

3. By amending Part 97.27 NDB/ADF SIAPs identified as follows:

* * * Effective December 23, 1982

- Paragould, AR—Paragould Muni, NDB Rwy 4, Original
 Paragould, AR—Paragould Muni, NDB Rwy 4, Amdt. 7, cancelled
 Benton Harbor, MI—Ross Field, NDB Rwy 27, Amdt. 7
 Grant, NE—Grant Muni, NDB Rwy 14, Original
 Medford, OK—Medford Muni, NDB Rwy 17, Original
 Littlefield, TX—Littlefield Muni, NDB Rwy 1, Original
 Marshfield, WI—Marshfield Muni, NDB Rwy 4, Amdt. 10
 Marshfield, WI—Marshfield Muni, NDB Rwy 16, Amdt. 6

* * * Effective December 9, 1982

- International Falls, MN—Falls Intl, NDB Rwy 31, Amdt. 7
 Durant, OK—Eaker Field, NDB Rwy 35, Amdt. 2
 Odessa, TX—Odessa-Schlemeyer Field, NDB Rwy 20, Amdt. 1

* * * Effective November 25, 1982

- Lake Charles, LA—Lake Charles Muni, NDB Rwy 15, Amdt. 15
 Lawrence, MA—Lawrence Muni, NDB Rwy 5, Amdt. 3
 Helena, MT—Helena, NDB-D, Amdt. 1

* * * Effective October 7, 1982

- Belleville, KS—Belleville Muni, NDB Rwy 18, Amdt. 2
 Belleville, KS—Belleville Muni, NDB Rwy 36, Amdt. 2

4. By amending Part 97.29 ILS-MLS SIAPs identified as follows:

* * * Effective December 23, 1982

- Benton Harbor, MI—Ross Field, ILS Rwy 27, Amdt. 4
 Dallas, TX—Addison, ILS Rwy 15, Amdt. 5

* * * Effective December 9, 1982

- International Falls, MN—Falls Intl, ILS Rwy 31, Amdt. 7

* * * Effective November 25, 1982

- Durango, CO—Durango-LaPlata County, ILS/DME Rwy 2, Original
 Atlanta, GA—The William B. Hartsfield Atlanta Intl, ILS Rwy 8, Amdt. 54
 Lake Charles, LA—Lake Charles Muni, ILS Rwy 15, Amdt. 15
 Lawrence, MA—Lawrence Muni, ILS Rwy 5, Original
 Helena, MT—Helena, ILS Rwy 26, Amdt. 6
 Lincoln, NE—Lincoln Muni, ILS Rwy 17R, Amdt. 2
 Spokane, WA—Spokane Intl, ILS Rwy 3, Amdt. 1

5. By amending Part 97.31 RADAR SIAPs identified as follows:

* * * Effective December 23, 1982

- Beaumont-Port Arthur, TX—Jefferson County, RADAR-1, Amdt. 7

* * * Effective December 9, 1982

- Madison, WI—Dane County Regional-Truax Field, RADAR-1, Amdt. 9

* * * Effective November 25, 1982

- Lake Charles, LA—Lake Charles Muni, RADAR-1, Amdt. 1

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. The FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

Issued in Washington, D.C. on October 22, 1982.

John M. Howard,
 Manager.

Aircraft Programs Division.

[FR Doc. 82-29853 Filed 10-29-82; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 8954]

Equifax Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: The FTC, in accordance with a decision rendered by the Court of Appeals for the Eleventh Circuit on June 18, 1982, has modified its Final Order In the Matter of Equifax Inc., issued on December 15, 1980 (46 FR 12479). The modified order, effective October 18, 1982, deletes Paragraphs C and D of Part I of the Order, eliminating references concerning the amount of adverse information the company's employees generate about consumers.

DATES: Final Order issued Dec. 15, 1980. Modified Order issued Oct. 18, 1982.

FOR FURTHER INFORMATION CONTACT: FTC/GC, Bruce G. Freedman, Washington, D.C. 20580. (202) 523-3865.

SUPPLEMENTARY INFORMATION: In the Matter of Equifax Inc., a corporation (formerly Retail Credit Company, a corporation). Codification appearing at 46 FR 12479 remains unchanged.

List of Subjects in 16 CFR Part 13

Consumer credit reports.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 84 Stat. 1128-36; 15 U.S.C. 1681-1681i)

The Modified Order to Cease and Desist is as follows:

Modified Order To Cease and Desist

In the matter of Equifax Inc., a corporation (formerly Retail Credit Company, a corporation), Docket No. 8954.

Respondent having filed in what is now the United States Court of Appeals for the Eleventh Circuit a petition for review of the Commission's cease and desist order issued on December 15, 1980; and the Court having rendered its decision setting aside in part the Commission's order:

Now, therefore, it is hereby ordered that the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the decision and judgment of the Court of Appeals to read:

I

It is ordered that respondent Equifax Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the collection, preparation, assembly, sale, or distribution of consumer reports, investigative consumer reports, and files, as "consumer report," "investigative consumer report," and "file" are defined in Section 603 (d), (e) and (g) of the Fair Credit Reporting Act (Pub. L. No. 91-508, 15 U.S.C. 1681 *et seq.*) ("the Act") and interpreted in the opinion of the Commission which accompanied the cease and desist order issued on December 15, 1980 (except credit reports prepared by Credit Bureau, Inc. of Georgia, Credit Bureau of Montreal, Ltd., and Credit Marketing Services), shall cease and desist from:

A. Representing, directly or by implication, during the preparation of any report, that investigative personnel employed by Equifax are agents or employees of the company to which the consumer who is the subject of the report has applied for a benefit.

B. Submitting consumer report information to any of its customers who has previously received a consumer

report regarding the same consumer, unless: in response to the order of a court having jurisdiction to issue such an order; in accordance with the written instructions of the consumer to whom it relates; or respondent has reason to believe the requester intends to use the information for a permissible purpose as set out in Section 604 of the Act.

C. Including in a consumer report concerning employment at an annual salary of less than \$20,000 any notice or other statement that indicates directly or indirectly by means of boilerplate language the existence of items of adverse information, the disclosure of which is prohibited by Section 605 of the Act; *Provided, however*, That language notifying the customer of the statutory limitations on the reporting of adverse information may be included in the type of consumer report to which this paragraph applies if it is included in all such reports, regardless of whether a particular consumer's file contains adverse information which the statute prohibits from being reported; and *Provided further*, That it is accompanied by an explanation that the notification is included in all reports of the type to which this paragraph applies and is not intended to imply the existence of obsolete adverse information which may not be reported.

D. Misrepresenting to any consumer who requests information concerning himself or herself in respondent's files, the consumer's rights to obtain disclosure by telephone under Section 610 of the Act.

E. Failing:

1. To make available to any consumer who requests information concerning himself or herself in respondent's files, in person or by mail, at the consumer's option, all forms which he or she must execute in connection with the requirements of Section 610 of the Act to receive disclosure to which the consumer is entitled under the Act and this order; and

2. To inform the consumer: that he or she has the right to disclosure upon proper identification, by telephone if he or she pays any toll charge, or in person, at the consumer's option; and what constitutes proper identification.

F. Failing to give disclosure required by Section 609 of the Act to any consumer who has requested disclosure, has provided proper identification as required by respondent under Section 610 of the Act, and has paid or accepted any charges which may be imposed under Section 612 of the Act.

G. Failing, when giving consumers disclosure, to disclose the nature and substance of all information (excluding medical information as defined in

Section 603(i) of the Act) in its files on the consumer at the time of the request, as required by Section 609 of the Act.

H. Requiring a consumer, as a prerequisite to disclosing information from the consumer's file pursuant to Section 609 of the Act, to fill out or sign a form which authorizes respondent to conduct a reinvestigation of any item the consumer may dispute, or to transmit the results of such reinvestigation to persons to whom it has previously reported the disputed information or which authorizes any business, organization, professional person or anyone else to give full information and records about said consumer to respondent; or interposing any other similar condition or requirement which exceeds those specified in Section 610 of the Act.

I. Failing within a reasonable period of time to reinvestigate any item of information in a consumer's file, the completeness or accuracy of which is disputed by the consumer, unless it has reasonable grounds to believe the dispute is frivolous or irrelevant, as required by Section 611(a) of the Act.

J. Furnishing, directly or indirectly, other than for reports prepared solely for use in the business of insurance, medical information, as defined in Section 603(i) of the Act, obtained in response to a written authorization signed by a consumer, unless the authorization clearly identifies respondent as a recipient of the medical information.

