§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700-feet or more above the surface of the earth.

* * * * *

ANM ID E5 Hailey, ID [REVISED]

Friedman Memorial Airport, ID

(Lat. 43°30′14″ N., long, 114°17′45″ W.)

That airspace extending upward from 700-feet above the surface within a 5.5 mile radius of Friedman Memorial Airport, and within 2 miles each side of the 328° bearing from the airport extending from the 5.5 mile radius to 7.4 miles northwest of the airport, and within 2 miles each side of the 159° bearing from the airport extending from the 5.5 mile radius to 7.6 miles southeast of the airport; and that airspace extending upward from 1,200-feet above the surface, bounded by a line beginning at lat. 43°50′00″ N., long, 114°38′27″ W.; 43°50′00″ N., long, 114°00′00″ W.; to lat. 43°12′55″ N., long, 114°00′00″ W.; to lat. 43°12′55″ N., 114°38′27″ W.; thence to point of origin; excluding that airspace within Federal Airways and the Burley, ID, Class E airspace area.

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Issued in Seattle, Washington on April 30, 2002.

Charles E. Davis,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 02–11906 Filed 5–10–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

[T.D. 02–24]

RIN 1515–AC82

Amended Procedure for Refunds of Harbor Maintenance Fees Paid on Exports of Merchandise

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with certain modifications, the content of interim amendments to the Customs Regulations which provide a new procedure for requesting refunds of export harbor maintenance fees. The new procedure simplifies the refund process by relieving exporters from documentary requirements in most cases and providing a 120-day period to allow exporters to seek additional refunds.

EFFECTIVE DATE: May 13, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Thompson, Revenue Branch, National Finance Center, (317) 298–1200 (ext. 4003).

SUPPLEMENTARY INFORMATION:

Background

The harbor maintenance fee was created by the Water Resources Development Act of 1986 (Pub. L. 99–622; codified at 26 U.S.C. 4461 *et seq.*) (the Act) and is implemented by § 24.24 of the Customs Regulations (19 CFR 24.24). Imposition of the fee is intended to require those who benefit from the maintenance of U.S. ports and harbors to share in the cost of that maintenance. Pursuant to the Act and as implemented by the regulations, the harbor maintenance fee became effective on April 1, 1987, and is assessed based on 0.125 percent of the value of commercial cargo loaded or unloaded at certain identified ports or, in the case of passengers, on the value of the actual charge paid for the transportation. In 1998, the U.S. Supreme Court held the fee unconstitutional as applied to exports (*United States Shoe Corporation* v. *United States,* 118 S. Ct. 1290, No. 97–372 (March 31, 1998)). Until then, the fee had been assessed on port use associated with imports, exports, foreign trade zone admissions, passengers, and movements of cargo between domestic ports.

After the Supreme Court decision, by a notice published in the **Federal Register** (63 FR 24209) on May 1, 1998, Customs announced that, as of April 25, 1998, the harbor maintenance fee for cargo loaded on board a vessel for export would no longer be collected. On July 31, 1998, Customs published in the **Federal Register** (63 FR 40822) an amendment to § 24.24 of the Customs Regulations, removing the requirement that exporters loading cargo at ports subject to the harbor maintenance fee pay the fee. Thus, currently, application of the fee continues, as noted above, but only for imports, domestic shipments, foreign trade zone admissions, and passengers.

On August 28, 1998, the U.S. Court of International Trade (CIT) ordered an immediate refund of undisputed export fee payments to exporters who had filed complaints with the court (*United States Shoe Corporation* v. *United States,* No. 94–11–00668, slip op. 98–126 (C.I.T. Aug. 28, 1998)). The court's refund procedure applied to export fee payments received by Customs within two years of the date of the exporter's complaint, and refunds under this procedure were duly paid by Customs. On February 28, 2000, the U.S. Court of Appeals for the Federal Circuit (CAFC) acknowledged that the Customs Regulations did not then impose a limitation on the period within which a refund request may be filed (*Swisher International, Inc.* v. *U.S.,* 205 F. 3d 1358 (No. 99–1277 C.A.F.C. February 28, 2000) (cert. denied).) With this decision, all parties who had paid export fees became eligible to file a refund request for those fees regardless of when the fees were paid. This opened the entire period the export fee was in effect (April 1, 1987—April 25, 1998) to recovery of refunds under the administrative procedure set forth in the regulations.

Recent Regulatory Activity Affecting Export Harbor Maintenance Fee Payments

After publishing a notice of proposed rulemaking and considering the comments received, Customs, on July 2, 2001, published a final rule in the **Federal Register** (66 FR 34813) establishing a one year from time of payment time limit within which a refund request must be filed for overpayments of harbor maintenance fees that were paid on a quarterly basis. As Customs has not collected the fee on exports since April 25, 1998, this time limitation, when in effect, would have eliminated the opportunity for exporters to file any additional harbor maintenance fee refund requests. Thus, to ensure that all exporters had sufficient time and notice to file refund requests, the July 2, 2001, final rule provided that those who made quarterly payments on exports more than one year ago (in effect, all payers of these export fees) would have until December 31, 2001, to file refund requests. Customs notes that the December 31, 2001, filing deadline for refunds applied also to any other harbor maintenance fees paid on a quarterly basis that are more than a year old as of that date.

