

**SUBCHAPTER 70-10.2**  
**REGULATIONS PROVIDING FOR DISTRIBUTION OF**  
**HEADNOTE 3(A) PRODUCTION UNDER THE LIMITED WAIVER**  
**PROVIDED BY ADMINISTRATIVE AGREEMENT**

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Subchapter Authority: 1 CMC §§ 2553 and 2557.

Subchapter History: Public Notice 12 Com. Reg. 6905 (Apr. 15, 1990) (determination not to adopt October 1989 proposed amendments); Public Notice 12 Com. Reg. 6815 (Feb. 15, 1990) (determination not to adopt October 1989 proposed amendments); Amdts Proposed 11 Com. Reg. 6597 (Oct. 15, 1989); Amdts Emergency 10 Com. Reg. 5552 (May 15, 1988) (effective for 120 days from Apr. 8, 1988); Amdts Proposed 8 Com. Reg. 4394 (June 3, 1986);\* Amdts Adopted 8 Com. Reg. 4216 (Feb. 17, 1986); Amdts Proposed 8 Com. Reg. 4187 (Jan. 17, 1986); Adopted 7 Com. Reg. 3727 (July 22, 1985); Emergency and Proposed 7 Com. Reg. 3728 (July 22, 1985) (effective for 120 days from June 6, 1985); Emergency and Proposed 7 Com. Reg. 3613 (May 21, 1985) (effective for 120 days from May 20, 1985).

\*A notice of adoption for the June 1986 proposed amendments was never published.

Commission Comment: 1 CMC § 2551 creates the Department of Finance within the Commonwealth government. 1 CMC § 2553 authorizes the Department to be responsible for customs and baggage inspection and other related matters. The Department is authorized to adopt rules and regulations regarding those matters within its jurisdiction. See 1 CMC § 2557.

**Part 001 - General Provisions**

**§ 70-10.2-001 Purpose**

The regulations in this subchapter shall provide for a division among CNMI sweater manufacturers of the import limit placed by the United States upon cotton, wool and man-made fiber sweaters in categories 345, 445, 446, 645 and 646 assembled in the CNMI from a minimum of four major sweater parcels which originate in a country whose sweater exports to the United States are subject to quota.

Modified, 1 CMC § 3806(d), (f).

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History: Adopted 7 Com. Reg. 3727 (July 22, 1985); Emergency and Proposed 7 Com. Reg. 3728 (July 22, 1985) (effective for 120 days from June 6, 1985); Emergency and Proposed 7 Com. Reg. 3613 (May 21, 1985) (effective for 120 days from May 20, 1985).

### § 70-10.2-005 Findings

The following administrative findings constitute the basis for the regulations in this subchapter:

(a) On January 9, 1978 upon the inception of the government of the Commonwealth of the Northern Mariana Islands General Headnote 3(a) to the Tariff Schedules of the United States, 19 U.S.C. § 1202, provided a country of origin rule specifically for insular possessions of the United States. That rule provides that an article is a product of the insular possessions if it does not contain foreign materials exceeding 50% of the total appraisal value of the product. There are no quota restrictions or duties applicable to insular possessions.

(b) On February 22, 1983, the United States Customs Service recognized that Headnote 3(a) applied to the Commonwealth of the Northern Mariana Islands under § 603(c) of the Covenant which provides the same treatment for imports from the Northern Mariana Islands into the United States as imports from Guam into the United States.

(c) Based upon that decision, certain corporations located sweater factories in the Commonwealth and began assembly operations under Headnote 3(a).

(d) On August 3, 1984, the Customs Service published interim regulations governing the importation of textiles and textile products into the United States (T.D. 84-171). These regulations, which applied to insular possessions, provide that articles which consist of materials which originated in a foreign country shall be considered as products of an insular possession only if the article has been substantially transformed by means of a substantial manufacturing or processing operation into a new and different article of commerce with a name, character or use distinct from the article or material from which it was so transferred. Essentially, assembly operations which contribute 50% to the final appraisal value of an article will no longer qualify the article as originating in the Commonwealth of the Northern Mariana Islands.

