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DEPARTMENT OF HOMELAND SECURITY

U. S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 148

CBP Dec. 13-19

USCBP-2012-0008

RIN 1515 -AD76

Members of a Family for Purpose of Filing CBP Family Declaration

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

ACTION: Final rule.

SUMMARY: This final rule affects persons eligible to file a single customs declaration. The final rule expands the definitions of family members residing in one household. As a result of this expansion, more U.S. returning resident and non-resident visitor families will be eligible to file a single customs declaration, and correspondingly, more U.S. returning resident family members may group their personal duty exemptions.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE **FEDERAL REGISTER.**]

FOR FURTHER INFORMATION CONTACT: Sophie Galvan, Program Manager,
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SUPPLEMENTARY INFORMATION:

Background

On March 27, 2012, U.S. Customs and Border Protection (CBP) published a notice of proposed rulemaking (NPRM) in the **Federal Register** (77 FR 18143) proposing to amend title 19 of the Code of Federal Regulations (19 CFR) regarding U.S. returning residents who are eligible to file a single customs declaration for members of a family residing in one household and traveling together upon arrival in the United States. The amendments proposed in the NPRM would expand the definition of “members of a family residing in one household” for purposes of allowing a responsible family member to make a joint declaration, either oral or written, for articles acquired abroad for all members of a family residing in one household and traveling together on their return to the United States.

The NPRM proposed to expand the relationships included in the definition of “members of a family residing in one household” and to refer to the additions as “domestic relationships.” As proposed in the NPRM, “domestic relationships” would include foster children, stepchildren, half-siblings, legal wards, other dependents, and individuals with an in loco parentis or guardianship relationship within the definition of “members of a family residing in one household.” “Domestic relationships” would also include two adult individuals in a committed relationship wherein the partners share financial assets and obligations, and are not married to, or a partner of, anyone else, including, but not limited to, long-time companions, and couples in civil unions or domestic partnerships. The proposed term “domestic relationship” would not extend to roommates or other cohabitants not otherwise meeting the above definition. Additionally, the proposed changes would not alter the residency requirements that, in

order to file a family declaration, members of a family residing in one household must have lived together in one household at their last permanent residence and intend to live together in one household after their arrival in the United States. The NPRM also proposed to remove outdated references to “resident servants” of a family and state instead that individuals employed by the household but not related by blood, marriage, domestic relationship, or adoption cannot be included in the family declaration.

Finally, the NPRM proposed to remove the phrase “regardless of age” where it currently appears in the introductory text of §§ 148.34(b) and 148.103(b), because it would not be consistent with the proposed definition of “domestic relationships.”

CBP solicited comments on the proposed rulemaking.

Discussion of Comments

Twenty-three commenters responded to the solicitation of public comment in the proposed rule. Twenty-two of those comments were favorable, noting in particular that the proposed amendments would reduce passenger processing time and create less paperwork for people who are traveling together as a family. Several of the commenters included additional suggestions. The one comment that was opposed to the proposal was submitted anonymously and stated that “this needs to stay as is, don’t add to or change it.” Since the proposed definition more accurately reflects family relationships among members of the traveling public, CBP is not persuaded by this comment. A description of the comments received, together with CBP’s responses, is set forth below.

Overall

Comment:

The vast majority of commenters supported CBP's effort to broaden the definition of members of a family residing in one household to more accurately reflect relationships among members of the public who are traveling together as a family, to reduce passenger processing time, and to create less paperwork for people who are traveling together as a family. Many commenters shared their own personal experiences upon their return to the United States and outlined what they perceived to be inconsistent and sometimes rude behavior by CBP officers. These commenters expressed their expectation that when the rule becomes final, CBP would apply the proposed definition consistently at all ports of entry.

CBP Response:

CBP is encouraged that members of the public are receptive to the proposal to expand the definition of members of a family residing in one household. Expanding the definition beyond the current criteria of "by blood, marriage, and adoption," would facilitate travel for families and would reduce the paperwork burden on both the traveling public and the government. As is further discussed in a response to a comment below, CBP plans to raise public awareness and train CBP staff to promote the consistent application of this new definition once it is final.

Children of Domestic Partners

Comment:

One commenter suggested that the regulations should clearly identify children of domestic partners as being within the definition of “members of a family residing in one household.”