Before publication of the July 2, 2001, final rule, Customs published an interim regulation providing a simplified procedure for requesting refunds of export harbor maintenance fees. The interim regulation was published in the **Federal Register** (66 FR 16854) on March 28, 2001, and became effective on that date. A correction document to the interim regulation was published in the **Federal Register** (66 FR 21806) on April 27, 2001.

It is noted that the July 2, 2001, final rule setting the one year time limitation

for refunds of quarterly harbor maintenance fee payments incorporated the simplified refund procedure for export fee payments set forth in the interim regulation. However, it modified the structure of the interim regulation and deleted language in the interim regulation regarding the application of interest to refunds because the issue of interest was and remains subject to litigation.

Today's document is a final rule that adopts, with modifications, the content of the interim regulation as corrected by the April 27, 2001, correction document. It retains the structure of the July 2, 2001, final rule and continues to not mention whether interest is applicable to the refunds. The primary additional modifications to the interim regulation (additional to those that were included in the July 2, 2001, final rule) are that: (1) Customs, after receiving a refund request, will provide exporters a list of all payments Customs was able to identify from a search of its records; (2) all exporters filing refund requests will have an additional 120 days from Customs issuance of payment and certification reports to file a request for a Revised Report/Certification to make a refund claim for additional payments; (3) refund requests covering export fee payments made prior to July 1, 1990, will become subject to a power of attorney/authorization letter requirement (exporters or their agents can submit the authorization after the refund request is filed); (4) an exception to the power of attorney/authorization letter requirement will be introduced for freight forwarders; and (5) any agent (including a freight forwarder) that signs a Report/Certification or Revised Report/Certification on an exporter's behalf will certify that it will use due diligence to forward the refund to the exporter and will return to Customs any refund not forwarded to the exporter within one year of its receipt. These and other changes are discussed in the ''Discussion of Comments'', ''Other Changes'', and ''Conclusion'' sections of this document.

Refund Filing Procedure Under the Interim Regulation and the July 2, 2001, Final Rule

For Export Fee Payments Made on and After July 1, 1990

The interim regulation's refund procedure, which became effective on March 28, 2001 (the substance of which was incorporated into the July 2, 2001, final rule), provides that Customs, upon receipt of a request, will search its records for payments made on and after July 1, 1990, and include all payments that can be confirmed in a ''Harbor Maintenance Tax Payment Report and Certification'' (Report/Certification) that is issued to the exporter. If the exporter agrees that the Report/Certification is accurate, the exporter will sign and return it to Customs, thereby agreeing that the amount determined to be owed in the Report/Certification is in full accord and satisfaction of its export harbor maintenance fee claims. Customs then will issue the refund.

If an exporter disputes any payment listed in the Report/Certification (that is, the Report/Certification does not include a payment the exporter believes was made or includes one but not in the correct amount), the exporter must submit documentary proof to Customs to support its claim. After reviewing the submission, if any additional or corrected payments can be confirmed, Customs will issue a Revised Report/Certification listing all undisputed payments from the initially issued Report/Certification and adding the additional confirmed payments (including corrections). If Customs cannot confirm the additional payments/corrections, they will be denied a refund. The denial will be final, and the original Report/Certification will constitute the total refund.

To receive a refund, the exporter must sign and return to Customs the Report/Certification or the Revised Report/Certification, as the case may be.

For Export Fee Payments Made Prior to July 1, 1990

Regarding refund requests for payments made prior to July 1, 1990, the interim regulation (and the July 2, 2001, final rule) provides that proof of payment documentation for each payment must be submitted with the request. If the documentation relative to a payment is sufficient to confirm the payment, Customs will issue a refund. If the documentation relative to a payment is lacking or insufficient to confirm payment, the refund request for that payment will be denied. Upon denial, an exporter will have an additional 120 days to submit documentation or additional documentation proving payment. Customs will review the documentation and issue refunds for confirmed payments and deny refunds for payments that cannot be confirmed. Any denials will be final.

In the interim regulation, Customs explained that it is treating payments made prior to July 1, 1990, differently from payments made on or after that date because it possesses paper documentary proof of payment for payments made on or after July 1, 1990, but not before. Under the interim regulation's procedure, where Customs has paper documentation, it will not require exporters to submit proof of payment with their refund requests. However, Customs will require documentation for such payments where an exporter disputes the completeness or accuracy of a Report/Certification.

Discussion of Comments

Customs received comments from nine commenters on the interim regulation. The comments raised various issues, some of which have already been addressed by Customs in its July 2, 2001, final rule.

Comment: One commenter indicated that exporters may be disinclined to accept Customs invitation to withdraw Freedom of Information Act (FOIA) requests. (Customs made the suggestion in the ''Background'' text of the interim regulation in order to unclog the refund process that had been inundated with FOIA requests. Customs did so after pointing out that FOIA requests would be of no benefit to exporters for two reasons: (1) In most cases, proof of payment documents would not be required under the refund procedure for export fee payments made on and after July 1, 1990, and (2) Customs does not possess, and therefore cannot provide, proof of payment documents (paper documents) for payments made prior to July 1, 1990.) This commenter explained that filers of FOIA requests will not withdraw them because the records received from a FOIA request can be used to assist exporters in identifying the quarters in which a payment was made, as required under the interim regulation. Thus, this commenter recommended that the regulation be modified to remove the requirement that the quarters of payment be identified in a refund request for payments made on and after July 1, 1990; Customs could then search the entire post-June 30, 1990, period for payments.

