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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 7, 163, and 178

Docket No. USCBP-2014-0001

RIN 1515-AD97

Documentation Related to Goods Imported from U.S. Insular Possessions

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the U.S. Customs and Border Protection (CBP) regulations to eliminate the requirement that a customs official at the port of export verify and sign CBP Form 3229, Certificate of Origin for U.S. Insular Possessions, and to require only that the importer present this form, upon CBP's request, rather than with each entry as is currently required. CBP believes that these amendments will serve to streamline the certification process and modernize the entry process by making it more efficient, as it will reduce the overall administrative burden on the importing trade as well as on CBP. The importer is still required to maintain CBP Form 3229 in its possession or may be subject to the assessment of a recordkeeping penalty if it cannot be produced.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments via Docket No. USCBP-2014-0001.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, D.C. 20229-1177.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, D.C. 20229-1177. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Seth Mazze, Trade Agreements Branch, Trade Policy and Programs, Office of International Trade, (202) 863-6567, seth.mazze@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:**Public Participation**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rulemaking. Comments that will provide the most assistance to CBP will reference a specific portion of the proposed rulemaking, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See ADDRESSES above for information on how to submit comments.

Background

Goods imported into the customs territory of the United States from an insular possession may be eligible for duty-free treatment under the provisions of General Note 3(a)(iv) of the Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202). In addition to the specific requirements set forth in General Note 3(a)(iv), HTSUS, the CBP regulations at part 7 of title 19 of the Code of Federal Regulations (19 CFR part 7) address insular possessions. Insular possessions of the United States are defined as American territories outside the customs territory of the United States and include the U.S. Virgin Islands, Guam, American Samoa, Wake Island, Midway Islands, and Johnston Atoll. See 19 CFR 7.2(a). In addition, goods imported from the Commonwealth of the Northern Mariana Islands are entitled to the same tariff treatment as imports from Guam and also subject to the provisions of section 7.3. See 19 CFR 7.2(a).

Section 7.3 of the CBP regulations (19 CFR 7.3) governs the duty-free treatment of goods imported from insular possessions of the United States, other than Puerto Rico. Puerto Rico is

excluded from this definition because it is part of the customs territory of the United States. Currently, to receive duty-free treatment on imports from U.S. insular possessions, the importer is required by section 7.3(f) to file a signed certificate of origin on CBP Form 3229 with each entry. Section 7.3(f) also requires that CBP Form 3229 be signed by the chief or assistant chief customs officer or other official responsible for customs administration at the port of shipment. CBP Form 3229 is unique in this regard as no other CBP certificate of origin requires verification and signature by a local customs officer at the port of export. In practice, obtaining the customs officer's signature requires the shipper to deliver CBP Form 3229 to the customs officer and either wait for a signature or leave the form to be signed and retrieved at a later time.

In order to align this certification process to CBP's post-importation verification process that is used for other certificates of origin required under the various free trade agreements or trade preference programs and to ease the administrative burden on shippers as well as importers seeking duty-free treatment of goods from U.S. insular possessions by making the entry process more efficient, this document proposes to amend section 7.3(f) of the CBP regulations (19 CFR 7.3(f)) by removing the signature and date requirement of a customs official from the documentation. In addition, the proposed rule would require only that the importer present the form signed by the shipper upon CBP's request, rather than with each entry as is currently required. Under the proposed rule, the importer must have in his possession, at the time of entry or entry summary, a completed CBP Form 3229 and must present the form upon request by the Port Director or his delegate. These regulatory amendments would allow CBP to simplify CBP Form 3229 by removing the data field for the "Verification of CBP Officer" including block 25, "Signature of CBP Officer". CBP also proposes to add block 22a "Shipper Email" and re-designate the "Date" block 24 to block 23a on CBP Form 3229. These amendments would help

to relieve the administrative burden on the shipper, by eliminating the need for the shipper to deliver CBP Form 3229 to a customs officer for signature and verification of the originating status of the goods; on CBP, by removing this task from the customs officer's duties; and on the importer, by removing the requirement that the form be presented with each entry.