CBP Response:

Biological and adopted children of a domestic partner meet the criteria of being “related by blood” or “by adoption” of paragraph (b)(1) of §148.34 (19 CFR 148.34(b)(1)). The revised definition was expanded to also include foster children, stepchildren, half-siblings, legal wards, and other dependents, and individuals with an in loco parentis or guardianship relationship.

Shared Financial Assets and Obligations

Comment:

Three commenters noted that the proposed language appears to exclude some family members who should fall within the definition of “domestic relationship.” For instance, one commenter questioned whether the proposed definition would exclude a family member who does not work outside of the house because that family member would not “share financial assets and obligations.”

One commenter was concerned that the sharing of financial assets may be interpreted too narrowly by CBP Officers. This commenter recommended that the requirement of “wherein the partners share financial assets and obligations” in the definition of “domestic relationship” be revised to read, “wherein the partners are financially interdependent” because a partner who does not work outside the home may

not be contributing to or “sharing financial assets,” but he or she is financially interdependent with the salary-earning partner.

One commenter suggested amending the definition to read as follows: “Two adults who are in a committed relationship including, but not limited to, long-time companions, and couples in civil unions, or domestic partnerships, wherein the partners are financially interdependent, and are not married to, or a partner of anyone else.”

Some commenters recommended that CBP not define “members of a family” by their finances at all.

CBP Response:

The regulations at issue address the ability of returning U.S. residents to group the exemptions for articles acquired abroad to which the several members of the family may be entitled. Therefore, the issue of finances is relevant to the definition. CBP interprets the phrase “wherein the partners share financial assets and obligations” to include situations where one partner does not work outside the home. Nevertheless, upon consideration of this comment, CBP agrees that the term, “financially interdependent” is clearer, and CBP will adopt this suggestion.

Definition of Resident

Comment:

Some commenters expressed concern whether the definition of “resident” as used by CBP in this context is the same as “permanent resident” as used in the immigration law context. Another commenter expressed the view that the definitions of “resident” and “non-resident” are not clear and should be further explained in the regulations.

CBP Response:

The term “resident” for purposes of this regulation is not the same as “lawful permanent resident” in immigration law. For customs purposes, pursuant to 19 CFR 148.2, persons arriving from foreign countries are divided into two categories: (1) residents of the United States returning from abroad and (2) all other persons (i.e., visitors). In describing further how a returning resident is described for customs purposes, paragraph (b) of §148.2 provides, in pertinent part, that citizens of the United States or persons who have formerly resided in the United States (including American citizens who are residents of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States) will be deemed residents of the United States returning from abroad within the meaning of “residents” as used in Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), in the absence of evidence that they have established a home elsewhere. For example, U.S. lawful permanent residents returning from abroad, who satisfy the definition of “members of a family residing in one household,” also may file a joint CBP declaration and aggregate their duty exemptions.

Paragraph (c) of § 148.2 provides that, “[a]ny person arriving in the United States who is not a resident of the United States or who, though a resident of the United States, is not returning from abroad, shall be treated for the purpose of these regulations as a nonresident.”

Married Women's Status and Gender Language

Comment:

Two commenters recommend that 19 CFR 148.2(b) be amended to remove outdated language. Section 148.2(b) states, in part, "For this purpose, the residence of a wife shall be deemed to be that of her husband unless satisfactory evidence is presented that the wife has established a separate residence elsewhere." One commenter proposed that CBP eliminate this sentence and the following sentence on children's residence or revise it to be gender neutral and encompass the revised definition of members of a family residing in one household.

CBP Response:

CBP agrees. In the regulatory text, CBP is removing the outdated sentence regarding the residence of the wife because a woman can claim her own individual personal exemption. CBP is also revising the sentence on a child's residence to make it gender neutral.

Non-Resident Visitors

Comment:

Two commenters recommend that the regulations be further amended to permit visitors entering the United States to complete a single CBP Form 6059-B in accordance with the expanded definition of family.

CBP Response:

In the NPRM, CBP proposed to revise the definition of the phrase "members of a family residing in one household." That phrase is used in 19 CFR 148.34(b) and

148.103(b), which relate to the family grouping of exemptions for articles acquired abroad to which only returning residents are eligible.