Customs response: Customs appreciates the commenter's concern regarding FOIA requests and has reconsidered the refund procedure. To accommodate exporters who have requested documentation and to further simplify the process, Customs is modifying the refund procedure in this document.

As set forth in the regulatory text in this document, Customs, when processing a refund request, will perform a search of its records (paper documents and electronic database) and produce for issuance to the exporter two reports: the Report/Certification (also provided for under the interim

regulation) and the Harbor Maintenance Tax Payment Report (HMT Payment Report; not provided for under the interim regulation).

The Report/Certification lists all post-June 30, 1990, payments identified by Customs record search and any pre-July 1, 1990, payments supported by documentation submitted by the exporter with its refund request or afterward; it also sets forth the total amount of the refund owed the exporter. The HMT Payment Report lists all payments made by the exporter during the entire recovery period (April 1, 1987 through April 25, 1998), as identified by Customs record search. Customs believes that the HMT Payment Report should satisfy all exporters who filed FOIA requests, as it contains all payments that Customs can identify from all record sources.

Consequently, specifying quarters of payment in a refund request (or not doing so) will not determine which payments will be included in a Report/Certification (although the information may be helpful to Customs in its search). Exporters who could not identify quarters will benefit from Customs issuance of the HMT Payment Report, as it will provide them information they may need to locate evidence of payments should that evidence be needed to obtain a refund.

Also, Customs notes that under the modified procedure, upon receipt of the HMT Payment Report and the Report/Certification, the exporter will have 120 days to submit a request for a Revised Report/Certification, with supporting documentation, to establish any payments not listed in the Report/Certification. This provides an exporter with a second opportunity to submit required documentation to establish pre-July 1, 1990, payments and, as under the interim regulation procedure, gives exporters the opportunity to support with documentation additional post-June 30, 1990, payments not listed in a Report/Certification (as well as corrections of payments listed).

Comment: Several commenters contended that Customs could use its database to provide information to exporters relative to export fee payments made prior to July 1, 1990. The exporters could then use the provided data to search for records to support payments.

Customs response: Customs favors this recommendation, which is reflected in the modified procedure set forth in this document. Under the modified procedure, Customs will use the database (along with other paper document sources Customs possesses for payments made on or after July 1, 1990) to provide each requesting exporter a HMT Payment Report that lists all payments made during the entire recovery period. This report will provide exporters data they can use to search for that supporting documentation, just as the commenter recommended.

Comment: One commenter recommended that Customs search its database for pre-July 1, 1990, payments and treat them the same as post-July 1, 1990, payments, meaning that Customs would include them in the Report/Certification's refund calculation.

Customs response: Customs cannot agree to this recommendation. The modified procedure will provide the exporter the reports that list payments Customs identified in its record search, but exporters will be required to submit supporting documentation to obtain refunds for pre-July 1, 1990, payments. Customs records do not include paper documentation to support these payments, and Customs experience with older payments recorded in the database has shown that the database is unreliable. Customs therefore cannot rely exclusively on that record source to confirm export fee payments, and exporters will have to provide that documentation (if not with the refund request, as soon as possible thereafter) to receive refunds for pre-July 1, 1990, payments.

Comment: Two commenters objected to the interim regulation's requirement that only certain documents are acceptable as proof of payment for pre-July 1, 1990, payments. (The interim regulation provides that acceptable documentation may be either a copy of the Export Vessel Movement Summary Sheet or, where an Automated Summary Monthly Shipper's Export Declaration was filed, a letter containing certain information there specified.) These commenters contended that any documentation tending to support the payment should be acceptable, such as a cancelled check, a company payment ledger, or a Shipper's Export Declaration (SED).

Customs response: The interim regulation requires as proof of payment the documentation that, under the regulations, was required to be submitted with payment. In requiring that documentation to support a payment, Customs is demanding no more from exporters than the regulation always required for refunds and no more than the regulation still requires for refunds of other than export harbor maintenance fee payments. However, Customs appreciates the difficulty some exporters may have in locating these documents, particularly for older payments (the recovery period extends back to April of 1987). Therefore, Customs is modifying the regulation to provide that, in addition to the required documents, Customs will consider any documentation the exporter submits that tends to prove a payment, including, with respect to exporters whose only quarterly HMT payments were for exports, affidavits attesting to that fact.

Customs notes however that in reviewing documentation other than the required documentation, it will balance its obligation to issue refunds with its obligation to protect the revenue. Thus, while Customs will accommodate exporters by considering additional evidence of payment, it will only accept those documents as evidence of payment if the documentation clearly shows that the payments were made for export fees (as opposed to other harbor maintenance fees), in the amounts sought to be refunded, and by the party requesting the refund (or on whose behalf the refund is requested). The regulation is amended in this document accordingly.