II

It is further ordered that respondent deliver a copy of this order to all present and future employees who are engaged in the preparation of consumer reports and investigative consumer reports or who are engaged in the disclosure or reinvestigation of information required by the Act.

It is further ordered that respondent distribute a copy of this order to each of its operating divisions and subsidiaries.

III

It is further ordered that respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

IV

It is further ordered that respondent shall, within sixty (60) days after service

upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Issued: October 18, 1982.

Carol M. Thomas,

Secretary.

[FR Doc. 82-29908 Filed 10-29-82; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 18, 19, 22, 24, 113, 125, 127, 132, 142, and 144

[T.D. 82-204]

Customs Regulations Amendments Relating to Customs Bonded Warehouses

AGENCY: Customs Service, Treasury.

ACTION: Final rule; Notice of fee schedule.

SUMMARY: To reduce costs to the public and reduce Customs staffing at bonded warehouses, this document extensively revises the Customs Regulations relating to the control of merchandise in Customs bonded warehouses by establishing an audit-inspection program. The document (1) authorizes Customs to accept a joint determination by the warehouse proprietor and the carrier, cartman or lighterman, or weigher, gauger or measurer, regarding the quantity of goods entered or withdrawn from a warehouse; (2) provides for release of merchandise directly to the proprietor by Customs officers at the customhouse rather than at the warehouse; and (3) provides district directors with the authority to allow warehouse proprietors to affix and break Customs seals. In addition, the document (1) provides fees to establish, alter, or relocate a bonded warehouse and an annual fee to reimburse the Customs appropriation for services rendered to the warehouse community; (2) provides procedures for the granting of the right to operate a bonded warehouse based on the qualifications, character, and experience of the applicant; and (3) provides procedures for the suspension or revocation of the right to operate a warehouse or to receive or release goods from a warehouse.

EFFECTIVE DATES: This rule is effective on December 1, 1982. The fees to establish, alter, or relocate a bonded warehouse, § 19.5, are effective on November 1, 1982. The annual fee to

reimburse the Customs appropriation for services rendered to the warehouse community is effective on December 1, 1982.

FOR FURTHER INFORMATION CONTACT:

Audit aspects: Joseph Palmer,
Regulatory Audit Division (202-566-2812)

Operational and fee aspects: John Holl,
Office of Inspection (202-566-5354)

Bonding aspects: William Rosoff,
Carriers, Drawback and Bonds
Division (202-566-5856)

Legal aspects of entry: Benjamin
Mahoney, Entry Procedures and
Penalties Division (202-566-5765)

Economic aspects: George Deyman,
Duty Assessment Division (202-566-8121).

U.S. Customs Service, 1301 Constitution
Avenue, NW., Washington, D.C.
20229.

SUPPLEMENTARY INFORMATION:

Background

Through the years procedures adopted by Customs have changed dramatically in an attempt to keep pace with cargo carrying jets, millions of entering passengers, and a workload of 4.5 million commercial transactions per year. Clearly Customs has adjusted, in many ways, to challenges posed by increases in population, commerce, and the breakthroughs in modern technology relating to the processing of cargo.

Although many changes have taken place, one segment of Customs operations has not changed since the time of sailing ships. This segment is the Customs bonded warehouse operation.

A Customs bonded warehouse is a building or other secured area in which dutiable goods may be stored, manipulated, or undergo manufacturing operations without payment of duty. Authority for establishing bonded warehouses is set forth in sections 311, 312, 555, and 556, Tariff Act of 1930, as amended (19 U.S.C. 1311, 1312, 1555, 1556). Part 19, Customs Regulations (19 CFR Part 19), sets forth the provisions relating to Customs bonded warehouses and the control of merchandise in these warehouses.

Upon the entry of goods into a bonded warehouse, the importer and warehouse proprietor are subject to liability under their Customs bond. This liability is cancelled when the goods are:

1. Exported;
2. Withdrawn as supplies for a vessel or aircraft in international traffic;
3. Destroyed under Customs supervision; or
4. Withdrawn for consumption in the United States after the payment of duty.

The following eight different types or classes of Customs bonded warehouses

are authorized under section 19.1, Customs Regulations (19 CFR 19.1).

Class 1. Premises owned or leased by the Government and used for the storage of merchandise undergoing Customs examination, under seizure, or pending final release from Customs custody. Unclaimed merchandise stored in such premises is held under "general order." When these premises are not sufficient or available for the storage of seized or unclaimed goods, they may be stored in a warehouse of class 3, 4, or 5.

Class 2. Importer's private bonded warehouses used exclusively for the storage of merchandise belonging or consigned to the proprietor thereof. A warehouse of Class 4 or 5 may be bonded exclusively for the storage of goods imported by the proprietor thereof, in which case it is also known as a private bonded warehouse.

Class 3. Public bonded warehouses used exclusively for the storage of imported merchandise.

Class 4. Bonded yards or sheds for the storage of heavy and bulky imported merchandise; stables, feeding pens, corrals, or other similar buildings or limited enclosures for the storage of imported animals; and tanks for the storage of imported liquid merchandise in bulk.

Class 5. Bonded bins or parts of buildings or elevators to be used for the storage of grain.

Class 6. Warehouses for the manufacture in bond, solely for exportation, of articles made in whole or in part of imported materials or of materials subject to Internal Revenue tax; and for the manufacture for home consumption or exportation of cigars in whole of tobacco imported from one country.

Class 7. Warehouses bonded for smelting and refining imported metal-bearing materials for exportation or domestic consumption.

Class 8. Bonded warehouses established for the purpose of cleaning, sorting, repacking, or otherwise changing in condition, but not manufacturing, imported merchandise, under Customs supervision, and at the expense of the proprietor.

All imported merchandise may be entered for warehousing except perishables and explosive substances other than fire-crackers.

Full accountability for all merchandise entered into a Customs bonded warehouse must be maintained and merchandise must be inventoried on a regular basis.

Merchandise in a Customs bonded warehouse may, with certain exceptions, be transferred from one bonded warehouse to another in

accordance with the provisions on §§ 19.15, 19.20, 19.24 and 144.34, Customs Regulations (19 CFR 19.15, 19.20, 19.24, 144.34).

Basically, merchandise placed in a Customs bonded warehouse, other than Class 6 or 7, may be stored, cleaned, sorted, repacked, or otherwise changed in condition but not manufactured (19 U.S.C. 1562).

Articles manufactured in a Class 6 warehouse must be exported under Customs supervision. Waste or byproducts from a Class 6 warehouse may be withdrawn for consumption upon payment of applicable duties.

Imported merchandise may be stored in a Customs bonded warehouse for a period of 5 years (19 U.S.C. 1557(a)).

Customs present and past operations for controlling bonded warehouses are based on the premise that effective control requires the physical presence of a Customs officer.

According to an October 1980, Customs Headquarters study, this method of operation costs the economy of the United States \$10 million in annual recurring costs. The study indicated the annual recurring cost is comprised of the following:

a. Approximately \$8.4 million in reimbursable charges assessed against the warehouse owners, operators, and proprietors by Customs;

b. Approximately \$1.6 million in non-reimbursable Customs appropriation funding.

Additionally, according to the study, this method of operation was determined to require 509 authorized positions (390 reimbursable, 119 non-reimbursable) which represented 3.5% of the Customs employment ceiling. These 390 reimbursable positions could not be converted to non-reimbursable positions to fulfill Customs responsibilities in other higher priority areas.

The development of an alternative approach for controlling warehouse operations is not new to Customs. In December 1964, a report titled *An Evaluation of: Mission Organization Management*, more commonly known as the "Stover Report," commented on the organization and management of the Bureau of Customs and recommended some actions which affected warehouse operations. These recommendations were extensively reviewed within Customs following the issuance of the Report. However, no action was taken at that time to implement the recommendations.

In a report dated December 16, 1974, issued to the Commissioner of Customs, the General Accounting Office stated:

The U.S. Customs Service employs warehouse officers to maintain physical custody of goods in bonded warehouses. We reviewed the necessity of having warehouse officers in view of the inventory document controls maintained at the customhouse and the periodic physical inventories performed by Customs on goods in bonded warehouses. The existing procedures for centrally controlling bonded goods at the customhouse, together with the bond protection of the Customs duties and the periodic physical inventory checks, are adequate for protecting Government revenues without having a warehouse officer present.

After an extensive review of the control of merchandise in bonded warehouses, and a pilot test conducted in Philadelphia, Pennsylvania, and Baltimore, Maryland, Customs was of the opinion that the system for controlling merchandise should be changed to one adopting a system of annual reporting by the warehouse proprietor with periodic inventory, spot checks, and audits by Customs. Accordingly, by notice published in the *Federal Register* on March 4, 1982 (47 FR 9225), Customs proposed such a system and invited public comments on the proposal.

