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## DEPARTMENT OF COMMERCE

### International Trade Administration

## DEPARTMENT OF THE TREASURY

### Customs Service

#### 15 CFR Part 301

[Docket No. 000331091-0177-02]

RIN 0625-AA47

#### 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:** Final rule.

**SUMMARY:** The International Trade Administration and U.S. Court of Law amended the regulations which govern duty-free entry of scientific instruments and apparatus, by educational and nonprofit institutions, into the United States. The amendments make the technical changes required by the Omnibus Trade and Competitiveness Act of 1988 and by the Miscellaneous Trade and Technical Corrections Act of 1999. In addition this rule revises the regulations to specify the correct court of review, to use terminology consistent with accepted metric units, to extend the waiver for repair components to maintenance tools as well, to simplify and clarify the regulations for applicants by clarifying the commercial use provisions and by removing redundant requirements, to add information about procedures for obtaining duty refunds, to reduce the number of copies required for resubmitted applications and to permit performance data obtained in tests or trials as evidence of guaranteed specifications.

**EFFECTIVE DATE:** June 25, 2001.

**ADDRESSES:** Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this final rule, including suggestions for reducing the burden, 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 (Attn: OMB Desk Officer).

**FOR FURTHER INFORMATION CONTACT:**

Gerald Zerdy, (202) 482-1660.

**SUPPLEMENTARY INFORMATION:** The International Trade Administration of the Department of Commerce and the U.S. Customs Service of the Department of the Treasury: 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 rule makes 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 rule makes editorial and administrative changes, including updating terminology.

We have amended § 301.2(h) to provide further information about the entry of accessories for existing instruments.

The rule amends 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.

The rule removes 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 revision leaves the method of this determination to the discretion of Customs.

Section 301.4(a)(3) is amended 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. This change clarifies the conditions of compliance with the statutory prohibition of commercial use within five years of entry (see § 301.1(c)(1)).

The rule amends § 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.

The rule eliminates § 301.5(a)(7), relating to the routine sending of copies of applications to interested domestic manufacturers. Use of this service has been extremely limited. We will continue to provide copies on a case-by-case basis if requested.

Section 301.5(c)(3) is amended by removing language requesting consultants to provide advice within 30 days. Routine interagency procedures do not require codification. "National Bureau of Standards" is replaced by "National Institute of Standards and Technology."

To simplify the application process § 301.5(e)(3) is amended 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. Section 301.5(e)(5) is amended to conform with this change.

The rule eliminates § 301.5(e)(9), which allows interested parties to comment 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.

Section 301.8(d) is amended to inform the applicant that estimated duties levied by U.S. Customs at the time of entry may be refundable, and 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, § 301.10 is amended (a) to add maintenance tools to the scope of the waiver already in place for repair tools.

### Classification

#### *Comments on Proposed Rule*

No comments were received in response to the notice of proposed rulemaking published for this rule on May 12, 2000 (65 FR 30555). No comments were received on that certification and the basis for it was not changed. Accordingly a Regulatory Flexibility Analysis has not been prepared. The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, when this rule was proposed, that it will not have a significant economic impact on a substantial number of small entities.

#### *Paperwork Reduction Act*

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. Public reporting burden for this collection of information is estimated to average 2 hours per response. 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 OMB under control number 0625-0037. The amendments will not increase the information burden on the public. Send comments on this burden estimate or any other aspects of the collection of information, including suggestions for reducing the burden, to the U.S. Department of Commerce and to OMB (see ADDRESSES).

#### *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 (see ADDRESSES).

#### *Executive Order 12866*

This rulemaking has been determined to be 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 the reasons set forth in the preamble, 15 CFR part 301 is 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. Amend paragraph (b)(1) by removing “”, contracted to by approximately 89 countries”;

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

c. Add paragraph (c)(4).

d. Amend paragraph (d) 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;

#### § 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), HTSUS, must be exclusively for the use of the institutions involved and not for distribution, sale, or other

commercial use within five years after entry. 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 the regulations in this section. 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. Amend paragraph (f) 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 paragraph (k) of this section and § 301.3(f).”;

b. Revise paragraph (f)(5);

c. Amend paragraph (h) 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. Amend paragraph (k) 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 paragraph (f) of this section.”;

e. Amend paragraph (r) 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.”; and

f. Amend paragraph(s) 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.”

### § 301.2 Definitions

\* \* \* \*

(f) \* \* \*

(5) Instruments initially imported solely for testing or review purposes which were entered under bond under 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.

\* \* \* \*

5. Amend § 301.3 as follows:

a. Amend paragraph (d) 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 paragraph (a)(3) are revised and a new third sentence is added 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. Amend paragraph (a)(1) by removing “10” from the first sentence and adding “5” in its place;

b. Amend paragraph (a)(2) 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. Amend paragraph (a)(3) by removing the last sentence;

d. Amend paragraph (a)(4)(v) by removing “submitted a formal” and adding “issued an” in its place;

e. Revise paragraph (a)(5);

f. Amend paragraph (a)(6) 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. Remove paragraph (a)(7);

h. Revise paragraph (b);

i. Amend paragraph (c)(2), by removing the word “the” between “to” and “appropriate” and by removing “written”

j. Amend paragraph (c)(3) 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. Amend paragraph (d)(1)(i) 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. Amend Paragraph (d)(1)(ii) 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 two sentences to the end of the paragraph (e)(5); and remove paragraph (e)(9).

### § 301.5 Processing of applications by the Department of Commerce.

(a) \* \* \*

(5) Untimely comments. Comments must be made on a timely basis to ensure their consideration by the Director and the technical consultants, and to preserve the commenting person’s right to appeal the Director’s decision. The Director, at his discretion, may take into account factual information contained in untimely comments.

\* \* \* \*

(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 "of this section"

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.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

**Raymond W. Kelly,**

*Commissioner of Customs.*

**John P. Simpson,**

*Deputy Assistant Secretary of the Treasury.*  
[FR Doc. 01-13165 Filed 5-24-01; 8:45 am]

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