Customs notes that the regulations did not require the CF 349 and the CF 350 until 1991. Thus, for a period of time after this 1991 regulation change, Customs also accepted with payment, and for proving payments for refund, the documentation that was required under the regulations prior to the 1991 change. Consequently, for issuing refunds now for payments made on and after July 1, 1990, Customs will accept as proof of payment, when required to be submitted, whichever type of document Customs accepted with the payment at the time it was made. That documentation was either the documentation required after the 1991 change or, at least for a time, the documentation required under the regulations prior to the 1991 change.

Comment: Two commenters objected to the interim regulation's statement, in the ''Background'' text of the document, regarding when a protest under 19 U.S.C. 1514 should be filed to challenge a denial of a refund request for a pre-July 1, 1990, payment. These commenters contended that the 90-day protest filing period should commence upon expiration of the 120-day refund request refiling period. (The interim regulation procedure provided that, for pre-July 1, 1990, payments, an exporter would have 120 days after a refund denial to submit additional documentation. The document pointed out, however, that if an exporter wanted to file a protest, it must do so within 90 days of the refund denial. This would mean that an exporter would have to file

a protest prior to the end of the 120-day period.)

Customs response: Under 19 U.S.C. 1514(c)(3), a protest must be filed within 90 days of the date of a Customs decision described in 19 U.S.C. 1514(a)(3) concerning charges or exactions under the customs laws, which includes a decision to deny a refund of export harbor maintenance fees. (See *Swisher International, Inc.* v. *United States,* 205 F. 3d 1358 (No. 99–1277 C.A.F.C. February 28, 2000)(cert. denied), which held that denial of a harbor maintenance fee refund request is protestable.) Based on this statutory requirement, the interim regulation document indicated that a protest must be filed within 90 days of the Customs decision to deny a refund.

However, the modified refund procedure, as set forth in this document, renders the concern of these commenters moot. Under the modified procedure, and in contrast to the procedure set forth in the interim regulation, under no circumstance does the 120-day period for filing documentation run concurrently with the statutory 90-day protest period. Under the modified procedure, the 90-day protest period begins to run either upon expiration of the 120-day period or issuance of a Revised Report/Certification if issued after the period's expiration.

Comment: Several commenters objected to Customs expression of intent, in the ''Background'' text of the interim regulation, to require that refund requests for export fee payments made more than a year ago be filed by the anticipated 30-day delayed effective date of the then not yet published July 2, 2001, final rule. These commenters recommended that Customs allow one year or 18 months from the date of publication of that anticipated final rule.

Customs response: Regarding the effective date of the July 2, 2001, final rule by which refund requests for export fee payments must be filed, Customs reconsidered the matter after publication of the interim regulation (partly in response to comments discussed in the final rule). Thus, in the July 2, 2001, final rule, Customs set forth a 180-day delayed effective date that would allow exporters plenty of time to file these refund requests, through December 31, 2001. Customs believes that this was a satisfactory resolution of the matter as it provided ample time to file refund requests (considering the period of time exporters had to do so prior to issuance of the July 2, 2001, final rule).

Comment: Several commenters objected to the interim regulation explicitly precluding application of interest to refunds of export harbor maintenance fees. Some of these commenters stated that interest should apply to these refunds and others stated that the regulation should not explicitly preclude application of interest while the issue is still being litigated.

Customs response: Customs does not agree that interest should apply to refunds of export harbor maintenance fees. As Customs pointed out in its comment responses published in the July 2, 2001, final rule, the U.S. Court of Appeals for the Federal Circuit ruled in *International Business Machines Corp.* v. *United States,* 201 F.3d 1367 (Fed. Cir. 2000), that exporters are not entitled to interest on the refund of these fees. Customs, however, does agree that the regulation should not mention interest while the matter is still subject to litigation. Consequently, Customs removed the language regarding interest from the regulation published in the July 2, 2001, final rule, and today's final rule document continues the omission.

Customs also notes that under § 24.24(e)(4)(ii)(B) of the interim regulation (and under the July 2, 2001, final rule), claims for recovery of interest are not included among the claims waived by the exporter. This is made explicit in the amendment published in this document (see § 24.24(e)(4)(iv)(B)(*5*)).

Comment: Several commenters objected to the interim regulation's requirement that a power of attorney or letter of authorization be submitted when an exporter is represented by an agent. The power of attorney or letter constitutes the exporter's authorization of an agent or representative to file a refund request, sign a Report/Certification or Revised Report/Certification, and/or receive a refund on its behalf.

Customs response: Customs notes that it was the exporter who was liable for the export fee and, as such, is the proper party entitled to receive a refund. Generally, where an agent claims to represent an exporter, Customs believes it is appropriate to require as evidence of the representation a properly executed and current power of attorney or letter of authorization executed by the exporter. This ensures that the agent requestor is properly authorized to request and receive the refund, and it protects both the Government and the exporter against the possibility of issuing a refund to the wrong party, issuing duplicate refunds to both the exporter and its agent, or issuing refunds to more than one agent claiming to represent the same exporter.

Thus, the general rule is that Customs will not process a refund request submitted by an agent on behalf of an exporter (by witholding issuance of the HMT Payment Report and the Report/Certification until an authorizing document is filed) unless a power of attorney or authorization letter signed by the exporter is submitted.

However, in reviewing this matter, Customs has recognized the special circumstance of freight forwarders who made export fee payments on behalf of many exporters at a time, in some cases, hundreds. Customs believes that this special circumstance warrants an exception to the general rule that is practical for Customs as well as the exporters represented by these agents.