It is Customs opinion that the audit-inspection program will provide relief to the private warehouse community by alleviating an extensive cost burden and provide increased flexibility of operations for warehouse proprietors since they need not await arrival of Customs officers to conduct supervision. This is a particularly important consideration to the warehouse proprietors if removals must be made on a weekend, holiday, or after normal business hours.

The regulation will apply only to control of merchandise within bonded warehouses. It will not apply to warehouse related transactions outside warehouses, such as supervision of exportations. Those transactions will be supervised under current procedures as they have been in the past. Duty-free stores are an example of an area where Customs procedures for transactions outside the warehouse remain unchanged.

With respect to duty-free shops, merchandise will continue to be examined and inspected as necessary for entry into the warehouse and to close out in-bond movements. After merchandise has been removed from a warehouse for exportation, delivery to the purchaser and exportation will be physically supervised to the extent required under Customs duty-free shop procedures.

These procedures call for Customs to supervise all exportations from duty-free shops located on U.S. borders.

Supervision of exportations from airport duty-free shops will be conducted at the discretion of the district director. Export supervision will continue to be reimbursable by the duty-free shops separate from and in addition to the annual renewal fee (through which Customs would accept reimbursement to the Customs appropriation for costs related to audits, spot checks, etc. within warehouses).

There will be no physical supervision, except on a spot check basis, of the deposit, withdrawal, or removal of goods in or from duty-free shop warehouses, or of manipulation that occurs within the warehouse. The proprietor will be responsible under the Customs Regulations and its bond for everything any other Class 2 warehouse proprietor would be responsible for under its bond.

The authority to change from the existing warehouse officer system to the audit-inspection system is contained in section 646a, Tariff Act of 1930, as amended (19 U.S.C. 1646a).

The changes proposed by the notice published in the *Federal Register* on March 4, 1982, set forth numerous amendments to Parts 10, 18, 19, 22, 24, 113, 125, 127, 132, 142, and 144, Customs Regulations (19 CFR Parts 10, 18, 19, 22, 24, 113, 125, 127, 132, 142, 144), to:

1. Authorize Customs to accept a joint determination by the warehouse proprietor and the carrier, cartman or lighterman, or weigher, gauger or measurer, regarding the quantity of goods entered or withdrawn from the warehouse;

2. Provide for release of merchandise directly to the proprietor of the warehouse by Customs officers at the custom-house rather than at the warehouse;

3. Provide district directors with the authority to allow warehouse proprietors to affix and break Customs seals;

4. Provide a fee to establish, alter, or relocate a bonded warehouse and an annual fee thereafter to reimburse the Customs appropriation for services rendered to the warehouse community;

5. Provide procedures for the granting of the right to operate a warehouse based on the qualifications, character, and experience of the applicant; and

6. Provide procedures for suspension or revocation of the right to operate a warehouse or to receive or release goods from a warehouse.

Numerous comments, both in favor of and opposed to the proposed amendments, were received in response to the notice of March 4, 1982. A detailed discussion of the comments is set forth following the next two sections

which provide the fee schedule for establishing, altering, or relocating a bonded warehouse, the annual fee to reimburse the Customs appropriation for services rendered to the warehouse community and the inapplicability of the delayed effective date provisions.

Notice Of Fee Schedule

On July 10, 1980, Customs published a notice in the *Federal Register* (45 FR 46442), relating to the fees for processing applications for bonded warehouses. As a part of the notice published in the *Federal Register* on March 4, 1982 (47 FR 9225), Customs proposed modification to the fee schedule.

The Independent Offices Appropriation Act 1952 (31 U.S.C. 483a), the so-called "User Charges Statute", requires Federal agencies to be as self-sustaining as possible. This statute authorizes the head of each Federal agency to establish fees for services provided to identifiable members of the public. The fees must be fair and equitable, taking into consideration the direct and indirect costs to the Government, the value to the recipient, the public policy or interest served, and other pertinent facts.

Section 19.2, Customs Regulations (19 CFR 19.2), provides, in part, that an owner or lessee desiring to establish a bonded warehouse shall file a written application with the district director which, among other things, describes the premises, gives the location, and states the class of warehouse. A fee of \$80 has been required to accompany the application.

Before an application may be approved, Customs must:

- (1) Determine that the application is in proper form;

- (2) Survey the premises to determine that all physical security requirements are met;

- (3) Perform a background investigation of the applicant and the applicant's officers and employees;

- (4) Prepare a report of that investigation; and

- (5) Review the application, survey, and background investigation report and prepare a response to the applicant.

Section 19.3, Customs Regulations (19 CFR 19.3), relates to alterations and relocations of existing bonded warehouses. Before an application to alter or relocate an existing bonded warehouse is approved, Customs must perform the same functions as are required in connection with an application to establish a bonded warehouse, except that a background investigation of the applicant and the applicant's officers and employee is not

required. However, no fee presently is required to accompany an application to alter or relocate an existing bonded warehouse.

A review of the costs involved in performing these functions revealed that the \$80 fee is inadequate. The current processing costs to Customs for initial applications is \$820 and the cost to Customs of processing an application to alter or relocate an existing bonded warehouse is \$356.

In light of the foregoing, the fee schedule for establishing, altering, or relocating a bonded warehouse will be as follows:

1. Establish a Bonded Warehouse, \$820.
2. Alter in Existing Bonded Warehouse, \$356.
3. Relocate an Existing Bonded Warehouse, \$356.

The new fees to establish, alter, or relocate a bonded warehouse are effective immediately.

As a part of the March 4, 1982, notice, Customs proposed an annual fee to reimburse the Customs appropriations for services rendered to the warehouse community. Customs has determined that it is necessary and appropriate for warehouse proprietors to bear the costs of the Customs supervision, including audit, inspection, and related administrative costs. This decision is predicated upon sections 312, 555, and 646, Tariff Act of 1930, as amended (19 U.S.C. 1312, 1555, 1646a). Section 555 provides that compensation for Customs employees appointed to supervise the movement of merchandise into and out of a bonded warehouse shall be reimbursed to the Government by the proprietor of the warehouse. Section 646 provides that when actions are required to be performed under the supervision of Customs officers, the degree of supervision shall be determined by the Secretary of the Treasury by regulation, or in the absence of such regulations, as the principal Customs officer concerned shall direct.

The Secretary of the Treasury has determined that the supervision of warehouse transactions required by the Tariff Act of 1930, as amended, should be performed by Customs on the basis of audits, periodic inventories, and occasional inspections. Therefore, the compensation of the Customs officials performing these functions are properly borne by proprietors of the regulated warehouses.

Customs has determined that the annual cost to each warehouse proprietor to reimburse the Customs appropriation for services rendered to the warehouse community is \$650. The annual fee will be due from each

warehouse facility on December 1, 1982, and annually thereafter beginning January 1, 1984.

The fee itself is based on an estimated total first year cost for the program of \$1.0 million, which is allocated among the 1538 existing warehouses.

The fee structure for subsequent calendar years of the audit-inspection program will be projected on the basis of the actual annual cost to Customs in the preceding fiscal year plus adjustments for any October Federal salary increases.

During the course of Customs review of the comments submitted and the total program, certain additional direct costs of the warehouse program were identified. Customs believes that these additional costs are properly reimbursable. Customs will be publishing a notice of proposed rulemaking and provide the public with an opportunity to comment with respect to these additional costs.

Inapplicability of Delayed Effective Date Provision

Because the fee schedule for establishing, altering, or relocating a bonded warehouse merely reflects the actual cost to Customs for the processing of an application and the services rendered result in conferring a benefit upon an identifiable member of the public, Customs believes it to be in the public interest not to continue to subsidize one segment of the public by charging less than the fair cost for the services rendered. Accordingly, pursuant to 5 U.S.C. 553(d)(3), good cause is found for dispensing with the delayed effective date for the fee schedule for establishing, altering, or relocating a bonded warehouse.

Discussion of Comments

In response to the notice of March 4, 1982, one commenter stated that it believed Customs proposed to revise the bonded warehouse regulations should have been the subject of an advanced notice of proposed rulemaking (ANPRM).

An ANPRM is used at an early stage in the regulatory process when an agency is unsure of the approach to take in a particular area and various alternative approaches are viable. An ANPRM provides an early opportunity for public participation in the regulatory process. As was stated in the background portion of this document, the bonded warehouse system has been extensively studied by various groups for several years. The most recent report completed in 1980 contained several alternatives to the current method of operation. A pilot test of the proposed

system has been successfully concluded. Based upon the foregoing, it was believed by Customs that an ANPRM was not necessary.