(e) As a result of the interim regulations, the sweater manufacturers have been unable to import sweaters into the United States Customs Territory, thereby threatening the existence of such an industry in the Commonwealth.

(f) On April 4, 1985, the Customs Service adopted the interim regulations, with minor amendments, as a final rule (T.D. 85-38).

(g) As a result of many months of discussion with the Committee for the Implementation of Textile Agreements (CITA) and the Office of the United States Trade Representative an administrative arrangement for the waiver of the regulations for 70,000 dozen sweaters annually was agreed to by the United States government and the

government of the Northern Mariana Islands on January 30, 1985. A directive from the Chairman of CITA to the Commissioner of Customs establishes an import limit and certification requirements to be effective on April 15, 1985. However, the annual period commenced on November 1, 1984.

(h) The amount of the annual waiver was established by the United States as the annual production capacity of the sweater manufacturers which were engaged in manufacturing under Headnote 3(a) in the CNMI.

(i) It is necessary to establish a system for the distribution of the waiver among those factories.

Modified, 1 CMC § 3806(d), (g).

History: Adopted 7 Com. Reg. 3727 (July 22, 1985); Emergency and Proposed 7 Com. Reg. 3728 (July 22, 1985) (effective for 120 days from June 6, 1985); Emergency and Proposed 7 Com. Reg. 3613 (May 21, 1985) (effective for 120 days from May 20, 1985).

Commission Comment: In subsections (b), (d) and (f), the Commission inserted a comma after the dates to correct manifest errors.

## **Part 100 - Waiver Certificate**

### **§ 70-10.2-101 Waiver Certificate**

The Chief of the Division of Customs shall issue a waiver certificate to applicants who meet the criteria set forth in § 70-10.2-105 which will entitle the holder to a pro rata share of the waiver. The certificate shall specify the number of sweaters in the share.

Modified, 1 CMC § 3806(c).

History: Public Notice 12 Com. Reg. 6905 (Apr. 15, 1990) (determination not to adopt October 1989 proposed amendments); Public Notice 12 Com. Reg. 6815 (Feb. 15, 1990) (determination not to adopt October 1989 proposed amendments); Amdts Proposed 11 Com. Reg. 6597 (Oct. 15, 1989); Adopted 7 Com. Reg. 3727 (July 22, 1985); Emergency and Proposed 7 Com. Reg. 3728 (July 22, 1985) (effective for 120 days from June 6, 1985); Emergency and Proposed 7 Com. Reg. 3613 (May 21, 1985) (effective for 120 days from May 20, 1985).

### **§ 70-10.2-105 Eligibility for Certificate**

- (a) An applicant is eligible for a waiver certificate upon proof of:
- (1) Incorporation in the Commonwealth of the Northern Mariana Islands prior to January 30, 1985;
  - (2) A valid license to conduct a sweater manufacturing business prior to January 30, 1985;
  - (3) Full time employment of at least twenty workers employed in the operation of the garment factory, at the time the application is submitted;
  - (4) Full time employment (40 hours per week) of workers in garment manufacturing operation who are either United States citizens, certificate of identity holders, Public Law

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5-11 permanent residents, or Trust Territory citizens who comprise the following percentages of the company's labor force:

- (i) After January 1, 1986 - 30%; and
- (ii) Before January 1, 1987 - 40%.

(b) Beginning in 1986, all applications for waiver certificates must be made by October 15 of each year.

(c) Failure to maintain the minimum requirements of subsections (a)(3) and (a)(4) any time during the year shall cause a certificate to be suspended until proof of compliance.

Modified, 1 CMC § 3806(c), (e), (f).

