

contained in paragraph (b) of this section have been or are being met.

(d) Any transferee who is either unwilling or unable to make the certifications and representations specified in paragraph (b) of this section shall secure the Departments' approval in advance of the sale or transfer of the business together with its duty-exemption. The request for approval shall specify which of the certifications specified in paragraph (b) of this section the firm is unable or unwilling to make, and give reasons why such fact should not constitute a basis for the Departments' disapproval of the sale or transfer.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985]

§§ 303.10-303.11 [Reserved]

§ 303.12 Issuance and use of production incentive certificates.

(a) *Issuance of certificates.* (1) The total annual amount of the Certificate of Entitlement, Form ITA-360, may be divided and issued on a biannual basis. The first portion of the total annual certificate amount will be based on reported duty-free shipments and creditable wages paid during the first six months of the calendar year, using the formula in §303.14(c). The Departments require the receipt of the data by July 31 for each producer who wishes to receive an interim duty refund certificate. The interim duty refund certificate will be issued on or before August 31 of the same calendar year in which the wages were earned unless the Departments have unresolved questions. The process of determining the total annual amount of the duty refund will remain the same. The completed annual application (Form ITA-334P) shall be received by the Departments on or before January 31 and the annual verification of data and the calculation of each producer's total annual duty refund, based on the verified data, will continue to take place in February. Once the calculations for each producer's duty refund has been completed, the portion of the duty refund that has already been issued to each producer will be deducted from the total amount of each producer's annual duty refund amount. The duty refund

certificate will continue to be issued by March 1 unless the Departments have unresolved questions.

(2) Certificates shall not be issued to more than one company in the territories owned or controlled by the same corporate entity.

(b) *Securities and handling of certificates.* (1) Certificate holders are responsible for the security of the certificates. The certificates shall be kept at the territorial address of the insular producer or at another location having the advance approval of the Departments.

(2) All refund requests made pursuant to the certificates shall be entered on the reverse side of the certificate.

(3) Certificates shall be returned by registered, certified or express carrier mail to the Departments when:

(i) A refund is requested which exhausts the entitlement on the face of the certificate,

(ii) The certificate expires, or

(iii) The Departments request their return with good cause.

(4) Certificate entitlements may be transferred according to the procedures described in (c) of this section.

(c) *The use and transfer of certificate entitlements.* (1) Insular producers issued a certificate may request a refund by executing a Form ITA-361P (see §303.2(b)(5) and the instructions on the form). After authentication by the Department of Commerce, the Form ITA-361P may be used to obtain duty refunds on watch movements, watches, and parts therefor. Duties on watchcases not containing a movement and on articles containing any material which is the product of a country with respect to which Column 2 rates of duty apply may not be refunded. Articles for which duty refunds are claimed must have entered the customs territory of the United States during the two-year period prior to the issue date of the certificate or during the one-year period the certificate remains valid. Copies of the appropriate Customs entries must be provided with the refund request in order to establish a basis for issuing the claimed amounts. Certification regarding drawback claims and liquidated refunds relating to the presented entries is required from the claimant on the form.

(2) Regulations issued by the Bureau of Customs and Border Protection, U.S. Department of Homeland Security, govern the refund of duties under Pub. L. 97-446, as amended by Public Law 103-465. If the Departments receive information from the Bureau of Customs and Border Protection that a producer has made unauthorized use of any official form, they shall cancel the affected certificate.

(3) The insular producer may transfer a portion of all of its certificate entitlement to another party by entering in block C of Form ITA-361P the name and address of the party.

(4) After a Form ITA-361P transferring a certificate entitlement to a party other than the certificate holder has been authenticated by the Department of Commerce, the form may be exchanged for any consideration satisfactory to the two parties. In all cases, authenticated forms shall be transmitted to the certificate holder or its authorized custodian for disposition (see paragraph (b) above).

(5) All disputes concerning the use of an authenticated Form ITA-361P shall be referred to the Departments for resolution. Any party named on an authenticated Form ITA-361P shall be considered an "interested party" within the meaning of § 303.13 of this part.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 56 FR 9621, Mar. 7, 1991; 61 FR 55885, Oct. 30, 1996; 66 FR 34812, July 2, 2001]

§ 303.13 Appeals.

(a) Any official decision or action relating to the allocation of duty-exemptions or to the issuance or use of production incentive certificates may be appealed to the Secretaries by any interested party. Such appeals must be received within 30 days of the date on which the decision was made or the action taken in accordance with the procedures set forth in paragraph (b) of this section. Interested parties may petition for the issuance of a rule, or amendment or repeal of a rule issued by the Secretaries. Interested parties may also petition for relief from the application of any rule on the basis of hardship or extraordinary circumstances resulting in the inability

of the petitioner to comply with the rule.

(b) Petitions shall bear the name and post office address of the petitioner and the name and address of the principal attorney or authorized representative (if any) for the party concerned. They shall be addressed to the Secretaries and filed in one original and two copies with the U.S. Department of Commerce, Import Administration, International Trade Administration, Washington, D.C. 20230, Attention: Statutory Import Programs Staff. Petitions shall contain the following:

(1) A reference to the decision, action or rule which is the subject of the petition;

(2) A short statement of the interest of the petitioner;

(3) A statement of the facts as seen by the petitioner;

(4) The petitioner's argument as to the points of law, policy of fact. In cases where policy error is contended, the alleged error together with the policy the submitting party advocates as the correct one should be described in full;

(5) A conclusion specifying the action that the petitioner believes the Secretaries should take.

(c) The Secretaries may at their discretion schedule a hearing and invite the participation of other interested parties.

(d) The Secretaries shall communicate their decision which shall be final, to the petitioner by registered mail.

(e) If the outcome of any petition materially affects the amount of the petitioner's allocation and if the Secretaries' consideration of the petition continues during the calculation of the annual allocations, the Secretaries shall set aside a portion of the affected territorial share in an amount which, in their judgment, protects the petitioner's interest and shall allocate the remainder among the other producers.

[49 FR 17740, Apr. 25, 1984, as amended at 56 FR 9622, Mar. 7, 1991]

§ 303.14 Allocation factors and miscellaneous provisions.

(a) *The allocation formula.* (1) Except as provided in (a)(2) of this section, the territorial shares (excluding any