-53 and 83-55-19. Canadian concurrence will be requested for the allotments at Cheboygan and Rogers City, Michigan.

DATES: Comments must be filed on or before June 16, 2000, and reply comments on or before July 3, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Lyle Robert Evans, President, Escanaba License Corp., 1101 Ludington Street, Escanaba, Michigan 49829.