History: Public Notice 12 Com. Reg. 6905 (Apr. 15, 1990) (determination not to adopt October 1989 proposed amendments); Public Notice 12 Com. Reg. 6815 (Feb. 15, 1990) (determination not to adopt October 1989 proposed amendments); Amdts Proposed 11 Com. Reg. 6597 (Oct. 15, 1989); Amdts Proposed 8 Com. Reg. 4394 (June 3, 1986); Amdts Adopted 8 Com. Reg. 4216 (Feb. 17, 1986); Amdts Proposed 8 Com. Reg. 4187 (Jan. 17, 1986); Adopted 7 Com. Reg. 3727 (July 22, 1985); Emergency and Proposed 7 Com. Reg. 3728 (July 22, 1985) (effective for 120 days from June 6, 1985); Emergency and Proposed 7 Com. Reg. 3613 (May 21, 1985) (effective for 120 days from May 20, 1985).

Commission Comment: The February 1986 amendments deleted former subsections (a)(3), (a)(4)(i) and (ii), and (c), added a new subsection (a)(3), re-designated the remaining subsections accordingly and amended subsections (a)(4), (a)(4)(i), (b) and (c).

A notice of adoption for the June 1986 proposed amendment was never published and, therefore, the Commission has not incorporated the proposed changes. The 1989 amendments proposed numerous amendments to this section and proposed to add a new § 203, entitled "Division of Quota Shares." The 1989 amendments were not adopted.

In subsection (a)(3), the Commission replaced the final period with a semi-colon to make the punctuation consistent.

### **§ 70-10.2-110 Duration of Certificate**

A waiver certificate shall be valid until modified by the issuance of a new waiver certificate pursuant to the allocation in § 70-30.3-130.

Modified, 1 CMC § 3806(c).

History: Public Notice 12 Com. Reg. 6905 (Apr. 15, 1990) (determination not to adopt October 1989 proposed amendments); Public Notice 12 Com. Reg. 6815 (Feb. 15, 1990) (determination not to adopt October 1989 proposed amendments); Amdts Proposed 11 Com. Reg. 6597 (Oct. 15, 1989); Amdts Adopted 8 Com. Reg. 4216 (Feb. 17, 1986); Amdts Proposed 8 Com. Reg. 4187 (Jan. 17, 1986); Adopted 7 Com. Reg. 3727 (July 22, 1985); Emergency and Proposed 7 Com. Reg. 3728 (July 22, 1985) (effective for 120 days from June 6, 1985); Emergency and Proposed 7 Com. Reg. 3613 (May 21, 1985) (effective for 120 days from May 20, 1985).

### **§ 70-10.2-115 Non-assignable Certificates**

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Waiver certificates cannot be assigned, sold, or transferred by the holder to any other person or entity.

History: Public Notice 12 Com. Reg. 6905 (Apr. 15, 1990) (determination not to adopt October 1989 proposed amendments); Public Notice 12 Com. Reg. 6815 (Feb. 15, 1990) (determination not to adopt October 1989 proposed amendments); Amdts Proposed 11 Com. Reg. 6597 (Oct. 15, 1989); Adopted 7 Com. Reg. 3727 (July 22, 1985); Emergency and Proposed 7 Com. Reg. 3728 (July 22, 1985) (effective for 120 days from June 6, 1985); Emergency and Proposed 7 Com. Reg. 3613 (May 21, 1985) (effective for 120 days from May 20, 1985).

### **§ 70-10.2-120 Change in Pro Rata Shares**

(a) Upon any decrease in the amount of the waiver by the United States, the effect of the decrease shall be shared equally among each of the holders of waiver certificates, to the maximum extent practicable.

(b) If the Chief determines upon a hearing that a company cannot be reasonably expected to utilize its entire waiver within the year, the share of the company may be re-assigned in equal shares to the remaining companies which can reasonably be expected to utilize the remainder.

(c) If it appears to any certificate holder that the manufacturer will be unable to produce a sufficient number of sweaters in order to utilize its entire waiver within the year, the holder shall surrender to the Chief the expected remainder prior to August 1. If a company fails to utilize more than 10% of its waiver in a year, the unused portion shall be deducted from its share for the next year. Any surrendered remainders or deductions from shares shall be distributed pro rata among other certificate holders who can be reasonably expected to utilize the increase in their share.