All individuals entering the United States must declare all articles acquired abroad to CBP at the port of first arrival in the United States. Returning residents and nonresidents arriving in the United States must make a declaration, either oral or written, of the merchandise they are importing and must pay duty on the merchandise unless specifically exempted by law. See 19 U.S.C. 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)). Unless an oral declaration is accepted, a person arriving in the United States must complete a written declaration on CBP Form 6059-B and present the form to the CBP officer at inspection. Section 148.14 of title 19 CFR is the regulatory section applicable to all international travelers presenting themselves at a port of entry. That section uses the phrase “family group residing in one household.” The term “family group residing in one household” is not currently defined in statute or regulation. In light of the comments CBP has received and for consistency and clarity, CBP will amend § 148.14 to explicitly define the phrase “family group residing in one household” to mean persons who are related by blood, marriage, domestic relationship (as defined in § 148.34(c)), or adoption.

Accordingly, visitors entering the U.S. who meet the expanded definition of family group residing in one household may file a single CBP Form 6059-B, but they do not get the benefit of any duty aggregation, or any other benefits which are only provided to residents of the United States.

Binational FamiliesComment:

One commenter raised questions regarding “binational families” (families where one family member is a U.S. citizen or lawful permanent resident and another is a non-immigrant) and the fact that the current form does not indicate that families must have the same U.S. immigration status in order to submit the form jointly.

CBP Response:

As indicated before, the declaration requirement is controlled by the customs regulations which are in title 19 of the Code of Federal Regulations (CFR); this regulation does not concern the immigration status of the traveler which would be controlled by the regulations in title 8 of the CFR. The proposed changes do not alter the residency requirements that, in order to file a family declaration, members of a family residing in one household must have lived together in one household at their last permanent residence in the United States and intend to live together in one household after their arrival in the United States. Therefore, if one family member resides in the United States and another resides abroad, even if they are traveling together, they are not eligible to file a joint customs declaration. In this instance, the returning resident would be entitled to the personal duty exemption of \$800 for articles acquired abroad (and not the family grouping of duty aggregation of \$1,600) while the non-resident family member would be entitled to the duty exemptions allowed for visitors.

Published Guidance & Training

Comment:

Two commenters recommend that CBP publish guidance for the public and train employees on the meaning of “residence” and “permanent residence.” Two commenters suggested that CBP include the new definition of “domestic relationship” on the instructions for CBP Form 6059–B and in the FAQ section of CBP Form 6059–B posted on the CBP website. A commenter expressed the need for training on the new regulations in order for them to be implemented properly and recommended that instruction on the proposed changes be part of the regularly scheduled training of all CBP officers.

CBP Response:

CBP understands the need to make clear to the traveling public who is included in the expanded definition of family to facilitate the completion of customs declarations. After this rule is published, CBP plans to update the travel section of the CBP website including the FAQ section on CBP Form 6059–B itself which is also found on the CBP website. CBP’s public affairs materials will also be updated to reflect the expanded definition of the terms “members of a family residing in one household” and a “family group residing in one household.” The Office of Field Operations (OFO) and the Office of Public Affairs plan to do outreach to trade groups and airline associations so that the public is made aware of the changes. For CBP officers and OFO staff, a roll out of memoranda, musters, and updates of CBP Officer Basic Training Academy training will be implemented upon final rule publication.

While CBP will not be amending CBP Form 6059-B (OMB Control Number 1651-0009) at this time, the form is scheduled to expire in February 2014. CBP will solicit comments during the renewal process on whether the form should be revised to improve clarity of the form or to reduce the number of questions listed on the form. CBP will also evaluate whether oral declarations could be used more often than written declarations. More discussion regarding the information collection associated with this regulation can be found later in the document in the section “Paperwork Reduction Act”.

CONCLUSION

After review of the comments and further consideration, CBP has decided to adopt as final, with the changes discussed above in the preamble and with additional non-substantive editorial changes, the proposed rule published in the **Federal Register** (77 FR 18143) on March 27, 2012.

EXECUTIVE ORDER 12866 AND EXECUTIVE ORDER 13563

Executive Orders 12866 and 13563 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. This rule has been designated a “significant regulatory action” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has reviewed this rule.

REGULATORY FLEXIBILITY ACT

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires Federal agencies to examine the impact a rule will have on small entities. A small entity may be: a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business under the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people). Because this rule directly regulates individuals and families, and these are not considered small entities, CBP certifies under 5 U.S.C. 605(b) that the amendments will not have a significant economic impact on a substantial number of small entities.

PAPERWORK REDUCTION ACT

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by Office of Management and Budget (OMB). The information collected under 19 CFR part 148 is included under OMB control number 1651-0009. There are no new collections of information required by this document and CBP is not modifying the form at this time. The number of responses related to the completion of the CBP Form 6059-B (customs declaration) for OMB control number 1651-0009 by members of the public traveling by air and sea is currently 105,606,000. This number has been updated below to reflect an estimated decrease of 1,100,000 customs declarations completed as a result of this rule:

Estimated Number of Respondents (Travelers): 104,506,000

Estimated Time per Response: 4 minutes

Estimated Total Responses: 104,506,000

Estimated Total Annual Burden Hours: 7,001,902

The customs declaration (CBP Form 6059-B) is due to expire on February 28, 2014. CBP will determine whether the form should be significantly revised, or whether there can be an expanded use of oral declarations instead of written declarations to further reduce the paperwork burden on the traveler. CBP plans to publish a 60-day Federal Register Notice and a 30-day Federal Register Notice to solicit comments from the public on CBP Form 6059-B prior to its expiration. CBP Form 6059-B and instructions can be seen on the following website:

http://cbp.gov/xp/cgov/travel/vacation/sample_declaration_form.xml

SIGNING AUTHORITY

This document is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects in 19 CFR Part 148

Customs duties and inspection, Declarations, Taxes.

Amendments to the CBP Regulations

For the reasons set forth above, part 148 of the CBP regulations (19 CFR part 148) is amended as set forth below.

PART 148- PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority for part 148 continues to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States);

* * * * *

2. In § 148.2,

a. Paragraphs (a) through (d) are amended by removing the word, “shall” wherever it appears, and adding in its place the word, “will”; and

b. Paragraph (b) is further amended by removing the last two sentences and adding a new last sentence.

The addition reads as follows:

§ 148.2 Residence status of arriving persons.

* * * * *

(b) * * * The residence of a minor child will be presumed to be the residence of the child’s parents.

* * * * *

3. Section 148.14 is amended by removing the last sentence and adding two sentences to read as follows:

§ 148.14 Family declarations.

* * * “A family group residing in one household” means persons who are related by blood, marriage, domestic relationship (as defined in § 148.34(c)), or adoption.

Individuals who are employed by the household but not related by blood, marriage, domestic relationship, or adoption will not be included in the family declaration.

4. In § 148.34:

a. Paragraph (a) is amended by revising the last sentence;

b. Paragraph (b) is revised; and

c. Paragraph (c) is added.

The additions and revisions read as follows:

§ 148.34 Family grouping of exemptions for articles acquired abroad.

(a) * * * No exemptions allowable to individuals employed by the household and accompanying the family but not related by blood, marriage, domestic relationship, or adoption will be included in the family grouping.

(b) Members of a family residing in one household. “Members of a family residing in one household” includes all persons who:

- (1) Are related by blood, marriage, domestic relationship, or adoption;
- (2) Lived together in one household at their last permanent residence; and
- (3) Intend to live in one household after their arrival in the United States.

(c) Domestic relationship. As used in paragraph (b)(1) of this section, the term “domestic relationship” includes foster children, stepchildren, half-siblings, legal wards, other dependents, individuals with an in loco parentis or guardianship relationship, and two adults who are in a committed relationship including, but not limited to, long-time companions, and couples in civil unions, or domestic partnerships, wherein the partners are financially interdependent, and are not married to, or a partner of, anyone else. The term “domestic relationship” does not extend to roommates or other cohabitants not otherwise meeting this definition.

5. In § 148.103, paragraph (b) is revised to read as follows:

§ 148.103 Family grouping of allowances.

* * * * *

(b) Members of a family residing in one household. “Members of a family residing in one household” includes all persons who:

- (1) Are related by blood, marriage, domestic relationship (as defined in § 148.34(c)), or adoption;
- (2) Lived together in one household at their last permanent residence; and
- (3) Intend to live in one household after their arrival in the United States.

Thomas S. Winkowski
Acting Commissioner
U.S. Customs and Border Protection

Approved: December 13, 2013

Timothy E. Skud
Deputy Assistant Secretary of the Treasury

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