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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 4

[CBP Dec. 18-12]

Technical Corrections to the Vessel Repair Unit Regulations

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule; technical amendment.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations to update provisions relating to the declaration, entry and dutiable status of repair expenditures made abroad for certain vessels to reflect the port of New Orleans, Louisiana as the only Vessel Repair Unit (VRU) location. The amendment will improve the efficiency of vessel repair entry processing, ensure the proper assessment and collection of duties, and make the regulations more transparent.

DATES: The final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Donna Dedeaux, Branch Chief, Cargo and Conveyance Security, at Donna.M.Dedeaux@cbp.dhs.gov or (202) 325-2497.

SUPPLEMENTARY INFORMATION:

Background

Under section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), purchases for or repairs made to certain vessels while they are outside the United States are subject to declaration, entry and payment of ad valorem duty. These requirements are effective upon the first arrival of the affected vessel in any port of the United States. The vessels subject to these requirements include those documented under U.S. law for the foreign or coastwise trades, as well as those which were previously documented under the laws of some foreign nation or are undocumented at the time that the foreign shipyard repairs are performed, but which exhibit an intent to engage in those trades.

The regulations implementing 19 U.S.C. 1466 are found in § 4.14 of the CBP regulations (19 CFR 4.14). Section 4.14 provides that when a vessel subject to the vessel repair statute first arrives into the United States or Puerto Rico following a foreign voyage, the owner, master, or authorized agent, or vessel operator must submit a vessel repair entry and declaration on CBP Form 226 (Form), a dual-use form used both for entry and declaration purposes. If no foreign repair-related expenses were incurred, that fact must also be reported either on the Form or by approved electronic means. The owner, master, or authorized agent must ensure the declaration is ready for presentation in the event that a CBP officer boards the vessel. Section 4.14 provides that the CBP port of arrival receiving either a positive or negative vessel repair declaration or electronic equivalent must immediately forward it to the appropriate Vessel Repair Unit (VRU) port of entry via mail, fax, or email. The owner, master, or authorized agent, or vessel operator must also file a vessel repair entry directly with the VRU. See, 19 CFR 4.14(c), (e). The regulations list three VRU locations:

New York, New York, San Francisco, California, and New Orleans, Louisiana. See, 19 CFR 4.14(g).

Discussion of Regulatory Changes

Of the three VRUs listed in § 4.14(g), only the New Orleans location is currently operational. Over the years, there has been a steady decrease in the number of vessel repair entries filed. Based on the small volume of entries being received at the VRU locations in New York and San Francisco and due to CBP's staffing needs, in 2003-2004, CBP informally streamlined VRU operations so that such operations would be performed only at the port of New Orleans VRU. As a result of common practice, the trade generally submits its vessel repair entries directly to the New Orleans VRU.¹ CBP forwards any entries received at the New York or San Francisco VRUs to New Orleans. To reflect this practice and for purposes of transparency, this document makes changes to § 4.14 to reflect the port of New Orleans as the sole VRU location. This document also updates the regulations to reflect a name change of the office within CBP Headquarters referenced in § 4.14. The referenced office is now known as the Cargo Security, Carriers & Restricted Merchandise Branch, Office of Trade. Also, to ensure clarity, the document makes additional minor wording changes to the regulation.

Inapplicability of Prior Notice and Delayed Effective Date

According to section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), rulemaking generally requires prior notice and comment, and a 30-day delayed effective date, subject to specified exceptions. Pursuant to 5 U.S.C. 553(a)(2), matters relating to agency management or personnel are excepted from the requirements of section 553. Additionally, as provided in 5 U.S.C. 553(b)(3)(A), the prior notice and comment and delayed effective

¹ Since 2003-2004, the port of New Orleans VRU has averaged approximately 540 entries per year.

date requirements do not apply when agencies promulgate rules concerning agency organization, procedure, or practice.

This rule does not require prior notice and comment because it relates to agency management and agency organization, procedures, or practice. As explained above, the rule merely updates the regulations to reflect the informal streamlining of VRU operations in 2003-2004, so that all vessel repair entries are processed by the New Orleans VRU. As a result of common practice, the trade generally submits its vessel repair entries are now submitted directly to the New Orleans VRU. CBP forwards any such entries received in New York or San Francisco to the New Orleans VRU for processing. Accordingly, this rule does not affect the substantive rights or interests of the public, but merely conforms the regulations to existing agency management and agency procedures and organization. This rule also makes other minor wording changes for clarity and includes a technical update to the regulations to reflect a name change in the referenced office within CBP Headquarters.