History: Public Notice 12 Com. Reg. 6905 (Apr. 15, 1990) (determination not to adopt October 1989 proposed amendments); Public Notice 12 Com. Reg. 6815 (Feb. 15, 1990) (determination not to adopt October 1989 proposed amendments); Amdts Proposed 11 Com. Reg. 6597 (Oct. 15, 1989); Amdts Emergency 10 Com. Reg. 5552 (May 15, 1988) (effective for 120 days from Apr. 8, 1988); Amdts Proposed 8 Com. Reg. 4394 (June 3, 1986); Adopted 7 Com. Reg. 3727 (July 22, 1985); Emergency and Proposed 7 Com. Reg. 3728 (July 22, 1985) (effective for 120 days from June 6, 1985); Emergency and Proposed 7 Com. Reg. 3613 (May 21, 1985) (effective for 120 days from May 20, 1985).

Commission Comment: The June 1986 amendments proposed to amend subsection (c). A notice of adoption for the June 1986 proposed amendments was never published and, therefore, the Commission has not incorporated the proposed changes.

The 1989 amendments proposed to amend subsections (a), (b) and (c). The 1989 amendments were not adopted.

### **§ 70-10.2-125 Retroactive Effect**

The waiver certificates issued in June of 1985 shall be retroactive to November 1, 1984 and shall expire on October 31, 1985. All shipments already documented by certificates of origin which entered the United States as part of the 70,000 dozen waiver shall be debited against the amounts of the certificate holders.

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History: Public Notice 12 Com. Reg. 6905 (Apr. 15, 1990) (determination not to adopt October 1989 proposed amendments); Public Notice 12 Com. Reg. 6815 (Feb. 15, 1990) (determination not to adopt October 1989 proposed amendments); Amdts Proposed 11 Com. Reg. 6597 (Oct. 15, 1989); Amdts Proposed 8 Com. Reg. 4394 (June 3, 1986); Adopted 7 Com. Reg. 3727 (July 22, 1985); Emergency and Proposed 7 Com. Reg. 3728 (July 22, 1985) (effective for 120 days from June 6, 1985); Emergency and Proposed 7 Com. Reg. 3613 (May 21, 1985) (effective for 120 days from May 20, 1985).

Commission Comment: A notice of adoption for the June 1986 amendments was never published.

### § 70-10.2-130 Allocation of Shares

(a) Rationale. The division of shares of the waiver provides an incentive for each manufacturer to employ local workers and to produce sweaters that will maximize the Commonwealth's tax collection. The division also recognizes the manufacturer's past production and its tax revenue contribution.

(b) Each of the three sweater manufacturers shall be allocated a base share of 10,000 dozen. The three categories upon which the allocations above this 10,000 figure shall be based are set forth in this subsection. The waiver shares in each category shall be awarded based upon the applicant's proportionate share of each category. For the allocation of 1986 shares, the period of reference for all three categories below shall be for calendar year 1985.

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| (1) Total payroll paid to non-aliens as defined in Public Law No. 3-105 (during the preceding calendar year) | 60% |
| (2) Past sweater production level by assembly and knitting (number of dozens exported in 1985)               | 20% |
| (3) Total export sales dollar (From Nov. 1 to Oct. 31 in the preceding year.)                                | 20% |

(c) The sources for the figures used to ascertain shares pursuant to subsection (b) shall be the following:

- (1) For figures used in subsection (b)(1) - an employers created form reconciled with employer's income tax quarterly withholding return (form OS-3705, Rev. 3/85).
- (2) For figures used in subsection (b)(2) - the certificate of origin for all sweaters exported.
- (3) For figures used in subsection (b)(3) - quarterly gross revenue tax forms.

(d) The division of shares of any waiver in excess of the 73,500 dozen agreement, and the division of any increase, bonus or additional amount authorized by the federal government, shall be by the formula in this section.

(e) No salary amount in excess of \$50,000 will be counted toward the total figure in subsection (b)(1).