Security Concerns

Several commenters expressed concern that the removal of the Customs warehouse officer would have an adverse effect upon the security of the warehouse facility and merchandise in the warehouse and affect the enforcement of laws other than those relating to revenue collection. These commenters believe the warehouse officer helps prevent the entry into the United States through the bonded warehouse of contraband and narcotics. Indeed, many warehouse proprietors apparently are convinced that the warehouse officer, being a Government official and representing Government presence at the warehouse, serves as a deterrent to crime in general and theft of dutiable merchandise in particular.

While recognizing that some benefit may flow to the warehouse proprietor in the area of security of the warehouse, Customs does not believe the presence of the Customs officer materially adds to the security of the warehouse. The functions of the Customs officer generally relate to recordkeeping and approving of documentation for merchandise entering or being removed from the warehouse. He does not patrol the facility. Further, the presence of the officer inside the warehouse militates against him detecting crime on the outside. A criminal would have to enter the warehouse facility before he would, in fact, be aware of the officer's presence. In addition, while some warehouses have a full-time officer, a great many warehouses only require the presence of an officer for an hour or two each day and in some cases only an hour or two each week. In these cases the impact of the officer's presence as deterrent to crime would be negligible. Further, and unarmed officer is in no better position to prevent crime than the warehouse proprietor or his employees.

With respect to crime in the warehouse resulting from illegal activity by Customs and warehouse personnel, this is more likely to occur between persons who know each other such as under the present system with an officer who has a long relationship with a warehouse proprietor and his employees than under the new system where warehouse personnel and a Customs officer will meet only on a random basis in the course of a specific inspection or audit. Moreover, since inspections and audits may be done by a team, the possibility of illegal activity is remote.

With respect to smuggling being conducted in a warehouse, it is unrealistic to believe that an officer can be at all places in a warehouse simultaneously. The movement of an officer in a warehouse is predictable, a factor which necessarily reduces deterrent value. Unannounced spot checks and audits by a team are unpredictable. In Customs view, this unpredictability more than offsets whatever deterrent value exists with an officer present in the warehouse.

Finally, normal investigations into the backgrounds of warehouse proprietors and their employees who have access to bonded merchandise has reduced, and will continue to reduce, the possibility of having persons with criminal involvement in the warehouse.

Because of the warehouse officer's limited presence at the facility and restricted functions while there, many warehouse proprietors do not consider the officer's presence as a deterrent to criminal activity. One commenter stated that "these times necessitate a guard on our facility during nonbusiness hours and a security alarmed building as well as normal security measures." The commenter continued that "actually, security is enhanced by the ability of the warehouse proprietor to have immediate access to all area (sic) of his facility in the event of fire, break-in, or response to security alarms, rather than waiting several hours in the middle of the night for a Customs officer with keys, as has happened to us."

In light of the foregoing, Customs does not believe that the minimal security benefits to a segment of the warehouse community warrant retention of the warehouse officer at the facility.

One commenter stated that the warehouse officer's presence at a bonded warehouse is perceived on an international level as assuring the integrity of the warehouse system.

Other countries employ the same controls embodied in the system adopted by this document and find them to provide satisfactory control and security without the physical presence of a warehouse officer. It is Customs opinion that the conversion from the old system to the new system will not cause alarm to countries conducting business with the United States and will result in no impact on this nation's international commerce.

Recordkeeping Concerns

Several commenters stated that the recordkeeping system maintained by their businesses do not duplicate the records maintained by Customs warehouse officers. They indicated that to assume the task of preparing

information previously maintained by the warehouse officer would result in additional costs to the warehouse proprietor. In addition, the commenters contend that to prepare the annual warehouse proprietor submission would be a clerical nightmare. They believe that if the system were computerized, it would require extensive programming costs and if a manual system were used it would be difficult to develop.

Based upon the pilot test of the system which was conducted in Baltimore, Maryland, and Philadelphia, Pennsylvania, Customs found that certain aspects of the warehouse officer functions (e.g., recordkeeping) were easily absorbed by the administrative staff of the warehouse proprietor and resulted in no or minimal additional costs. Further, these additional recordkeeping tasks could be merged with the proprietor's inventory control system to achieve economy in operations that were not available to Customs.

During the pilot test one proprietor employed an individual to assume the duties of a warehouse officer. Customs found the new employee was paid less than half the cost of the warehouse officer and performed the recordkeeping task in a more efficient and effective manner. All warehouse proprietors under the revised system will be able to negotiate directly for the wages of any new employee rather than being required to reimburse 100% of the salary of a Federal employee plus the 37% fringe benefit surcharge. In addition, Customs officers will normally not be needed on weekends, holidays, or after normal business hours. This will eliminate the necessity of warehouse proprietors reimbursing the Government for overtime services. In addition, it should be noted that warehouse proprietors are presently obliged to maintain systems which essentially duplicate the warehouse officer's record to determine their liability for bonding purposes. While it is true that the new regulations require the maintenance of the entry folders, Customs believes that this can be done at a lower cost by the proprietors than they are paying Customs to do it under the present system.

The pilot test also indicated that warehouse proprietors were capable of preparing the annual warehouse proprietor submission from records normally maintained without imposing any significant problems. It is noted that all submissions prepared during the pilot test were prepared manually.

It should be noted that the words "entry folder" used in the NPRM have been changed in the final rule to "permit

file folder". This change was made because many Customs field personnel believed that all entry documentation would be maintained by the warehouse proprietor. This is not the case. Customs will retain the original entry documentation (i.e., CF 7502, Warehouse or Rewarehouse Entry). The following documentation will be maintained by the warehouse proprietor in the permit file folder:

- Custom Form 7505—Warehouse Withdrawal for Consumption
- Custom Form 7506—Warehouse Withdrawal—Conditionally Free of Duty and Permit
- Custom Form 7512—Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit
- Custom Form 5931—Discrepancy Report and Declaration
- Custom Form 3461—Immediate Delivery Application
- Custom Form 7521—Entry for Bonded Manufacturing Warehouse and Permit
- Custom Form 3499—Application and Permit to Manipulate, Examine, Sample or Transfer Goods in Customs Custody
- Custom Form 7519—Combined Rewarehouse and Withdrawal for Consumption.

Certain proprietary information is listed on the above documents. In order to prevent the unauthorized disclosure of this proprietary information, a new paragraph (7) has been added to § 19.12(a). In addition, a new paragraph (8) has been added to § 19.3(e) relating to the grounds for suspension or revocation of the bonded status of a warehouse to allow suspension or revocation for unauthorized disclosure of proprietary information.

One commenter stated that preparation of the warehouse proprietor submission would result in clerical and inventory cost aggregating \$3,000 and \$3,500, respectively.

Customs agrees that some costs will be incurred. However, the pilot test disclosed that preparation of the submission could be absorbed by the administrative staff without incurring significant additional costs. Also, a majority of businesses make at least one physical inventory count each year. The purpose of tying the warehouse proprietor submission to the proprietor's business year was to avoid the necessity of making a separate inventory for Customs purposes. Customs is of the opinion that any additional costs incurred will be more than offset by savings by virtue of not paying the salary of a Customs warehouse officer.

One commenter stated that it believes that recordkeeping requirements may hinder the movement of merchandise.

Customs disagrees. The methods and procedures of filing warehouse documentation have remained essentially the same with two exceptions. First, the warehouse proprietor, instead of the warehouse officers, will be responsible for recording entry transactions. Second, the proprietor will be responsible for filing an annual submission with Customs. Neither of these changes should result in a hindrance to cargo movement.

Not all commenters viewed the recordkeeping requirements as an onerous burden. One commenter states "we currently perform recordkeeping, duplicating the task of our warehouse officer. However, may we point out that we feel our recordkeeping is superior to that of our warehouse officer because it is performed by trained clerical personnel proficient in this area rather than someone unschooled in accounting/bookkeeping procedures. Furthermore, our receiving and shipping personnel are more experienced and qualified in noting quantity, exceptions, and damage to merchandise received and delivered than our warehouse officer."

One commenter believes that Customs personnel conducting spot checks and inventories will disrupt the warehouse operations and require the presence of warehouse personnel.

Customs personnel who conduct spot checks and audits will, in Customs opinion, quickly gain the experience to enable them to locate merchandise from the proprietor's locator system without requiring a significant amount of assistance from warehouse employees. While Customs officers conducting spot checks will invite warehouse officials to accompany them if they so desire, Customs will not require them to do so except in unusual situations.