Executive Orders 12866, 13563, and 13771

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two

prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule as a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this regulation. This regulation updates CBP’s VRU regulations, eliminating costs of processing vessel repair entries that must be forwarded to the New Orleans VRU. Thus, DHS considers this a deregulatory action under Executive Order 13771. See OMB’s Memorandum, “Guidance Implementing Executive Order 13771, ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

This rule amends an outdated regulation by removing obsolete provisions to reflect the streamlining of VRU operations. Of the three VRUs listed in § 4.14(g), only the New Orleans location is currently operational. Although, as a result of common practice, the trade generally submits its vessel repair entries directly to the New Orleans VRU for processing, some entries are submitted to the other locations listed in the regulations. Vessel Repair Entries are filed on paper and submitted via postal mail and each entry can be hundreds of pages long. Historically, misdirected entries have been forwarded in hard copy to the New Orleans VRU. This rule eliminates the small costs in processing vessel repair entries that may be initially submitted to the other locations that CBP must then forward to the New Orleans, Louisiana VRU. CBP believes the monetized cost savings of the rule to be insignificant due to the small number of vessel repair entries received each year, an average of 540, of which some are not already submitted to the New Orleans VRU. This rule will make the procedures for processing vessel repair entries more efficient for both CBP and the affected population, with zero additional costs.

Regulatory Flexibility Act

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Signing Authority

This document is being issued in accordance with 19 CFR 0.2(a), which provides that the authority of the Secretary of the Treasury with respect to CBP regulations that are not related to customs revenue functions was transferred to the Secretary of Homeland Security pursuant to Section 403(l) of the Homeland Security Act of 2002. Accordingly, this final rule to amend such regulations may be signed by the Secretary of Homeland Security (or his or her delegate).

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Entry procedures, Repairs, Reporting and recordkeeping requirements, Vessels.

AMENDMENTS TO THE REGULATIONS

For the reasons stated in the preamble, part 4 of the CBP 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 and the specific authority citation for § 4.14 continue to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105

* * * * *

Section 4.14 also issued under 19 U.S.C. 1466, 1498; 31 U.S.C. 9701.

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2. Amend § 4.14 as follows:

- a. Revise the third and fifth sentences of paragraph (c);
- b. Revise the fourth sentence of paragraph (d);
- c. Revise the fourth sentence of paragraph (e);
- d. Revise the second, fourth, seventh and eighth sentences of paragraph (f);
- e. Revise paragraph (g);
- f. Revise the eighth and the ninth sentences of paragraph (i)(1);
- g. Revise the fifth sentence of paragraph (i)(2);
- h. Revise the third sentence of paragraph (i)(4).

The revisions read as follows:

§ 4.14 Equipment purchases for, and repairs to, American vessels.

* * * * *

(c) *Estimated duty deposit and bond requirements.* * * * At the time the vessel repair entry is submitted by the vessel operator to the Vessel Repair Unit (VRU) as defined in paragraph (g) of this section, that same identifying information must be included on the entry form. * * * CBP officials at the port of arrival may consult the VRU as identified in paragraph (g) of this section or the staff of the Cargo Security, Carriers & Restricted Merchandise Branch, Office of Trade in CBP Headquarters in setting sufficient bond amounts. * * *

(d) *Declaration required.* * * * The CBP port of arrival receiving either a positive or negative vessel repair declaration or electronic equivalent will immediately forward it to the VRU as identified in paragraph (g) of this section.

(e) *Entry required.* * * * The entry must be presented or electronically transmitted by the vessel operator to the VRU as identified in paragraph (g) of this section, so that it is received within ten calendar days after arrival of the vessel. * * *

(f) *Time limit for submitting evidence of cost.* * * * If the entry is incomplete when submitted, evidence to make it complete must be received by the VRU as identified in paragraph (g) of this section within 90 calendar days from the date of vessel arrival.

* * * The VRU may grant one 30-day extension of time to submit final cost evidence if a satisfactory written explanation of the need for an extension is received before the expiration of the original 90-day submission period. * * * Questions as to whether an extension should be granted may be referred to the Cargo Security, Carriers & Restricted Merchandise Branch, Office of Trade in CBP Headquarters by the VRU. Any request for an extension beyond a 30-day grant issued by the VRU must be submitted through that unit to the Cargo Security, Carriers & Restricted Merchandise Branch, Office of Trade, CBP Headquarters. * * *

(g) *Location and jurisdiction of vessel repair unit port of entry.* The VRU, located in New Orleans, Louisiana, processes vessel repair entries received from all United States ports of arrival.

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(i) *General procedures for seeking relief* – (1) *Applications for relief.* * * *

Applications must be addressed and submitted by the vessel operator to the VRU and will be decided in that unit. The VRU may seek the advice of the Cargo Security, Carriers & Restricted Merchandise Branch, Office of Trade in CBP Headquarters with regard to any specific item or issue which has not been addressed by clear precedent. * * *

(2) *Additional evidence.* * * * After a decision is made on an Application for Relief by the VRU, the applicant will be notified of the right to protest any adverse decision.

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(4) *Administrative protest.* * * * In particular, the applicable protest period will begin on the date of the issuance of the decision giving rise to the protest as reflected on the relevant correspondence from the VRU.

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Dated: November 21, 2018

Kevin K. McAleenan
Commissioner
U.S. Customs and Border Protection

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