

(70 FR 13514) announcing a modification to the NCAP test to clarify that all relevant data elements are required to be submitted in the automated truck manifest submission. That notice did not announce any change to the deployment schedule and is not affected by publication of this notice. All requirements and aspects of the test, as set forth in the September 13, 2004 notice, as modified by the March 21, 2005 notice, continue to be applicable.

Dated: September 13, 2007.

**Thomas S. Winkowski,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. E7-18527 Filed 9-19-07; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

[USCBP-2006-0021; CBP Dec. 07-78]

#### Interpretive Rule Concerning Classification of Unisex Footwear

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

**ACTION:** Final interpretation.

**SUMMARY:** This document adopts as final, with minor changes, a proposed interpretive rule regarding the criteria to be used by U.S. Customs and Border Protection ("CBP") to determine whether footwear is considered to be "commonly worn by both sexes" (unisex) for tariff classification purposes under Heading 6403 of the Harmonized Tariff Schedule of the United States ("HTSUS") that was published in the **Federal Register** on July 24, 2006. The rates of duty applicable to footwear "For other persons" (i.e., "unisex") are about 1.5 percent higher than the rates of duty applicable to footwear "For men, youths and boys." The criteria set forth in this document will promote uniformity in the classification of subject footwear, thereby ensuring that proper duties are collected.

**DATES:** *Effective Date:* October 22, 2007.

**FOR FURTHER INFORMATION CONTACT:** Alexandra (Sasha) Kalb, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, (202) 572-8791.

#### SUPPLEMENTARY INFORMATION:

##### Background

This document sets forth the criteria to be used by CBP to determine whether footwear should be considered "unisex"

for tariff classification purposes. Chapter 64, HTSUS, covers footwear, gaiters and the like, and parts of such articles. Disparities in the duty rates applicable to some provisions under Heading 6403 in Chapter 64 are based on the gender of the user. Additional U.S. Note 1(b) and Statistical Note 1(b) to Chapter 64, HTSUS, provide that footwear "for men, youths and boys" covers footwear of certain men's and youths' sizes, not including unisex footwear (i.e., "footwear commonly worn by both sexes"). Statistical Note 1(c) to Chapter 64, HTSUS, provides that footwear "for women" covers footwear of certain women's sizes, whether for females or of types commonly worn by both sexes (i.e., unisex). Elsewhere in the HTSUS (in subheadings 6403.99.75 and 6403.99.90, for example), footwear is classified as "for other persons," a definition that also includes unisex footwear. The determination of whether footwear is classifiable as "for men, youths and boys" rather than "for women" or "for other persons," therefore, often rests on whether the footwear is truly for men, youths and boys or is, in fact, unisex. The rates of duty applicable to footwear "For other persons" (i.e. unisex) are about 1.5 percent higher than the rates applicable to footwear "For men, youths and boys."

It is noted that many types of footwear may be, and in fact are, worn by both sexes. In addition, many types of shoes in male sizes do not feature physical characteristics to designate that the footwear is intended exclusively for males. The standards employed for purposes of determining whether footwear is considered unisex had been developed and applied by CBP on an ad hoc, case-by-case basis. This approach, while effective in individual cases, had provided only limited guidance to the importing community and to CBP officers with respect to other import transactions involving different factual circumstances.

#### Request From Public To Provide Enhanced Guidance

In a letter dated September 17, 1999, the footwear importing public, represented by the Footwear Distributors and Retailers of America ("FDRA"), requested that CBP take steps to provide enhanced guidance in determinations concerning unisex issues. The FDRA specifically requested that CBP set forth the criteria for determining whether footwear claimed to be "for men, youths and boys" is considered "commonly worn by both sexes" and therefore classifiable as footwear "for other persons." The FDRA

additionally requested that CBP ensure the uniform interpretation and application of those criteria by CBP field offices.

#### Preliminary Notice

After receiving the above-referenced letter, CBP published a general notice in the **Federal Register** (67 FR 18303) on April 15, 2002. In that document, CBP set forth its criteria for determining what constitutes unisex footwear for tariff classification purposes as well as the criteria proposed by the FDRA. In addition, CBP solicited comments on the appropriateness of the standards proposed by the FDRA and on the extent to which any standards followed by CBP in the past should be retained. Suggestions for alternative standards were also invited. Four comments were received in response to the preliminary notice.

#### Proposed Interpretive Rule

CBP published a proposed interpretive rule in the **Federal Register** (71 FR 41822) on July 24, 2006. In the proposed interpretive rule, CBP reiterated its traditional criteria for determining what constitutes unisex footwear, addressed the four comments received in response to the preliminary notice, and proposed new criteria for purposes of determining whether footwear should be considered unisex for tariff classification purposes. The criteria set forth by CBP in the proposed interpretive rule, to be applied in sequential order, are:

(1) Footwear in sizes for men, youths and boys will not be considered to be "commonly worn by both sexes" (i.e., "unisex") if marked "MEN'S SIZE \_\_\_\_\_", "YOUTHS' SIZE \_\_\_\_\_", or "BOYS' SIZE \_\_\_\_\_".