Part 10—Comments

Two commenters indicated that § 10.62a relating to blanket withdrawals for certain merchandise should be expanded to allow use of the Customs Form 7512 in addition to Customs Form 7506 in making the blanket withdrawals.

The change in § 10.62a, as proposed, did not contemplate any modification of the regulations with respect to the authorization of blanket withdrawals of vessel supplies for transportation in bond and lading at a port other than the port where withdrawn. Authorizing the use of a Customs Form 7512 would expand the use of the blanket withdrawal to allow transportation to

another port. While the change suggested may ultimately prove to be beneficial, it would be necessary for Customs to conduct a study of its implications. In any case, it is outside the scope of this proposal, and would have to be considered in a separate rulemaking action.

To make it clear that merchandise may only be withdrawn and transported for lading at the port of withdrawal, specific language to this effect has been included in §§ 10.62 and 10.62a.

Part 19—Comments

One commenter stated that some warehouses operations are foreign owned and should not be granted permission by Customs to operate bonded warehouses in the United States.

Customs has no statutory authority to implement the request. It is a subject for legislative action.

Several commenters have stated that the removal of the warehouse officer will result in a loss of an arbiter in case of loss, shortage, or damage to goods.

The warehouse officer's use as an arbiter was never authorized by Customs and is not sanctioned. The Customs officer should only be a witness to agreements reached by the warehouse proprietor and the bonded carrier or licensed cartman or lighterman delivering the goods to the warehouse regarding loss, shortage, or damage to goods.

One commenter proposed that the definition of a Class 2 warehouse in § 19.1(a)(2) be changed to authorize merchandise to be entered which belongs to another importer at the same address sharing a common ownership of at least 25% with the proprietor. Apparently, the owners of the Class 2 warehouse have an ownership interest in another corporation.

The second sentence of 19 U.S.C. 1555, in pertinent part, states that private warehouses "may be bonded for the storing of such merchandise only as shall belong or be consigned to the owners or proprietors" of the warehouse. Section 19.1(a)(2) merely paraphrases that statutory provision. In Customs opinion, authorizing a corporate entity different from the one which owns the warehouse to use the warehouse, even though the corporation has common owners, would be violative of the statutory provisions.

One commenter believed that the requirement that merchandise transported within the port limits be transported by a bonded cartman was an unnecessary expense and source of paperwork.

Section 565, Tariff Act of 1930, as amended (19 U.S.C. 1565), provides that "the cartage of merchandise entered for warehouse shall be done by cartmen to be appointed and licensed by the appropriate customs officer and who shall give a bond * * * for the protection of the Government against any loss of, or damage to, such merchandise while being so carted." Customs has no authority to modify the statute. Any change would be the subject of legislative action.

One commenter recommended that all existing bonded warehouses be "grandfathered" under present regulations.

Customs is unable to adopt this recommendation since it would eliminate all of the benefits to be gained through adoption of the proposal. It would increase costs because of the necessity of maintaining two sets of bonds and regulations plus auditor-inspector teams in addition to warehouse officers. The indefinite existence of two sets of regulations with two sets of bonds and procedures causes administrative and legal problems. Further, the indefinite retention of all existing warehouse officers, which is implicit in the request, would eliminate the expected cost-saving benefits of the proposal.

One commenter suggested that the proposal be expanded to permit the storage of unbonded merchandise in the bonded warehouse or in the bonded portion of a warehouse that has both bonded and unbonded areas. Another commenter indicated that warehouse operations which have effective security and contain low risk merchandise, should be allowed to segregate merchandise by computerized records.

Sections 555, 557, 558, and 559, Tariff Act of 1930, as amended (19 U.S.C. 1555, 1557, 1558, 1559), contemplate that only merchandise in bond is to be placed in a bonded warehouse, or in the bonded area of a warehouse that has both bonded and nonbonded areas. Further, since under the audit-inspection system Customs will exercise less physical control over the bonded warehouse, Customs is of the opinion that adoption of the suggestion would be unwise.

One commenter suggested that the port directors, instead of the district directors, be given authority to handle routine matters relative to Customs bonded warehouses. Another suggested that they have joint responsibility.

These suggestions relate to internal Customs operating procedures involving delegations of authority which Customs believes should not be the subject of regulations. However, under existing

delegations of authority, a district director is authorized to designate a port director to act on his behalf on routine matters. The amendments adopted by this document have no effect on the exercise of that discretion. With respect to the second comment, numerous operational and administrative problems would be created by vesting joint responsibility in a supervisor (i.e., district director) and his subordinator (i.e. port director).

One commenter requested that warehouse proprietors be authorized to use their premises as Customs bonded warehouses pending completion of a background investigation, provided the premises meets Customs requirements and the application documents are correct and complete. The stated reason for this request is that background investigations require 3 to 4 months to complete.

Customs cannot adopt this requested change. The background investigation is necessary to provide information the district director needs in deciding whether to approve the application. A temporary or interim approval cannot be given since the proprietor would acquire a property right to operate the warehouse which Customs believes could only be removed through a formal hearing to discontinue the temporary approval. Further, information from the background investigation is even more important now than in the past to the district director's decision concerning the application, since the proprietor is given much more responsibility and flexibility under this new concept and Customs physical presence at the warehouse is reduced. However, Customs recognizes that there are delays caused by background investigations and is currently undertaking administrative measures to reduce the delays.

Several commenters requested that all proprietors be educated in the procedures, rules, and responsibilities under the new system.

Customs will make every effort to educate proprietors regarding the new warehouse system. In addition, the warehouse community is invited to call the Customs Office of the Regional Director, Regulatory Audit, or the Office of Inspection, in their area to obtain solutions for any problems that may arise. Assistance can also be obtained from the individuals listed in the "For Further Information Contact" section of this document.

Commenters have expressed concern over the possible proliferation of bonded warehouses resulting in so-called "fly by night" operators competing against existing warehouse proprietors.

Under the new system, as was done in the past, Customs will conduct an investigation into the background of the applicant as well as any employee before approving the application. If an applicant does not possess the qualifications to provide adequate service to the importing community, the application will not be approved.

One commenter indicated that the proposed rule to allow warehouse proprietors to affix and break Customs seals has nothing to do with the warehouse operation, but deals with the movement of merchandise in-bond, a bond in which a warehouse proprietor has no interest. The commenter further states that it is doubtful Customs could support a claim for liquidated damages against a carrier's bond for shortages in manifested quantities if the Customs seal is affixed or broken by other than a Customs employee.

In Customs opinion, the affixing and breaking of seals does have something to do with a warehouse operation. The interface with the warehouse operation occurs in the agreement between the carrier and the proprietor as to the quantity and condition of goods delivered or picked up at a warehouse. Further, Customs does not believe that its ability to support a claim for liquidated damages is affected by authorizing a warehouse proprietor to affix and break seals.

In the opinion of one commenter, allowing total control of general order, abandoned, and seized goods to be in the warehouse proprietor and the cartman could place Customs in a bad position in the event of a loss.

Customs is not allowing total control of general order, abandoned, and seized goods to be in the warehouse proprietor or the cartman. Customs will order goods to and from warehouses, and hold the proprietor responsible for the storage and handling thereof under the conditions of its bond. There will always be certain articles (e.g., narcotics, cash, firearms, seized records) which will never be sent to bonded warehouses for storage, but rather retained on Customs-owned premises. The selection of which goods should be sent to a bonded warehouse or stored on Customs premises will be, as it presently is, at the discretion of Customs.

One commenter indicated it was unnecessary to perpetuate the archaic provisions of proposed §19.1 relating to the construction of bonded yards.

Section 19.1(a), as modified by this document, does not provide very detailed requirements for bonded yards. Most of the detail was deleted in the

NPRM. Further, Customs does not agree that the regulation is archaic.

With respect to proposed §19.1(c), it is stated that the warehouse should be constructed in a manner to render it impossible for unauthorized persons to enter. One commenter asks who is an unauthorized person.

An unauthorized person would be any person not authorized by Customs or the proprietor to be in the warehouse, or any person not entitled by law or regulation to be in the warehouse.

One commenter states that it assumes that the procedures for establishing a warehouse set forth in proposed §19.2 relate only to warehouses seeking to operate as Customs bonded warehouses after the effective date of the rule and that existing warehouses need not file new applications.

The commenter is correct. Existing warehouses need not file new applications, however, all warehouses will be required to pay the annual fee and file new bonds.