To accommodate these agents and yet to ensure, as much as possible, that Customs does not inadvertently issue double refunds to an exporter who also files a refund request on its own behalf, Customs will process refund requests filed by freight forwarders without power of attorneys or authorization letters unless any exporter covered in the refund request has also filed a separate refund request on its own behalf. In that instance, the freight forwarder's entire refund request will be removed from the chronological processing order and processed later.

The exception to the power of attorney/authorization letter requirement for freight forwarders is added to § 24.24(e)(4)(iv)(B)(*1*) of this final rule. Minor conforming modifications are made in the amended regulation, as necessary.

Customs notes that while it always intended to process refund requests in the chronological order of receipt, the interim regulation did not make that explicit. This final rule amends the regulation to make it explicit (see § 24.24(e)(4)(iv)(B)(*1*)).

Where a power of attorney or authorization letter is submitted, whether or not required, it must be executed by an official of the exporting company who is authorized to legally bind the company.

Finally, Customs notes that under the interim regulation procedure, this requirement for a power of attorney or authorization letter only applied to refund requests for post-June 30, 1990, payments for which a Report/Certification would be issued. Refund requests covering payments made prior to July 1, 1990, did not require a power of attorney or authorization letter, as they were to be treated like a request for a refund of any other quarterly paid harbor maintenance fee (except that an

additional 120-day period to establish payments would apply) and a Report/Certification would not be issued. However, as the modified procedure treats payments made prior to and on or after July 1, 1990, the same with respect to issuance of a HMT Payment Report and a Report/Certification that must be signed by the exporter or its representative to receive a refund, the power of attorney/authorization letter requirement is no longer limited to refund requests covering post-June 30, 1990, payments. The regulation is modified accordingly in this document (§ 24.24(e)(4)(iv)(B)(*1*)).

Comment: One commenter recommended that Customs clarify that already-filed refund requests (filed before publication of the interim regulation) that were accompanied by documentation to prove payments made on or after July 1, 1990, will result in a Customs records search that is not limited to only the quarters covered by the documentation submitted. This commenter stated that an exporter should receive refunds for all post-June 30, 1990, payments made but will not if Customs does not search the entire period or the exporter does not refile its refund request identifying all possible quarters during which payments were (or could have been) made.

Customs response: Given the modified procedure set forth in this document, this commenter's concern is moot. Exporters, all of whom have already filed refund requests, will receive the HMT Payment Report that identifies all payments made by the exporter, as revealed by Customs record search. All post-June 30, 1990, payments that Customs can identify will be included in the HMT Payment Report and the Report/Certification whether or not the exporter's request specified quarters of payment. All payments, no matter when made, will be included in the HMT Payment Report.

Comment: Some commenters contended that Customs should convene a public meeting to discuss the amended refund process.

Customs response: Customs does not agree with this recommendation. As stated in its comment responses published in the July 2, 2001, final rule document, Customs believes that a public meeting regarding this subject is unnecessary and that the particular administrative (notice and comment) procedures being followed are sufficient to resolve the matter at issue.

Comment: One commenter recommended that Customs adopt a procedure to sever disputed claims from undisputed claims in a refund request to allow immediate payment of claims that can be verified while the exporter pursues a dispute involving claims that cannot be verified.

Customs response: A form of severability (of undisputed claims from disputed claims) is available under the modified procedure. Under the modified procedure, an exporter may sign and return to Customs a Report/Certification to receive the refund set forth in that report and also file a request for a Revised Report/Certification to seek refunds for additional payments not identified in the Report/Certification. The request for a Revised Report/Certification may be filed either contemporaneously with the filing of the signed Report/Certification or sometime later but within the 120-day period. Customs notes, however, that corrections of payments included in a signed Report/Certification cannot be pursued later because the exporter's signature on the report constitutes a full accord and satisfaction agreement with respect to all payments covered in that report.

In addition, an exporter may file another request for a Revised Report/Certification at any time during the 120-day period. This feature of the procedure allows an exporter to seek a refund for any later discovered payments and gives an exporter another chance to prove (with additional documentation) a payment that was not included in a refund previously issued by Customs.

Finally, after expiration of the 120-day period, an exporter may file a protest covering any payments not refunded by Customs. This provides another opportunity to sever disputed from undisputed refund claims, though later in the process.

Comment: One commenter recommended that a time limit be imposed on Customs processing of refund requests to require that Customs process at least 500 claims per month.

Customs response: Customs disagrees that a monthly processing requirement is necessary. However, Customs agrees that the expeditious processing of claims should be given a high priority. Toward that end, the modified procedure provides that Customs will endeavor to issue a Revised Report/Certification within 60 days of receiving a request for a revised report with supporting documentation. Also, for exporters whose payments are confined to the post-June 30, 1990, period and who do not dispute the payments listed and the refund set forth in a Report/Certification, refunds will be issued soon after Customs receipt of a signed Report/Certification. The sooner the exporter signs and returns it to Customs, the sooner Customs will issue the refund. Customs believes that the timetable set up in the modified procedure adequately addresses this commenter's concern.