Importers filing CBP Form 3229 are subject to the recordkeeping requirements and procedures governing the maintenance, production, inspection, and examination of records set forth in part 163 of the CBP regulations. See 19 U.S.C. 1508 and 1509. In general, any record required to be made, kept, and rendered for examination and inspection by CBP must be kept for five (5) years from the date of entry. 19 CFR 163.4. Failure to comply with a lawful demand for the production of an entry record, including CBP Form 3229, may result in the assessment of a recordkeeping penalty pursuant to 19 U.S.C. 1509(g). See also 19 CFR 163.6(b).

Lastly, CBP plans to adopt non-substantive, editorial amendments to the regulations. CBP proposes to update the outdated name of the Form which appears in the list of records and information required for the entry of merchandise in the Appendix to part 163 (commonly referred to as the "(a)(1)(A)" list) by amending the listing within section IV for section 7.3(f) to reflect the current name of the form from "CF 3229" to "CBP Form 3229". CBP also proposes to make editorial changes to the sample declarations made by the shipper in the insular possession and by the importer in the United States by updating the year from the 20th Century, "19__." to the 21st Century, "20__" in 19 CFR 7.3(f)(2).

Executive Orders 12866 and 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 is not a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this regulation.

Regulatory Flexibility Act

This section examines the impact on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. 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 per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

As discussed above, if promulgated, the proposed rule will remove the requirement that an importer present a completed CBP Form 3229 with each shipment from an insular possession, and the importer will only be required to present a completed CBP Form 3229 upon CBP’s request.¹ Additionally, this rule will remove the requirement that the shipper of a good from an insular possession obtain a customs official’s signature and date of signature in order to complete a CBP Form 3229.

Using internal databases, CBP has identified that over the last six fiscal years, on average there have been approximately 3,545 shipments of goods each year, imported by approximately 135 importers, from insular possessions (see Table 1). Any importer that imports goods from an insular possession would need to comply with this rule. Therefore, CBP believes that this rule has an impact on a substantial number of small importers. Although this rule may have an effect

¹ The importer will still be required to maintain a completed CBP Form 3229 in its records in accordance to applicable record keeping requirements.

on a substantial number of importers, CBP believes that the economic impact of this rule will not be significant. Because importers will be required to present a completed CBP Form 3229 to CBP only upon request by a CBP officer rather than with each shipment from an insular possession, CBP estimates that an average importer may, at a maximum, print approximately 26 fewer CBP Form 3229s annually. While this would be a positive economic impact, CBP believes that this maximum benefit realized will be negligible.

Table 1: Completed CBP Forms 3229

Fiscal Year	Importers	Completed 3229s
2007	191	7,258
2008	188	4,980
2009	136	3,210
2010	97	2,183
2011	110	1,897
2012	89	1,744
<i>Average</i>	<i>135</i>	<i>3,545</i>

Source: Internal CBP databases

As noted previously, CBP has identified that over the last six fiscal years, there have been an average of 3,545 shipments a year of goods to the United States from insular possessions (see Table 1). Due to data limitations, however, CBP is unable to identify the number of shippers that ship these shipments to the United States. Any shipper that ships goods to the United States from an insular possession would need to comply with this rule. Therefore, CBP believes this rule has an impact on a substantial number of small shippers shipping goods from insular possessions. Although CBP believes this rule may affect a substantial number of shippers, CBP does not believe that this rule will have a significant impact on shippers. CBP estimates that it takes a shipper, on average, approximately one hour to obtain a customs official's signature and date of signature, in order to complete CBP Form 3229.² If this rule is promulgated, CBP

² This time burden differs from Paperwork Reduction Act (PRA) burden because the PRA burden is for completing the form and does not account for travel time.

estimates that shippers shipping goods from an insular possession, including any small entities, will realize time burden reduction (i.e. time savings) of one hour per shipment. CBP estimates the average wage of a shipper's employee who is responsible for the form to be approximately \$45.10 per hour. Thus, CBP estimates that each shipper, including any small entities, will save approximately \$45.10 per shipment. CBP does not believe a savings of \$45.10 per shipment to be a significant economic impact.