In the NPRM it was indicated that in approving an application to establish a warehouse facility under proposed §19.2(a), Customs would determine whether the facility meets the following conditions: (i) The entry transaction level or dollar value of merchandise, or both, is of sufficient volume to warrant establishment of the facility; (ii) the warehouse facility is located 35 miles or less from the port of entry; and (iii) Customs has personnel resources available to adequately control all warehouse operations including the operation of the applicant warehouse facility within the district. If the above conditions are not met, it was indicated that the application would not be approved.

Several comments were received which objected to the 35 mile limitation. The 35-mile limit was intended only as a guide in approving applications. It was not a regulation change. Nor should it be construed as a mandatory requirement. It was only cited as one of many factors which could cause an application for a warehouse to be denied. Depending on the resources available for spot checks and audits of warehouses in a given port, it may be necessary from time to time to deny applications for warehouses distant from ports of entry. Some such applications will doubtless be approved. Customs staffing is not infinite, and geography must play a part in Customs decision whether to approve a warehouse application.

The 35-mile figure was not arbitrary. It represents the estimated distance a Customs officer in an average port, travelling through city traffic to the port

limits, can travel beyond those limits in 1 hour. Thus, an average round trip to such a warehouse represents 2 hours of time lost from the productive workday of the officer. Customs must take such a loss into consideration in determining whether to approve the application. In approving applications, Customs will look at all the facts and circumstances, including the business considerations which dictate that a warehouse operation be located a substantial distance from the port.

In commenting on the provisions of proposed § 19.2(f) relating to an investigation of the qualifications, character, and experience of the applicant, one commenter stated it knows of no situation in which Customs has been able to deny a person the right to make a living for any of the reasons set forth in the proposed section.

There is a difference between a vested and an unvested right. An applicant for the right to operate a warehouse has an unvested right. There are court cases supporting the denial of a license to individuals or organizations based on qualifications, character, and experience. Customs has in the past been able to deny applications for bonded warehouses based on the qualifications, character, and experience of the applicant. The proposed change merely spells out in the regulations Customs current practice of conducting an inquiry into character, qualifications, and experience before an application is approved.

Section 19.2(a) as proposed did not include a provision prescribing when the annual fee set forth in § 19.5 must be paid. Customs has added a paragraph to 19.2(a) and to each of the bonds in the Appendices to require payment within 14 days of the due date.

A commenter requested that the provision in section 19.3(c), relating to discontinuance of warehouses, which allows the discontinuance of one warehouse without affecting the bonded status of any other warehouse covered by a general bond, be retained. This provision, which was not in the NPRM, would relate only to bonded smelters or refiners who are specifically authorized by statute to have multiple warehouses owned by one proprietor on one general bond. Customs agrees with the commenter as to a bonded smelter or refiner and has retained the provision in § 19.17(c) of the final rule.

One commenter objected to the requirement in proposed § 19.3(d) for a proprietor to provide the district director with an employee list and to keep it updated.

The requirement for an employee list is not new. It is contained in current

§ 19.3(d). The list must be supplied only when requested by the district director. Customs does not believe that district directors often request such lists, and has no record of any complaint from a proprietor that supplying such a list has been an onerous burden. The list is needed by Customs from time to time to ensure the integrity of the warehouse operation.

One commenter believes that inactivity in a warehouse for 2 years should not be a cause for revoking or suspending its right to operate since business requirements may dictate that the warehouse remain inactive.

The ground for suspension or revocation in proposed § 19.3(e)(7) is that bonded merchandise has not been stored in the warehouse for 2 years, not that there has been inactivity with respect to the warehoused goods for 2 years.

An action to suspend or revoke under the provisions of § 19.3(e)(7) would lead to a "show cause" proceeding wherein the proprietor may state its case against suspension or revocation. The district director would consider arguments by the proprietor that the economic conditions of the trade require continuance of the warehouse. For example, in the case of a bonded smelting and refining warehouse the proprietor could show that metals are theoretically charged against the bond of the warehouse. The purpose of proposed § 19.3(e)(7) is to provide Customs with a means of closing a warehouse that the proprietor does not use and to force the proprietor to make a positive choice as to whether the warehouse is worth continuing.

Also, a suspension of a bond under the provisions of proposed § 19.3(b) for a stated period, whether requested by the proprietor or done by Customs, does not require reapplication for reinstatement of bonded status under proposed § 19.2. There is nothing to preclude a suspension by Customs until a time when the need arises to once again place bonded merchandise in the warehouse, providing the bond is still sufficient to safeguard the revenue.

The NPRM indicated that under revised § 19.6, each warehouse proprietor would be charged a fee to establish or relocate a warehouse facility and an annual fee thereafter which would be determined under the provisions of 19 U.S.C. 1555 and 31 U.S.C. 483a. This proposal envisioned aggregating substantially all costs associated with Customs supervision including audit, inspection, investigative, and administrative costs. These costs would then be equally divided among the total warehouse

locations at the beginning of the fiscal year to determine the annual fee. The fees would be revised annually to reflect current costs and the fee would be published in the *Federal Register* for the next calendar year. Another alternative considered was to bill warehouse proprietors individually for the costs of services incurred by Customs at each individual warehouse.

Both the proposal and the alternative approach were the subject of numerous comments. Many commenters felt it would be unfair for them to pay a share of the total cost for an audit type system if they are not, in fact, audited. Several commenters indicated that individual billings to specific warehouse proprietors for services rendered is more equitable than using an annual fee.

Customs recognizes the validity of the commenters argument but does not believe that this method is in the best interests of the warehouse community as a whole. Because of limited Customs resources, only a fraction of the entire warehouse community will be audited each year. However, the entire warehouse community will be benefiting by saving substantial sums because of the elimination of the reimbursable warehouse officer positions.

Under the old system, in 1980 reimbursable warehouse officer costs paid by the warehouse community aggregated \$8.4 million. In addition, Customs paid \$1.6 million to non-reimbursable warehouse administrative support positions. The total cost of the old program was approximately \$10 million. Under that system, the average cost to each warehouse proprietor was approximately \$6,000 per year. The new program is estimated to cost approximately \$1 million. Since there are approximately 1500 warehouse facilities operating in the United States, its territories and possessions, the annual fee will be \$650. The cost of the new system will cover only those costs to conduct audits and spot check inventories. It will not cover the cost to conduct investigations of warehouses in which fraudulent activity has been identified (i.e., if in the course of an audit fraud is discovered, the audit will be terminated and a report forwarded to the Customs Office of Investigations setting forth audit findings and requesting an investigation). The warehouse proprietors will not be charged for investigative costs.

The new warehouse program will require intense audits of warehouse facilities on a random basis. To provide for the least disruption to the warehouse facility operation, audits will be coordinated with the warehouse

proprietor. To assure Customs that warehouse operations are in accordance with regulatory requirements, inspectional teams will make unannounced visits to all warehouse premises and perform spot check inventory counts and limited reviews of warehouse proprietor records. Although these reviews will not be as intense as an audit, they will provide Customs an opportunity to view warehouse proprietor compliance with the regulations. Any questionable practices uncovered during an inspectional visit may be used by the Customs Regulatory Audit Division to initiate an audit of the warehouse proprietor.

Based upon the above programs' methodology, it is clear that if Customs were to bill proprietors on an individual basis for service specifically rendered, it would result in some warehouse proprietors reimbursing Customs large sums of money to cover audit costs while other companies which were not audited would pay minimal costs for inspectional visits. Customs believes the method of equally dividing the cost to reimburse the Customs appropriation for services rendered among the entire warehouse community is the most equitable method.

However, since the fees will be revised annually based upon actual costs for the previous fiscal year, and because of the substantial concern of the warehouse community, Customs intends to evaluate the method of calculating the fees as experience is gained with the new system. In light of the foregoing, Customs is adopting the annual fee calculation method proposed in the NPRM (i.e., aggregating the costs associated with the program and dividing the costs equally among the warehouse community) in the amount of \$650 for each warehouse.

One commenter stated that the annual renewal fee requirement would place every warehouse proprietor under a cloud since there would be uncertainty as to whether it would be allowed to continue its operations in the next year.

The commenter has misinterpreted the purpose of the annual fee. Customs only purpose in establishing the proprietor annual fee was to provide a means to collect reimbursement for the services rendered by Customs to the warehouse community during the previous year. A proprietor's warehouse operation could not be terminated by Customs at the time the fee is collected. If Customs believes a proprietor's right to operate should be suspended or revoked, it would follow the procedures set forth in § 19.3(f). To eliminate this source of confusion the word "renewal" has been deleted from the regulatory language.