Other Changes

After further consideration of the interim regulation's refund procedure, Customs determined that other changes were warranted (additional to those discussed in the comment responses above). One change involves the exporter's waiver (release, waiver, and abandonment) of claims against the Government (its officers, agents, and assigns for costs, attorney fees, expenses, compensatory damages, and exemplary damages, excluding interest), and another change involves the exporter's full accord and satisfaction agreement. The interim regulation (as well as the July 2, 2001, final rule) provides that the waiver and the full accord and satisfaction agreement apply to all export fee payments made by the exporter, whether or not addressed in a report. In contrast, under the modified procedure set forth in this document, an exporter's signature on a Report/Certification or a Revised Report/Certification represents a waiver and a full accord and satisfaction agreement relative only to the payments approved for refund in the report.

Another change is the Government's waiver of claims (excluding fraud claims) against the exporter (its employees, etc.) which in this document, like the exporter's waiver, is limited to claims arising out of payments covered in a signed report. Under the interim regulation, the Government's waiver was broad, covering all export fee payments whether or not covered in a report.

Another change has to do with the certification made by an agent, including a freight forwarder, that signs a Report/Certification or Revised Report/Certification on an exporter's behalf. Customs, in determining that the freight forwarder exception to the power of attorney/authorization letter requirement is warranted (discussed in the ''Comments'' section), recognized that any agent should be accountable for the proper distribution of refunds issued by Customs that are intended for exporters covered in the agent's refund request. Thus, Customs is adding to the regulation (§ 24.24(e)(4)(iv)(B)(*5*)) a provision that requires any agent, when signing a Report/Certification or Revised Report/Certification and accepting refunds on behalf of exporters, to certify that it will use due diligence to forward the refund to the exporters it represents, and will return a refund to Customs,

within one year of receipt, if it does not forward it to the exporter.

Another change in the regulation is to add language indicating that refund requests will be processed in the chronological order of receipt (see § 24.24(e)(4)(iv)(B)(*1*)) . Customs always intended to process refund requests in this way, but the regulation was silent in this regard.

Finally, a change concerning the address for submitting requests for refunds of harbor maintenance fees paid on a quarterly basis (found in § 24.24(e)(4)(i) of the interim regulation) is made in this document (in §§ 24.24(e)(4)(i) and (iv)(A)). The change reflects the correct zip code; however, as noted previously, this change was reflected in the July 2, 2001, final rule and was made in a notice of correction document published in the **Federal Register** on April 27, 2001.

Conclusion

After analysis of the comments and further review and consideration of the matter, Customs has determined to adopt as final the content of the interim amendments published in the **Federal Register** (66 FR 16854) on March 28, 2001, with the changes discussed above in this document and set forth in the amended regulatory text below.

In summary, these changes relate to: (1) That part of the procedure relative to Customs issuance of refunds after receiving a refund request, including the issuance of a HMT Payment Report; (2) the processing of refund requests in chronological order; (3) the requirement that a power of attorney or authorization letter be submitted to Customs prior to issuance of a HMT Payment Report and Report/Certification for any refund request (as opposed to only requests covering post-June 30, 1990, payments) submitted on the exporter's behalf by an agent other than a freight forwarder; (4) an exception to the power of attorney/ authorization letter requirement applicable to freight forwarders and it's effect on the chronological processing of refunds filed by freight forwarders; (5) a requirement that any agent (including a freight forwarder) that signs a Report/ Certification or Revised Report/ Certification on an exporter's behalf must certify that it will use due diligence to forward the refund to the exporter and will return to Customs any refund not forwarded to the exporter within one year of its receipt; (6) the exporter's waiver (release and abandonment) of claims and its agreement of full accord and satisfaction; (7) the Government's waiver of claims against the exporter; (8) the address for mailing refund requests for export harbor maintenance fees; and (9) the matter of interest on refunds of export harbor maintenance fees. Customs notes that the latter two changes were reflected in the July 2, 2001, final rule.

Customs emphasizes that the instant final rule's modification of the interim regulation's refund-filing procedure will not prejudice exporters who filed refund requests in accordance with that procedure. The modified procedure is simpler and more accommodating to exporters than the interim regulation's procedure, and all filers will benefit equally from its implementation. Customs notes that as all refund requests have been filed prior to publication of this document, any modification to the procedure will not affect any exporter's actual filing of the request. The modifications made in this document affect the part of the procedure that commences after Customs receives a refund request.

Finally, Customs notes that this document amends only § 24.24(e)(4)(iv). The remaining paragraphs of § 24.24(e)(4) remain as published in the July 2, 2001, final rule (which became effective after the interim regulation and thereby replaced the interim regulation).

Inapplicability of Delayed Effective Date

Pursuant to 5 U.S.C. 553(d)(3), Customs has determined that a delayed effective date for this final rule is unnecessary. This document adopts, with some modifications, the content of an interim regulation previously published in the **Federal Register** (66 FR 34813) and made effective on March 28, 2001. The several changes made with publication of this document are to the benefit of the exporters who are required to follow the procedure set forth in the already effective interim regulation. For that reason, the effective date of this final rule document should not be delayed.

Executive Order 12866

This document does not meet the criteria for a Asignificant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this final rule has previously been reviewed and approved by the Office of Management and Budget (OMB) under OMB control number 1515–0158. Additional information requested in the final rule relates to usual and customary business information/records. This rule does not include any substantive changes to the existing approved information collection. 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.