Although CBP believes that a substantial number of small entities, both importers and shippers, may be affected by this rule, CBP does not believe that the economic impacts will be significant. CBP certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collections of information in this document will be submitted for OMB review in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651-0016. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collections of information in these regulations are contained in 19 CFR 7.3(f) and currently set forth in CBP Form 3229, Certificate of Origin. This information is required at the time of entry and is used by CBP to verify the goods are eligible for duty-free treatment under General Note 3(a)(iv), HTSUS.

The proposed regulations and changes to CBP Form 3229 would reduce the estimated time burden on shippers by two minutes per completed form. Shippers currently spend an estimated 22 minutes completing CBP Form 3229, Certificate of Origin. The proposed

regulations and new draft of CBP Form 3229 would reduce this time to an estimated 20 minutes to complete the form. The anticipated time savings comes as a result of the elimination of the customs officer signature requirement on the form.

The likely respondents are businesses which import from U.S. insular possessions. Such imports are almost exclusively petroleum, refined in St. Croix, U.S. Virgin Islands. Other such imports include tuna fish, watches, organic chemicals, and alcohol. The proposed burden hours for information collection 1651-0016 are as follows:

- Number of Respondents: 113
- Number of Annual Responses: 2,260
- Time per Response: 20 minutes
- Total Annual Burden Hours: 746

This reflects a decrease of 68 burden hours.

Comments concerning the collections of information should be directed to the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, D.C. 20229-1177. The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs).

Signing Authority

This proposed regulation is being issued in accordance with 19 CFR § 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 7

American Samoa, Customs duties and inspection, Guam, Midway Islands, Puerto Rico, Wake Island.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

Proposed Amendments to the CBP Regulations

For the reasons set forth in the preamble, 19 CFR parts 7, 163, and 178 are proposed to be amended as set forth below.

PART 7 – CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

1. The general and specific authority citations for part 7 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624; 48 U.S.C. 1406i.

§ 7.3 [Amended]

2. In § 7.3:

a. Paragraphs (b) introductory text, (d) introductory text, (e)(1) introductory text, and (e)(2) are amended by removing the word “shall” and adding, in its place, the word “will”.

b. Paragraph (f)(1) is revised.

c. Paragraph (f)(2) introductory text is amended by removing the word “shall” and adding, in its place, the word “must.”; and

d. Paragraphs (f)(2)(i) and (ii) are amended by removing the year designation “19__” wherever it appears, and replacing it with the year designation “20__”.

The revision reads as follows:

§ 7.3 Duty-free treatment of goods imported from insular possessions of the United States other than Puerto Rico.

* * * * *

(f) Documentation. (1) When goods are sought to be admitted free of duty as provided in paragraph (a)(1) of this section, an importer must have in his possession at the time of entry or entry summary a completed certificate of origin on CBP Form 3229, showing that the goods comply with the requirements for duty-free entry set forth in paragraph (a)(1) of this section. The importer must provide CBP Form 3229 upon request by the port director or his delegate. Except in the case of goods which incorporate a material described in paragraph (c)(3)(ii) of this section, a certificate of origin will not be required for any shipment eligible for informal entry under § 143.21 of this chapter or in any case where the port director is otherwise satisfied that the goods qualify for duty-free treatment under paragraph (a)(1) of this section.

* * * * *

PART 163 - RECORDKEEPING

3. The authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

* * * * *

Appendix to Part 163 [Amended]

4. In the Appendix to part 163, within section IV, the listing for § 7.3(f) is amended by removing the abbreviation “CF” and adding, in its place, the words “CBP Form”.

PART 178 - APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

5. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 et seq.

§ 178.2 [Amended]

6. In § 178.2, the table is amended by revising the listings for § 7.3 to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB control No.
* * § 7.3	* * * Claim for duty-free entry of goods imported from U.S. insular possessions.	* * 1651-0116
* * * * *	* * * * *	* *

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Acting Commissioner
U.S. Customs and Border Protection

Approved: January 8, 2014

Timothy E. Skud

Deputy Assistant Secretary of the Treasury

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