One commenter believes that cost was the sole factor Customs considered in establishing a new system to control warehouse operations. In addition, the commenter indicated a willingness to reimburse Customs for all costs incurred to control its warehouse, including costs not presently reimbursed, so long as the warehouse officer remains on the premises.

While it is true that cost is one of the Government's primary and current concerns, Customs initiated the warehouse study over 3 years ago. The purpose of the study was to develop a new system which was both cost efficient and mission effective, i.e., a system that would provide protection to the revenue which was equal to or greater than the present system at a reduced cost. In addition, the new system would provide Customs with personnel savings which could be reallocated to higher priority areas. A great many warehouse proprietors apparently do not realize that the warehouse officer positions, although fully reimbursable, are counted against Customs overall personnel ceiling. Because large numbers of Customs personnel are performing warehouse functions, it is not possible to assign these personnel to tasks in other areas which have a higher priority and represent a greater threat to the revenue or to the country (e.g., interdiction of narcotics).

One commenter, citing language from the NPRM which indicated that the notice proposed to provide for release of goods directly to the warehouse proprietor by Customs officers at the customhouse, rather than at the warehouse, objected, because it believed it would be necessary to have all withdrawals "signed off" at the customhouse.

Under § 19.6(a) a warehouse officer may release goods to a proprietor only upon a permit signed by the district director. Since no warehouse officer will be present at the warehouse under the revised system, the permit of the district director extends directly to the proprietor. The purpose of the permit is to assure the district director that all duties and taxes are paid and all laws and regulations are complied with before the goods are removed from Customs custody in the warehouse.

Goods which are free of duty may be issued a blanket permit to withdraw for delivery at the same port, and removed in partial releases under § 19.6(d) without further Customs approval. It will not be necessary to travel to the customhouse to present a document each time a partial release occurs. The new system does not substantially

change existing procedures on duty-free merchandise or impose any additional burden.

Several commenters believe that the realities in the transportation of cargo very often do not allow a joint determination of quantities to be made at the time of deposit of goods in, or removal of goods from, a bonded warehouse.

It must be stressed that the liability for the quantity of goods deposited in a warehouse is based on the quantity reported in the entry documentation, not on a joint discrepancy report. The joint discrepancy report is significant only as a means of reducing or adjusting the proprietor's liability from the quantity reported in the entry documentation.

However, Customs accepts the legitimacy of the comment concerning the difficulty of jointly resolving discrepancies at the time of entry or removal, and is therefore changing the language of proposed § 19.6 to allow a period of 15 days after deposit of goods in, or removal of goods from, a warehouse for the filing of a joint discrepancy report.

Based upon its own review, Customs has added a new paragraph (c) in proposed § 19.6 which indicates that when a Customs officer supervises the entry or removal of goods, the Customs officer's report of goods deposited in, or removed from, a warehouse shall determine the proprietor's (and therefore the carrier's) liability for the quantity and condition of goods so deposited or removed.

In addition, Customs has added a new subparagraph (2) to § 19.6(a) to specify that the liability of a warehouse proprietor may be modified after the deposit of goods in the warehouse by several actions which result in a change in the duty liability of the importer of the goods, including concealed shortages, casualty loss, destruction, and manipulation. The reason for allowing these modifications is that the liability for duty has been changed through various provisions of law by the decrease (and occasionally an increase in the case of manipulations) in the quantity of goods, and that the proprietor's liability for safeguarding the goods has been correspondingly changed.

Customs has also added a sentence to § 19.6(b)(1) to specify that the proprietor must obtain a signed receipt from the carrier upon removal or withdrawal of merchandise from the warehouse to gain relief from liability. The purpose of the addition is to assure that the carrier has accepted liability for the transportation of the merchandise from the warehouse.

Further, Customs has added a subparagraph (2) to § 19.6(b) to describe more clearly the status of goods for which a permit to withdraw has been issued but are not yet removed from the warehouse. In such cases, the goods must be segregated or marked to show they have already been withdrawn to permit ready identification during Customs spot checks and audits. Such goods which are duty-paid or unconditionally duty-free are deemed to be no longer in Customs custody and released to the warehouse proprietor. Other goods which have been withdrawn are deemed to be at least conditionally dutiable and therefore still in Customs custody. This subparagraph is added to draw a distinction between goods withdrawn in partial releases in proposed § 19.6(d) and goods which have been duty-paid but remain in the warehouse.

In line with this clarification, § 127.14(c)(1) is also amended to conform with § 19.6(b)(2) by deleting the words "beyond the 5-year warehouse period".

One commenter suggests that proposed § 19.6(e), which indicates that the district director may authorize a warehouse proprietor to break Customs in-bond seals, should be directive and not permissive.

Customs does not agree. The district director has the right to have Customs personnel supervise the unloading as a part of his responsibility of protecting the revenue. Accordingly, the regulation must be permissive in nature to protect the district director's authority in this area.

One commenter states that it should be allowed to put into computers the data previously maintained by the warehouse officer.

The warehouse proprietors submission may be computerized if the report generated by the computer duplicates the information contained in the warehouse officers report (CF 5213-Ledger Book) and is set forth in the same manner.

One commenter suggested that proprietors be authorized to unlade goods which arrive in a container with a broken seal before notifying the district director, as set forth in proposed § 19.6(e). The commenter believes this may be necessary to protect the goods from adverse weather conditions.

The proprietor must report the unsatisfactory condition of the seal so the district director has the option of inspection of the seal and container before unloading. In many cases, the district director may choose not to inspect the seal, and will accept a joint report of the carrier and the proprietor

in lieu of physical inspection. The district director's decision will depend on many factors, including any financial threat faced by the proprietor or carrier or any damage to the goods. Since the district director can be telephoned, Customs sees no reason to authorize unloading when seals are found to be broken without or before obtaining approval of the district director.

One commenter suggests that reports of extraordinary shortages or damages be submitted to the port director rather than to the district director, as set forth in proposed § 19.6(e). The commenter indicates that allowing the port director to receive this information would be in the interest of an efficient operation.

Primary responsibility for receiving this information will be vested in the district director. However, the district director can, under existing delegations of authority, authorize the port director to receive this information and take appropriate action.

One commenter suggests that the language in proposed § 19.6(d)(4) to the effect that "partial releases may not be removed in a quantity of less than an entire package" be interpreted to allow the removal of single bottles from a full case.

The proposed language is based on current § 144.33, Customs Regulations (19 CFR 144.33), which, in turn, implements the first sentence of section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562). That section indicates that unless the Secretary of the Treasury specially authorizes a lesser amount, no merchandise shall be withdrawn from a bonded warehouse in less quantity than an entire bale, case, box, or other package. Inasmuch as no reasons were given by the commenter why the exception should be made, there is no basis on which to authorize a change in the current procedures.

One commenter indicated that as it reads proposed § 19.6, it would not be able to enter goods for warehouse and repack them into sets which are packaged in individual cartons and then subsequently withdraw the repackaged goods from warehouse.

Customs believes the commenter is misreading the proposed regulations. They do not, in any way, prohibit an importer from entering goods in one packed condition, performing a repacking operation, and withdrawing them in another packed condition. The regulations only require that (1) the repacking be done on an individual or blanket permit to manipulate, and (2) that the records required in proposed § 19.12 reflect the operation.

Several commenters requested that a "first in-first out" inventory accounting

system be used in lieu of specific identification of goods in a warehouse.

Customs believes this recommendation, although beyond the scope of this regulation change, has merit. After further study and consideration, it may be the subject of future action.

One commenter requests that Customs authorize the warehouse proprietors to apply overages of imported goods to shortages of similar goods.

Customs is required by law to collect duty on imported goods and is without authority to authorize a warehouse proprietor to offset overages against shortages.

One commenter requests clarification concerning the procedure for recording transactions and recordkeeping responsibilities.

Section 19.6 sets forth the procedure for a warehouse proprietor to obtain approval from the district director to deposit, withdraw, obtain partial release, and seal goods in a warehouse. Section 19.12 relates to the proper recording of the transaction to provide Customs with a historical record to review in order to be in a position to determine warehouse proprietor compliance with regulations. In the proper sequence of events, the warehouse proprietor would first obtain approval from the district director to deposit, withdraw, etc. goods at a warehouse, as set forth in § 19.6. He would next record the district director's approval and any related action in the company records, as required by § 19.12. Recording approval of entry and withdrawal documentation must take place at the customhouse before the movement of the merchandise.

One commenter points out that under proposed § 19.8 importers must make application for sampling, examination, or repacking of goods which must be approved by the district director. The commenter notes that in proposed § 19.11, the district director may approve a blanket application to manipulate. The commenter indicates that blanket applications should be the rule.