Regulatory Flexibility Act

Because no notice of proposed rulemaking was required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. However, because this amendment to the regulations merely simplifies, to the benefit of exporters, a procedure for applying for and receiving refunds of export harbor maintenance fees that is already provided for under an existing regulation, it will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices contributed in its development.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Fees, Financial and accounting procedures, Imports, Taxes, User fees.

Amendments to the Regulations

For the reasons stated in the preamble, under the authority of 19 U.S.C. 66 and 1624, the content of the interim rule amending 19 CFR part 24 that was published at 66 FR 16854 on March 28, 2001, is adopted as a final rule, with changes, to read as follows:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for part 24 is amended to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

* * * * *

2. Section 24.24 is amended by revising paragraph (e)(4)(iv) to read as follows:

§ 24.24 Harbor maintenance fee.

* * * * *

(e) *Collections, supplemental payments, and refunds—** * *

(4) * * *

(iv) *For fees paid on export movements.* Customs will process refund requests relative to fee payments previously made regarding the loading of cargo for export as follows:

(A) *Refund request.* For export fee payments made prior to July 1, 1990, the

exporter (the name that appears on the SED or equivalent documentation authorized under 15 CFR 30.39(b)) or its agent must submit a letter of request for a refund specifying the grounds for the refund and identifying the specific payments made. The letter must be accompanied by the proof of payment set forth in paragraph (e)(4)(iv)(C) of this section. For export fee payments made on or after July 1, 1990, supporting documentation is not required with the refund request. For these payments, the request must specify the grounds for the refund, identify the quarters for which a refund is sought, and contain the following additional information: the exporter's name, address, and employer identification number (EIN); the name and EIN of any freight forwarder or other agent that made export fee payments on the exporter's behalf; and a name, telephone number, and facsimile number of a contact person.

(B) *Refund procedure*—(*1*) *Processing order; power of attorney.* Generally, a properly filed refund request will be processed in the chronological order of its receipt. A refund request filed on behalf of an exporter by an agent other than a freight forwarder must be supported by a power of attorney or letter signed by the exporter authorizing the representation. A refund request filed by an agent other than a freight forwarder that lacks a power of attorney or authorization letter will not be processed unless one or the other is submitted. A refund request filed by a freight forwarder does not require a power of attorney or authorization letter to be processed; however, if Customs has not received a power of attorney or authorization letter for an exporter covered in a freight forwarder's refund request and that exporter has filed a separate refund request on its own behalf, that freight forwarder's entire refund request will be removed from the chronological processing order and processed after the processing of all exporter refund requests is completed.

(*2*) *HMT Payment Report and Report/Certification.* In processing a request for a refund, Customs will conduct a search of its records (Customs electronic database and paper document sources) and produce for issuance to the exporter (or its agent, as appropriate) a ''Harbor Mantenance Tax Payment Report'' (HMT Payment Report) that lists all payments reflected in those records for the entire period the fee was in effect. Customs will also produce for issuance to the exporter a ''Harbor Maintenance Tax Refund Report and Certification'' (Report/Certification) that lists all payments supported by paper documentation, either retained by Customs (relative to payments made on and after July 1, 1990) or submitted by the exporter with its refund request (relative to payments made at any time the fee was in effect). Where a refund request was filed on the exporter's behalf by an agent other than a freight forwarder, a power of attorney or authorization letter must be filed with Customs before Customs will issue these reports. The Report/Certification sets forth the total amount of the refund that Customs believes it owes the exporter for the payments listed in that report (minus any previous refunds). Pre-July 1, 1990, payments listed in the HMT Payment Report for which paper documentation has not been provided by the exporter will not be listed in the Report/Certification. The exporter has 120 days from the date the HMT Payment Report and the Report/Certification are issued (the 120-day period) to sign and return to Customs the Report/Certification in order to receive the refund set forth in that report and/or to submit to Customs a request for a Revised Report/Certification. Where the exporter chooses to receive the refund set forth in the Report/Certification, the exporter must sign and return the report to Customs. Customs will issue the refund upon receipt of the signed report.

(*3*) *Revised Report/Certification.* A request for a Revised Report/Certification must be accompanied by documentation to support any payments not listed in the Report/Certification or corrections to listed payments. See paragraph (e)(4)(iv)(C) of this section regarding acceptable documentation. If an exporter (or its agent, as appropriate) both signs and returns to Customs a Report/Certification and requests a Revised Report/Certification, Customs will not, when reviewing the request for a Revised Report/Certification, approve for refund any corrections to the payments that were listed in the signed Report/Certification; Customs will, however, in that circumstance, consider approving any additional payments that were not listed in the signed Report/Certification. If an exporter does not sign and return to Customs a Report/Certification, but requests a Revised Report/Certification, Customs will consider approving for refund corrections to the payments listed in the Report/Certification and additional payments. Where the exporter requests a Revised Report/Certification, Customs will review the documentation submitted with the request, make a determination, and, within 60 days of the request's receipt, issue a Revised Report/Certification that lists all payments approved for refund and the total amount of the refund owed. In order to receive the refund set forth in a Revised Report/Certification, the exporter must sign and return it to Customs. Customs will issue the refund upon its receipt of the signed report. An exporter, within the 120-day period, may submit additional requests for a Revised Report/Certification, with appropriate documentation, to cover any payments not approved for refund in a Revised Report/Certification previously issued by Customs.