(2) Even if not marked as described in criterion 1, footwear in sizes for men, youths or boys will not be considered to be "commonly worn by both sexes" (i.e., "unisex") if:

a. The importer imports the same shoe for women and girls, or;

b. Evidence is provided in the form of marketing material, retail advertisements, or other convincing documentation demonstrating that the same shoe for women and girls is available in the U.S. marketplace.

(3) A style of footwear in sizes for males will not be presumed to be "commonly worn by both sexes" (i.e., "unisex") unless evidence of marketing establishes that at least one pair in four (25 percent) of that style is sold to and/or worn by females.

(4) A determination that footwear is "commonly worn by both sexes" will

trigger “unisex” classification treatment that is applicable to all sizes.

In addition to providing the proposed classification criteria set forth above, CBP solicited additional comments in the proposed interpretive rule. The prescribed public comment period closed on September 22, 2006.

#### Discussion of Comments

Three submissions were received in response to the solicitation of comments in the proposed interpretive rule. Two of the submissions were provided by a law firm on behalf of various footwear importers. A separate law firm, on behalf of a trade association consisting of footwear retailers, importers, and producers, provided the third submission. A description of the various comments contained in the submissions, and CBP’s analysis related thereto, is set forth below.

#### Comment

A commenter indicated that criterion (1) is ambiguous on a number of practical points and suggested amending it by permitting “clear abbreviations” to be used in the marking, as well as permitting marking on just one shoe per pair, and marking on stickers and hang tags instead of the shoes themselves. In addition, a commenter requested that CBP state the minimum form or manner of marking which footwear must have in order not to be considered “commonly worn by both sexes” under criterion (1).

#### CBP Response

CBP requires that the country of origin be marked on both shoes in a pair in order to ensure that the marking is conspicuous. The rationale behind this requirement is that a prospective purchaser may inspect and try on only one shoe for fit prior to purchase. Traditionally, size markings are also provided on both shoes in a pair. Accordingly, CBP requires that the marking described under criterion (1) also be on both shoes in a pair. Since the country of origin already must appear on both shoes, and because sizes also traditionally appear on both shoes, we do not view this requirement as an undue burden to importers.

Certain kinds of footwear, usually inexpensive shoes sold in retail packages or bags, not the type that is usually tried on for fit prior to purchase, have been found to be legally marked by means of stickers or hang tags. CBP will also accept stickers or hang tags on this type of footwear as an indication that the footwear is not “commonly worn by both sexes” if the marking is sufficiently permanent, conspicuous, and legible to

indicate the required information to the ultimate purchaser in the United States.

With respect to abbreviations, it is CBP’s position that using “YTH” to indicate “YOUTHS” is acceptable. However, CBP finds that the required MEN’S or BOYS markings are already concise and that these markings do not lend themselves to abbreviation. Consequently, the use of abbreviations for these markings is unnecessary and unacceptable.

Thus, there are two possible methods for marking footwear under criterion (1) in order for such footwear not to be considered “commonly worn by both sexes” and trigger “unisex” classification.

The first acceptable marking under criterion (1) is: MEN’S SIZE \_\_\_\_, YOUTHS’ SIZE \_\_\_\_ or BOYS’ SIZE \_\_\_\_.

Alternatively, the second acceptable marking under criterion (1) is: MEN’S SIZE \_\_\_\_, YTH SIZE \_\_\_\_, or BOYS’ SIZE \_\_\_\_.

#### Comment

A commenter requested that a “gender symbol” be permitted to satisfy the marking mentioned in criterion (1).

#### CBP Response

If an importer chooses to mark footwear with gender symbols in addition to the marking in criterion (1), that will serve as further evidence that the footwear is “not commonly worn by both sexes.” However, gender symbols alone will not satisfy CBP that the footwear is “not commonly worn by both sexes.”

#### Comment

A commenter stated that it understands that criterion (3) does not require an importer to conduct a market survey. Rather, the importer would make entry based on its marketing approach.

#### CBP Response

CBP does not require the importer to conduct a market survey. If the importer chooses not to mark imported footwear in the manner indicated in criterion (1) and no female version of the subject footwear is demonstrated to exist, and CBP determines that the footwear is the type “commonly worn by both sexes,” that footwear will be deemed “unisex” and entered accordingly. If an importer disagrees, CBP will consider a market survey, submitted by the importer, that establishes that at least one pair in four (25 percent) of the subject footwear is not sold to and/or worn by females.

#### Comment

A commenter requested that CBP clarify criterion 2(b) by defining or explaining the meaning of “same” shoe.

#### CBP Response

“Same” shoe in the context of criterion 2(b) means either having the same style number or name with a female prefix or suffix to indicate gender or, if not having the same style number or name, made with the same materials, with the same features and value, and designed for the same purpose as the subject shoe.

#### Comment

A commenter stated that the final rule should clarify that marketing studies “will be used sparingly at CBP’s discretion” and that conclusions made as a result of the marketing studies can be applied to unliquidated and future entries of footwear studied.

