

§§ 10.115–10.119 [Reserved]

VISUAL OR AUDITORY MATERIALS

§ 10.121 Visual or auditory materials of an educational, scientific, or cultural character.

(a) Where photographic film and other articles described in subheading 9817.00.40, Harmonized Tariff Schedule of the United States (HTSUS), are claimed to be free of duty under subheading 9817.00.40, HTSUS, there shall be filed in connection with the entry covering such articles a document issued by the U.S. Information Agency certifying that it has determined that the articles are visual or auditory materials of an educational, scientific, or cultural character within the meaning of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character as required by U.S. Note 1, Subchapter XVII, chapter 98, HTSUS.

(b) Articles entered under subheading 9817.00.40, Harmonized Tariff Schedule of the United States (HTSUS), shall be released from Customs custody prior to submission of the document required in paragraph (a) of this section only upon the deposit of estimated duties with the port director. Liquidation of an entry covering merchandise which has been released under this procedure shall be suspended for a period of 90 days from the date of entry or until the required document is submitted, whichever occurs first. In the event that the director of the port of entry does not receive the required document within the 90-day period, the merchandise shall be immediately classified and liquidated in the ordinary course, without regard to subheading 9817.00.40, HTSUS.

[T.D. 67–185, 32 FR 11641, Aug. 11, 1967, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988; T.D. 90–78, 55 FR 40166, Oct. 2, 1990]

RATE OF DUTY DEPENDENT UPON
ACTUAL USE

§ 10.131 Circumstances in which applicable.

The provisions of §§ 10.131 through 10.139 are applicable in those circumstances in which the rate of duty

applicable to merchandise is dependent upon actual use, unless there is a specific provision in this part which governs the treatment of the merchandise. However, specific marking or certification requirements, such as those for bolting cloths in section 10.58, may be applicable to merchandise subject to the provisions of sections 10.131–10.139.

[T.D. 71–139, 36 FR 10726, June 2, 1971, as amended by T.D. 86–118, 51 FR 22515, June 20, 1986]

§ 10.132 [Reserved]

§ 10.133 Conditions required to be met.

When the tariff classification of any article is controlled by its actual use in the United States, three conditions must be met in order to qualify for free entry or a lower rate of duty unless the language of the particular subheading of the Harmonized Tariff Schedule of the United States applicable to the merchandise specifies other conditions. The conditions are that:

(a) Such use is intended at the time of importation.

(b) The article is so used.

(c) Proof of use is furnished within 3 years after the date the article is entered or withdrawn from warehouse for consumption.

[T.D. 71–139, 36 FR 10726, June 2, 1971, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988]

§ 10.134 Declaration of intent.

A showing of intent by the importer as to the actual use of imported merchandise shall be made by filing with the entry for consumption or for warehouse a declaration as to the intended use of the merchandise, or by entering the proper subheading of an actual use provision of the Harmonized Tariff Schedule of the United States (HTSUS) and the reduced or free rate of duty on the entry form. Entry made under an actual use provision of the HTSUS may be construed as a declaration that the merchandise is entered to be used for the purpose stated in the HTSUS, provided the port director is satisfied the merchandise will be so used. However, the port director shall require a written declaration to be filed if he is not satisfied that merchandise entered under an actual use provision will be

United States Customs Service, Treasury

§ 10.139

used for the purposes stated in the HTSUS.

[T.D. 71-139, 36 FR 10726, June 2, 1971, as amended by T.D. 89-1, 53 FR 51252, Dec. 21, 1988]

§ 10.135 Deposit of duties.

When the requirement of §10.134 has been met the merchandise may be entered or withdrawn from warehouse for consumption without deposit of duty when proof of use will result in free entry, or with deposit of duty at the lower rate when proof of use will result in a lower rate of duty.

[T.D. 71-139, 36 FR 10726, June 2, 1971, as amended by T.D. 84-213, 49 FR 41166, Oct. 19, 1984]

§ 10.136 Suspension of liquidation.

Liquidation of an entry covering merchandise for which a declaration of intent has been made pursuant to §10.134 and any required deposit of duties made, shall be suspended until proof of use is furnished or the 3-year period allowed for production thereof has expired.

[T.D. 71-139, 36 FR 10726, June 2, 1971]

§ 10.137 Records of use.

(a) *Maintenance by importer.* The importer shall maintain accurate and detailed records showing the use or other disposition of the imported merchandise. The burden shall be on the importer to keep records so that the claim of actual use can be readily established.

(b) *Retention of records.* The importer shall retain records of use or disposition for a period of 3 years from the date of liquidation of the entry.

(c) *Examination of records.* The records required to be kept by paragraph (a) of this section shall be available at all times for examination and inspection by an authorized Customs officer.

[T.D. 71-139, 36 FR 10726, June 2, 1971]

§ 10.138 Proof of use.

Within 3 years from the date of entry or withdrawal from warehouse for consumption, the importer shall submit in duplicate in support of his claim for free entry or for a reduced rate of duty

a certificate executed by (1) the superintendent or manager of the manufacturing plant, or (2) the individual end-user or other person having knowledge of the actual use of the imported article. The certificate shall include a description of the processing in sufficient detail to show that the use contemplated by the law has actually taken place. A blanket certificate covering all purchases of a given type of merchandise from a particular importer during a given period, or all such purchases with specified exceptions, may be accepted for this purpose, provided the importer shall furnish a statement showing in detail, in such manner as to be readily identified with each entry, the merchandise which he sold to such manufacturer or end-user during such period.

[T.D. 71-139, 36 FR 10727, June 2, 1971]

§ 10.139 Liquidation.

(a) *In general.* Upon satisfactory proof of timely use of the merchandise for the purpose specified by law, the entry shall be liquidated free of duty or at the lower rate of duty specified by law. When such proof is not filed within 3 years from the date of entry or withdrawal from warehouse for consumption, the entry shall be liquidated dutiable under the appropriate subheading of the Harmonized Tariff Schedule of the United States.

(b) *Exception for blackstrap molasses.* An entry covering blackstrap molasses, as hereinafter defined, may be accepted and liquidated with duty at the lower rate after the filing of the declaration of intent required by §10.134 and the deposit of estimated duties required by §10.135 without compliance with §§10.136, 10.137, and 10.138. Blackstrap molasses is "final" molasses practically free from sugar crystals, containing not over 58 percent total sugars and having a ratio of

total sugars×100/Brix

not in excess of 71. In the event of doubt, an ash determination may be made. An ash content of not less than