(f) Each manufacturer shall be notified within 20 days from the effective date of the regulations in this subchapter as to his allocation of shares for 1986. Any waiver certificate already issued in 1986 will be modified by this notification.

Modified, 1 CMC § 3806(d), (f), (g).

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History: Public Notice 12 Com. Reg. 6905 (Apr. 15, 1990) (determination not to adopt October 1989 proposed amendments); Public Notice 12 Com. Reg. 6815 (Feb. 15, 1990) (determination not to adopt October 1989 proposed amendments); Amdts Proposed 11 Com. Reg. 6597 (Oct. 15, 1989); Amdts Proposed 8 Com. Reg. 4394 (June 3, 1986); Amdts Adopted 8 Com. Reg. 4216 (Feb. 17, 1986); Amdts Proposed 8 Com. Reg. 4187 (Jan. 17, 1986); Adopted 7 Com. Reg. 3727 (July 22, 1985); Emergency and Proposed 7 Com. Reg. 3728 (July 22, 1985) (effective for 120 days from June 6, 1985); Emergency and Proposed 7 Com. Reg. 3613 (May 21, 1985) (effective for 120 days from May 20, 1985).

Commission Comment: The February 1986 amendments deleted former § 207, entitled “Increase of Waiver,” and replaced it with this section. See 7 Com. Reg. at 3733 (July 22, 1985).

The June 1986 amendments proposed to delete the new § 207 and reinstate former § 207, entitled “Increase of Waiver.” A notice of adoption for the June 1986 proposed amendments was never published and, therefore, the Commission has not incorporated the proposed changes. The 1989 regulations proposed to amend subsection (a) and delete subsections (b) through (f). The 1989 amendments also proposed to add a new § 209, entitled “Previous Regulations.” The 1989 amendments were not adopted.

In subsection (b), the Commission changed “manufacturer’s” to “manufacturers” to correct a manifest error. The Commission corrected the spelling of “preceding” in subsection (b)(1) pursuant to 1 CMC § 3806(g).

### **Part 200 - Certification Process**

#### **§ 70-10.2-201 Commonwealth Imports**

- (a) Imports of any component parts which come under the administrative agreement must be identified as such to Customs upon inspection.
- (b) A company with a waiver certificate shall identify upon inspection the style of sweater to be assembled and shall provide the customs inspector with a copy of a customs ruling for assembly of that style or a similar style.
- (c) The customs inspector shall inspect the component parts of each shipment and compare them with the components called for by the ruling. If the component is a more finished product than specified, the customs inspector shall notify the Chief of Customs. The Chief shall not issue a certificate of origin or a sweater quota exemption certification for any sweater utilizing the nonconforming component piece.
- (d) All completed sweater samples shall be clearly and individually marked as samples. In addition, their container shall clearly indicate that samples are enclosed.
- (e) The Chief of Customs shall cause records to be kept to identify imported component parts in exported finished sweaters.

Modified, 1 CMC § 3806(f).

History: Adopted 7 Com. Reg. 3727 (July 22, 1985); Emergency and Proposed 7 Com. Reg. 3728 (July 22, 1985) (effective for 120 days from June 6, 1985); Emergency and Proposed 7 Com. Reg. 3613 (May 21, 1985) (effective for 120 days from May 20, 1985).

**§ 70-10.2-205 Commonwealth Exports**

(a) A company seeking a sweater quota exemption certification shall apply to Customs by executing under penalty of perjury an affidavit which states:

- (1) The quantity of sweaters;
- (2) The MFA category;
- (3) The style number;
- (4) The country of origin of the component part; and
- (5) That each of the sweaters was assembled in the Northern Mariana Islands from a minimum of four separate major sweater panels.

(b) The customs inspector shall check the shipment against the record of importation and shall stamp the front of the original commercial invoice in blue ink only if he reasonably believes the shipment qualifies under the certification agreement.

(c) The affidavit shall be kept in a file for that company with a deduction made from the company's share of the waiver.

Modified, 1 CMC § 3806(f).

History: Adopted 7 Com. Reg. 3727 (July 22, 1985); Emergency and Proposed 7 Com. Reg. 3728 (July 22, 1985) (effective for 120 days from June 6, 1985); Emergency and Proposed 7 Com. Reg. 3613 (May 21, 1985) (effective for 120 days from May 20, 1985).

**§ 70-10.2-210 Perjury**

In addition to criminal prosecution, the Chief of Customs may revoke a portion of a company's present or future quota if he finds, after an administrative hearing, proof by a preponderance of the evidence of perjury in the affidavit submitted under § 70-10.2-205.

Modified, 1 CMC § 3806(c).

History: Adopted 7 Com. Reg. 3727 (July 22, 1985); Emergency and Proposed 7 Com. Reg. 3728 (July 22, 1985) (effective for 120 days from June 6, 1985); Emergency and Proposed 7 Com. Reg. 3613 (May 21, 1985) (effective for 120 days from May 20, 1985).

**Part 300 - Customs Records**

**§ 70-10.2-301 Signature Authority**

The Chief of Customs shall designate by letter to the Director of Finance four officials, including himself, authorized to issue and sign the certificates.

History: Adopted 7 Com. Reg. 3727 (July 22, 1985); Emergency and Proposed 7 Com. Reg. 3728 (July 22, 1985) (effective for 120 days from June 6, 1985); Emergency and Proposed 7 Com. Reg. 3613 (May 21, 1985) (effective for 120 days from May 20, 1985).

**§ 70-10.2-305 Certification Stamp**



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The Chief of Customs shall be responsible for the security of the sweater quota exemption certification stamp.

History: Adopted 7 Com. Reg. 3727 (July 22, 1985); Emergency and Proposed 7 Com. Reg. 3728 (July 22, 1985) (effective for 120 days from June 6, 1985); Emergency and Proposed 7 Com. Reg. 3613 (May 21, 1985) (effective for 120 days from May 20, 1985).

### **§ 70-10.2-310 Records**

At the minimum, the following records must be maintained by the Customs Division:

- (a) Importation of component parts listing quantities, style numbers, countries of origin, fiber, and recipient;
- (b) Affidavits upon exportation under the waiver;
- (c) Certificates of origin; and
- (d) A current account of the remaining share of each company.

Modified, 1 CMC § 3806(f).

History: Adopted 7 Com. Reg. 3727 (July 22, 1985); Emergency and Proposed 7 Com. Reg. 3728 (July 22, 1985) (effective for 120 days from June 6, 1985); Emergency and Proposed 7 Com. Reg. 3613 (May 21, 1985) (effective for 120 days from May 20, 1985).

### **§ 70-10.2-315 Inspection of Premises**

Customs inspectors shall make periodic inspections of business premises, paying particular attention to:

- (a) The processes of manufacturing;
- (b) The component parts utilized;
- (c) The number of resident workers and the types of tasks assigned; and
- (d) The presence of any training programs for resident workers.

Modified, 1 CMC § 3806(f).

History: Adopted 7 Com. Reg. 3727 (July 22, 1985); Emergency and Proposed 7 Com. Reg. 3728 (July 22, 1985) (effective for 120 days from June 6, 1985); Emergency and Proposed 7 Com. Reg. 3613 (May 21, 1985) (effective for 120 days from May 20, 1985).

### **§ 70-10.2-320 Audit**

As a condition of accepting a waiver certificate, a company consents to provide the Public Auditor of the Commonwealth of the Northern Mariana Islands with access to and

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the right to examine and copy any records, data, or papers relevant to the manufacturing process in the Commonwealth.

History: Adopted 7 Com. Reg. 3727 (July 22, 1985); Emergency and Proposed 7 Com. Reg. 3728 (July 22, 1985) (effective for 120 days from June 6, 1985); Emergency and Proposed 7 Com. Reg. 3613 (May 21, 1985) (effective for 120 days from May 20, 1985).