#### CBP Response

If the importer chooses not to mark imported footwear in the manner indicated in criterion (1) and no female version of the subject footwear is demonstrated to exist in the U.S. marketplace as indicated in criterion (2), and CBP determines that the footwear is the type “commonly worn by both sexes,” that footwear will be deemed “unisex” and entered accordingly. If an importer disagrees, CBP will consider market surveys, submitted by the importer, that establish that at least one pair in four (25 percent) of the subject footwear is not sold to and/or worn by females. Conclusions made as a result of the marketing studies will be applied to all entries of the subject footwear whose liquidation is not final.

#### Comment

A commenter recommended that the sequence of the criteria be revised so that criterion (3) appears first because “if there is no evidence establishing that the footwear is sold to and/or worn by females, the remaining three standards do not come into play.”

#### CBP Response

Criterion (3) is a default rule which is to be implemented only when criterions (1) and (2) do not apply. Criterion (3) is only applicable in situations where the importer has not marked the imported footwear, no female version of the subject footwear is demonstrated to exist in the U.S. marketplace, and CBP determines that the footwear is the type “commonly worn by both sexes.” As a result, the sequence of the criteria cannot be revised so that default criterion (3) appears first.

*Comment*

A commenter requested that CBP make it clear that non-U.S. sizes and conversion charts will not be considered in determining whether footwear is deemed "unisex" and that size/gender labels are controlling.

*CBP Response*

CBP only requires that imported footwear bear country of origin markings. The marking of imported footwear as described in criterion (1) is entirely voluntary and is intended to assist CBP in the determination of whether or not footwear is "commonly worn by both sexes." The size/gender label will generally be controlling.

*Comment*

A commenter stated that if criterion (2) is to have any practical meaning, it must be revised to permit a showing that comparable footwear is available in women's and girls' sizes.

*CBP Response*

CBP does not consider comparability to be relevant to the determination of whether a particular style is "unisex." CBP will consider marketing material, retail advertisements, or other convincing documentation demonstrating that the same style of shoe is available in the U.S. marketplace.

*Comment*

A commenter recommended that CBP indicate that an importer may rely on the size designations, whether or not there is a gender indication, in classifying footwear at the statistical level.

*CBP Response*

Size designation alone will generally determine the classification of footwear unless the footwear is "commonly worn by both sexes."

**Conclusion**

Upon due consideration of the comments received, CBP has decided to adopt as final the proposed interpretive rule, which was published in the **Federal Register** (71 FR 41822) on July 24, 2006, with allowance made for the permitted abbreviation to criterion (1) and minor editorial changes to criterion (2). Specifically, in order to clarify the requirements under criterion (2), criteria 2(a) and 2(b) in the final interpretive rule will reference the "same style of shoe" as opposed to the "same shoe". Thus, the final interpretive rule with the minor changes is set forth below.

**Final Interpretive Rule**

The criteria to be utilized by CBP for determining whether footwear should be considered to be "unisex" under Heading 6403, HTSUS, are:

(1) Footwear in sizes for men, youths and boys will not be considered to be "commonly worn by both sexes" (i.e., "unisex") if marked "MEN'S SIZE \_\_\_\_", "YOUTHS' (or YTH) SIZE \_\_\_\_", or "BOYS' SIZE \_\_\_\_".

(2) Even if not marked as described in criterion 1, footwear in sizes for men, youths or boys will not be considered to be "commonly worn by both sexes" (i.e., "unisex") if:

a. The importer imports the same style of shoe for women and girls, or;

b. Evidence is provided in the form of marketing material, retail advertisements, or other convincing documentation demonstrating that the same style of shoe for women and girls is available in the U.S. marketplace.

(3) A style of footwear in sizes for males will not be presumed to be "commonly worn by both sexes" (i.e., "unisex") unless evidence of marketing establishes that at least one pair in four (25 percent) of that style is sold to and/or worn by females.

(4) A determination that footwear is "commonly worn by both sexes" will trigger "unisex" classification treatment that is applicable to all sizes.

Dated: September 17, 2007.

**W. Ralph Basham,**

*Commissioner, U.S. Customs and Border Protection.*

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5117-N-83]

**Notice of Submission of Proposed Information Collection to OMB; Mortgage Record Change**

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

FHA-approved mortgagees report to HUD the sale of a mortgage between investors, the transfer of the mortgage servicing responsibility, or a change in mortgagees, as appropriate. HUD

requires this information to assure accuracy in the fee and premium billing programs under HUD-FHA's automatic data processing system. HUD uses the information to process premium payments and to process claims.

**DATES:** *Comments Due Date:* October 22, 2007.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502-0422) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail [Lillian\\_L\\_Deitzer@HUD.gov](mailto:Lillian_L_Deitzer@HUD.gov) or telephone (202) 708-2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at <http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm>.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*This notice also lists the following information:*

*Title of Proposal:* Mortgage Record Change.

*OMB Approval Number:* 2502-0422.

*Form Numbers:* HUD-92080.

*Description of the Need for the Information and its Proposed Use:* FHA-approved mortgagees report to HUD the sale of a mortgage between investors,