(*4*) *Protest.* For purposes of filing a protest under 19 U.S.C. 1514 (and 19 CFR part 174), unless issuance of a Revised Report/Certification is pending, any payments not approved for refund in a Report/Certification or a Revised Report/Certification issued by Customs within the 120-day period will be considered denied as of the date the period expires; a protest covering such payments must be filed within 90 days of that date. For any payments not approved for refund in a Revised Report/Certification issued after expiration of the 120-day period, a protest may be filed within 90 days of that report's issuance.

(*5*) *Significance of signed Report/Certification and Revised Report/Certification.* A Report/Certification or Revised Report/Certification must be signed by an officer of the company duly authorized to bind the company or by an agent (such as a broker or freight forwarder) representing the exporter in seeking a refund under this section. A Report/Certification or Revised Report/Certification signed by the exporter or its agent and received by Customs constitutes the exporter's agreement that the amount of the refund set forth in the report is accurate and Customs payment of that refund amount is in full accord and satisfaction of all payments approved for refund in the report. The signed Report/Certification or Revised Report/Certification also represents the exporter's release, waiver, and abandonment of all claims, excluding claims for interest, against the Government, its officers, agents, and assigns for costs, attorney fees, expenses, compensatory damages, and exemplary damages arising out of the payments approved for refund in the report. When an agent, including a freight forwarder, signs a Report/Certification or Revised Report/Certification on behalf of an exporter(s), the agent certifies that it is acting on the exporter's behalf and will use due diligence to forward the refund to the exporter, and, in the event the agent does not forward the refund to the exporter, will notify Customs and return

the refund to Customs within one year of its receipt of the refund. Upon receipt of the signed Report/Certification or Revised Report/Certification, Customs releases, waives, and abandons all claims other than fraud against the exporter, its officers, agents, or employees arising out of all payments approved for refund in the report.

(C) *Documentation.* For payments made prior to July 1, 1990, supporting documentation is required to obtain a refund and must be submitted in accordance with paragraphs (e)(4)(iv)(A) and/or (B)(*3*) of this section. For payments made on and after July 1, 1990, supporting documentation is not required to obtain a refund, unless the exporter seeks to prove corrections of payments listed in the Report/Certification (if the exporter did not sign and return it to Customs) and/or additional payments not listed in a Report/Certification, in accordance with paragraph (e)(4)(iv)(B)(*3*) of this section. The supporting documentation that Customs will accept as establishing entitlement to a refund, whether submitted with a refund request or a request for a Revised Report/Certification, is whichever of the following documents Customs accepted with the payment at the time it was made: a copy of the Export Vessel Movement Summary Sheet; where an Automated Summary Monthly Shipper's Export Declaration was filed, a copy of a letter containing the exporter's identification, its employer identification number (EIN), the Census Bureau reporting symbol, and, the quarter for which the payment was made; or a copy of a Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349, for the quarter covering the refund requested. Customs also will consider other documentation offered as proof of payment of the fee, such as cancelled checks and/or affidavits from exporters attesting to the fact that all quarterly harbor maintenance tax payments made by the exporter were made exclusively for exports, and will accept that other documentation as establishing entitlement for a refund only if it clearly proves the payments were made for export harbor maintenance fees in the amounts sought to be refunded and were made by the party requesting the refund or the party on whose behalf the refund was requested.

* * * * *

Robert C. Bonner,

Commissioner of Customs.

Approved: May 8, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–11835 Filed 5–10–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8985]

RIN 1545–AY02

Hedging Transactions; Corrections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Wednesday, March 20, 2002 (67 FR 12863) relating to the character of gain or loss from hedging transactions.

DATES: This correction is effective March 20, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth Handler (202) 622–3930 or Viva Hammer (202) 622–0869 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 1221 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.446–4 [Corrected]

2. Section 1.446–4, paragraph (d)(3) is amended by removing the language ''§ 1.1221–2(a)(4)(i)'' from the last sentence and adding the language ''§ 1.1221–2(a)(4)'' in its place.

§ 1.1256(e)–1 [Corrected]

3. Section 1.1256(e)–1, paragraph (c) is amended by removing the language ''(f)(1)(ii)'' from the second sentence and adding the language ''(g)(1)(ii)'' in its place.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–11793 Filed 5–10–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach 02–009]

RIN 2115–AA97

Security Zones; Cruise Ships, San Pedro Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing moving and fixed security zones around cruise ships located on San Pedro Bay, California, near and in the ports of Los Angeles and Long Beach. These actions are necessary to ensure public safety and prevent sabotage or terrorist acts against these vessels. Persons and vessels are prohibited from entering these security zones without permission of the Captain of the Port.

DATES: This rule is effective from 11:59 p.m. PDT on May 1, 2002 to 11:59 p.m. PST on December 1, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP Los Angeles-Long Beach 02–009 and are available for inspection or copying at Coast Guard Marine Safety Office Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Rob Griffiths, Chief of Waterways Management Division, at (310) 732–2020.

SUPPLEMENTARY INFORMATION: