

U.S. Customs and Border Protection

General Notices

PROPOSED COLLECTION; COMMENT REQUEST

Guam Visa Waiver Agreement

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651-0126.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Guam Visa Waiver Agreement (Form I-760). This request for comment is being made pursuant to the Paperwork Reduction Act (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before July 14, 2008, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of

the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Guam Visa Waiver Agreement

OMB Number: 1651-0126

Form Number: I-760

Abstract: This Agreement is intended to ensure that every alien transported to Guam pursuant to Public Law 99-396 meets all of the stipulated eligibility criteria prior to departure to Guam. It also outlines the requirements to be satisfied by the carrier.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Individuals

Estimated Number of Respondents: 5

Estimated Number of Responses: 5

Estimated Time Per Response: 12 minutes

Estimated Total Annual Burden Hours: 1

Dated: May 8, 2008

TRACEY DENNING,
*Agency Clearance Officer,
Customs and Border Protection.*

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, May 14, 2008

The following documents of U.S. Customs and Border Protection (“CBP”), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
*Executive Director,
Regulations and Rulings,
Office of International Trade.*

**MODIFICATION OF RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF PHOTO ALBUMS**

AGENCY: Bureau of Customs and Border Protection; Department of Homeland Security.

ACTION: Notice of modification of a tariff classification ruling letter and revocation of any treatment relating to the classification of photo albums.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a photo album consisting of paper pages with plastic overlays permanently bound in a cover made of cloth wrapped paperboard. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 42, No. 13, on March 20, 2008. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 27, 2008.

FOR FURTHER INFORMATION CONTACT: Beth Safeer, Tariff Classification and Marking Branch, at (202) 572–8825.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice proposing to modify NY M80420, dated February 24, 2006, was published on March 20, 2008, in Vol. 42, No. 13 of the Customs Bulletin. No comments were received in response to this notice. As stated in the proposed notice, this modification will cover any rulings, which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical merchandise. Any person involved with substantially identical merchandise should have advised CBP during this notice period. An importer’s failure to advise CBP of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its

agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY M80420 to reflect the proper classification of the merchandise pursuant to the analysis set forth in the HQ H019477 (Attachment). In NY M80420, CBP classified a 5" x 6½" x ¾" album with a cover made of cloth-wrapped paperboard and paper pages incorporating clear plastic overlays under heading 4820.50.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for albums for samples or for collections, of paper or paperboard. For the reasons set forth in HQ H019477, we find that the photo album is properly classified under heading 3926.90.4800, HTSUSA, as "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Photo albums." Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective sixty (60) days after its publication in the Customs Bulletin.

DATED: May 6, 2008

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachment



DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H019477
May 6, 2008
CLA-2 OT:RR:CTF:TCM H019477 BAS
CATEGORY: Classification
TARIFF NO.: 3926.90.4800

KARL R. KANE
300 Broadway Street
Suite #30
San Francisco, CA 94133

RE: Classification of a Photo Album; NY M80420, dated February 24, 2006, modified

DEAR MR. KANE:

This is in reference to New York Ruling Letter (NY) M80420, dated February 24, 2006, which classified, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), certain photo albums. In that ruling, the photo albums at issue were classified in subheading 4820.50.0000, HTSUSA, which provides for albums for samples or for collections, of paper or paperboard. We have reviewed NY M80420 and determined the classification provided therein is incorrect. This ruling letter modifies NY M80420.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S. C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY M80420, dated February 24, 2006, as described below, was published in the *Customs Bulletin*, Volume 42, Number 13, on March 20, 2008. U.S. Customs and Border Protection (CBP) received no comments during the notice and comment period that closed on April 19, 2008.

FACTS:

The photo album at issue is a 5" x 6½" x ¾" album consisting of numerous paper pages permanently bound within a cover made of cloth-wrapped paperboard. The pages incorporate clear plastic overlays/sleeves under which photos may be inserted for storage and display.

ISSUE:

Is the subject merchandise classifiable in subheading 4820.50.0000, HTSUS, which provides for albums for samples or for collections, of paper or paperboard or under subheading 3926.90.4800, HTSUSA, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Photo albums"?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs and Border Protection (CBP) believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The photo album at issue consists of separate components that are each classifiable under different headings. The separate components are the paperboard album wrapped with cloth, paper pages and clear plastic overlays. As a result, the merchandise cannot be classified under GRI 1, and CBP must apply the remaining GRIs. When "goods are, prima facie, classifiable under two or more headings, then classification" shall be made pursuant to GRI 3, which states the following:

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale,

which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

- (c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

In this case, since two or more headings refer to part only of the materials of which the photo album is made, the photo album must be classified according to its essential character. With respect to determining the essential character of this composite good, the EN to GRI 3(b) provides the following guidance:

(VIII). The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

There have been several court decisions on “essential character” for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. See, *Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), *affirmed* 119 F. 3d 969 (Fed. Cir. 1997); *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), *motion for rehearing and reconsideration denied*, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging co., v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995). See also, *Pilloutex Corp. v. United States*, 98–1227, CAFC, 171 F.3d 1370; 1999 U.S. App. LEXIS 4371.

The essential character of the subject merchandise can be determined by comparing each component as it relates to the use of the product. In this instance, the predominate use of the plastic sleeves in displaying and protecting photos and pictures imparts the essential character.

It has been the practice of CBP to classify photograph albums according to the material of the pages and not the material of the cover or inserts. See HQ H005082, dated March 29, 2007; HQ W968250, dated August 3, 2006; NY M81024, dated April 3, 2006; NY L87797, dated October 24, 2005; NY L84420, dated May 23, 2005; NY H87735, dated February 21, 2002; NY I85926, dated September 30, 2002; NY I84082, dated August 6, 2002; NY H82195, dated July 9, 2001; NY F87436, dated June 15, 2000; and HQ 951845, dated August 20, 1992.

Prior to 2007, CBP consistently classified similar merchandise, scrapbook albums, in heading 3924, HTSUS. See HQ H005082, dated March 29, 2007; HQ W968250, dated August 3, 2006; NY H87735, dated February 21, 2002; and, NY L84420, dated May 23, 2005. CBP has also regularly classified photo albums by the merchandise’s plastic sleeve. See NY M81024, dated April 3, 2006; NY L87797, dated October 24, 2005; NY I85926, dated September 30, 2002; NY I84082, dated August 6, 2002; and NY H82195, dated July 9, 2001. Specifically, in HQ 951845, dated August 20, 1992, CBP held that a photo album with paper inserts, plastic filler pages, and an outer surface composed of cellular plastics with a textile fabric reinforcement was correctly classified in heading 3924, HTSUS. Accordingly, the instant merchandise should be classified according to the plastic sleeves.

Pursuant to Title 19, United States Code, Section 3005, the Harmonized Tariff Schedule of the United States was amended to reflect changes recommended by the World Customs Organization. The proclaimed changes are effective for goods entered or withdrawn from warehouse for consumption on or after February 3, 2007. See Presidential Proclamation 8097, 72 FR 453, Volume 72, No. 2 (January 4, 2007). As part of the proclaimed changes, Additional U.S. Note 5 to Chapter 39, HTSUS, was added, which states: “[f]or the purposes of heading 3924, the expression ‘household articles’ does not include photo albums (see subheading 3926.90.48)”. As of the February 3, 2007 amendment to the HTSUS, photo albums are specifically provided for in subheading 3926.90.48, HTSUS. In accordance with the rationale of the previous rulings in addition to the 2007 HTSUS amendment, the photo album at issue is classified in heading 3926, HTSUS. These amendments bring the HTSUS in conformity with the HSC decision to classify photograph albums with plastic sleeves as other articles of plastics in subheading 3926.90.4800, HTSUS.

Notably, the only instances where CBP has classified scrapbook albums in heading 4820, HTSUS, is when the subject merchandise did not have a plastic sleeve at all. See NY M82265, dated May 19, 2006; NY K88852, dated September 9, 2004; and NY J87084, dated August 25, 2003. In the instant case, the merchandise is more like the photo and scrapbook albums classified in Chapter 39, HTSUS, than the scrapbooks classified in heading 4820, HTSUS, because the subject merchandise has plastic sleeves.

HOLDING:

The proper classification for the photo album at issue is subheading 3926.90.4800, HTSUSA, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Photo albums.” The column one, general rate of duty is 3.4 percent ad valorem.

EFFECT ON OTHER RULINGS:

Accordingly, NY M80420 is modified to reflect the above classification. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.