The blanket permit to manipulate, in proposed § 19.11, extends to a manipulation under proposed § 19.8, if it is continuous or repetitive, and the proprietor maintains the required records. Blanket permits can be approved only when the manipulation described is uniform over the period of the permit. If this were otherwise the application would not be descriptive of what the applicant is actually doing, and the applicant would be in violation of its bond. The district director must

understand what the applicant will actually be doing before the application can be approved. Once a permit is given, either blanket or specific, the district director may authorize the manipulation to be performed in a warehouse without physical supervision by a Customs officer. Because of less on-site inspection, blanket permits should not be the rule but the exception. On either a blanket or specific permit, the district director has discretion to physically supervise the operation.

One commenter believes that the requirement in § 19.12(b)(2) that permit file folders be maintained in a secure area should define the security standard, and that Customs inspection of those records should be limited to regular office working hours.

The standard for a secure area for permit file folders is the same as that for goods as set forth in specification #5, Customs Standards of Cargo Security, T.D. 72-56. The purpose of the requirement is to assure that access to the folders is limited, even within a facility, to those officers and employees having a need and a right to use the folders, so that opportunities for fraud, misuse of documentation, and negligence are limited. As discussed earlier in this document, a requirement has been set forth in § 19.12(a)(7) which indicates that proprietary information in, or proprietary information contained on, documents to be included in the permit file folders can only be disclosed to authorized persons. Section 19.3(e)(8) has been modified to provide that unauthorized disclosure is a ground for suspension or revocation of the bonded status of the warehouse.

With respect to the second part of the comment, Customs does not expect to conduct spot checks and audits of records outside the normal business day.

One commenter has suggested that flexibility be introduced in proposed § 19.12(d)(6) with respect to the marking of packages. The commenter specifically suggests that the entry number be placed on only one case on each corner of a pallet rather than on every case. Customs is of the opinion that the district director may use his discretion in this area and if he believes the revenue is adequately protected and administrative problems will not be created, he can authorize a warehouse proprietor to mark the cases as requested. However, because each situation is unique, we do not believe it is appropriate to address the question in the regulations.

One commenter stated that manipulation in warehouse should not

be included on the warehouse proprietor submission.

Customs did not intend to require a listing of manipulation transactions on the warehouse proprietor submission.

Part 24—Comment

One commenter believes that proposed § 24.17(d) should clearly indicate the services for which Customs officers may receive reimbursement.

The commenter appears to believe that this section relates only to warehouses. This is not the case. This section relates to the determination of the fee for any reimbursable service rendered to the public whether it be clearance of aircraft, vessels, or warehouse operations. The services for which the fees are collected are so numerous and varied it is not possible to include a complete listing.

Part 113—Comment

One commenter recommends that the provision for approval by the Commissioner of Customs of the General Bond for Smelting and Refining Warehouses in present § 113.13(a), Customs Regulations (19 CFR 113.13(a)), be retained. Under the provisions of section 311, Tariff Act of 1930, as amended (19 U.S.C. 1311) more than one warehouse, in more than one customs district, may be covered by one smelting and refining bond. The commenter states that only the Commissioner is in a position to determine whether warehouses in more than one district are adequate.

The present practice requires district directors to report to Customs Headquarters on the suitability of the proposed bonded smelter or refiner for bonded warehouse status. Since there is no provision for Headquarters personnel to conduct an on-site inspection of each of the premises to be bonded, reliance must be placed on the reports of the individual district directors. There is no practical reason why such reports cannot be sent to the district director with whom the bond is to be filed. Essentially similar discretion has already been given to district directors in the case of bonds for bonded carriers and importers that transact business in several districts and use the General Term Bond for Entry of Merchandise, Customs Form 7595. Actual supervision of a warehouse operation would be done by the district director in the district where the warehouse is located and coordinated with the district director who approved the bond.

Part 132

Present § 132.15, Customs Regulations (19 CFR 132.15), relates to withdrawals

from warehouse prior to opening of any quota. The section was intended to cover the situation in which merchandise was physically removed from a warehouse at a date subsequent to the presentation of the warehouse withdrawal. In such a situation, the date of presentation, not the date of physical removal, governs any quota status or benefit. Present §§ 132.11, 132.11a, and 141.68(d), Customs Regulations (19 CFR 132.11, 132.11a, 141.68(d)) fully explains the significance of the date of presentation. In light of the foregoing it is Customs opinion that § 132.15 is unnecessary. Accordingly, it is removed.

Part 144—Comments

A commenter indicates that as the proprietor has complete control over goods entering or being withdrawn from warehouse, it is logical to assume that the responsibility for determining the satisfaction of liens and other charges must also be that of the proprietor since Customs would have no control over the time of release.

Determining the satisfaction of liens will be done by Customs at the time of filing the withdrawal from the warehouse, as specified in § 144.32(c). Control will be exercised at the time of filing the withdrawal rather than at the time of removal from the warehouse.

One commenter requested clarification of the language in the NPRM which, while discussing the merits of the proposed system, indicated that the proprietor would not have to wait for a Customs warehouse officer before making a withdrawal. The commenter asked whether Customs was proposing a period of time after withdrawal for the deposit of duties.

Customs was not proposing that duties could be deposited after withdrawal. Under proposed § 144.38(e), it is clearly indicated that "when the duties and other charges have been paid, a permit * * * shall be issued and delivered to the person making the warehouse withdrawal." Once the permit is issued the proprietor would be in a position to release the goods from warehouse without a Customs officer present to supervise the removal.

During the course of reviewing the proposed regulations and comments, it was felt some additional narrative clarification was needed in the area of withdrawal versus removals. In situations where a warehouse proprietor files a blanket withdrawal and subsequently removes the goods piecemeal, the warehouse proprietor must be aware of its responsibilities in this area under the audit-inspection program. Once a blanket withdrawal is

filed for all the goods, and the permit file folder is forwarded to Customs, it will still be necessary for the warehouse proprietor to accurately and fully account for all goods covered by the withdrawal but not removed from the warehouse. Further, the warehouse proprietor will be held responsible for the ultimate and proper disposition of the goods until removed from the warehouse in the manner reported to Customs.

Comments on Bond Forms

One commenter believes that paragraph 2(a) of the smelting and refining bond should be modified by eliminating the requirement that records be maintained in accordance with the regulations and substitute a requirement for maintenance of records in a manner ordinarily recorded in the industry.

Customs disagrees. A proprietor's records must be maintained in accordance with the regulations. To permit records to be maintained in a manner ordinarily recorded in the industry could result in an assortment of recordkeeping practices which would require Customs to specifically tailor its compliance check program for each business. The tailoring of the program would result in excessive audit and inspection time which would increase the reimbursable charges to the warehouse community collected each year through the annual fee.

One commenter recommends that paragraph 2(g) of the smelting and refining bond, which relates to filing with Customs a report listing an inventory of all metal in warehouse, should indicate that the report is required monthly. Customs agrees and has modified the bond accordingly.

A bonded smelting and refining warehouse proprietor recommends that paragraph 2(b) of the smelting and refining warehouse bond exempt smelters who operate under Headnote 4(b), Part 1, Schedule 6, Tariff Schedules of the United States (TSUS), from the requirement of furnishing an annual statement or require an annual statement only from smelters which claim deductions under Headnote 4(c), Part 1, Schedule 6, TSUS. The commenter pointed out that T.D. 67-139 eliminated a requirement in § 19.19, for an annual submission.

Headnote 4(b) sets absolute deductions for ores and metal-bearing materials of copper, lead, or zinc content to be determined by chemical analysis. Headnote 4(c) sets deductions for ores and metal-bearing materials to be used instead of the absolute deductions. Headnotes 4 (d), (e), and (f) set procedures for claiming those

deductions, procedures for establishing plant losses in excess of the absolute deductions, and requirements for retention of plant records to support such claims. Under T.D. 67-139, § 19.19 was amended to eliminate the annual report since the tariff schedules established absolute allowances. The annual statement was, at that time, used to establish wastage requirements. The present need for an annual submission is not for the wastage factor, but for auditing purposes. In light of the foregoing, Customs believes the annual submission is necessary.

Two commenters questioned whether Customs has the authority to demand bonds which provide for reimbursement of any loss or expense connected with the discontinuance or suspension of the bonded status of a warehouse (see condition 1, Proprietors Warehouse Bond for Storage and Manipulation of Merchandise, Classes 2, 3, 4, 5, and 8, Appendix B, NPRM; and condition 2, Proprietors Manufacturing Warehouse Bond, Class 6, Appendix C, NPRM) or for reimbursement of any cost based on Customs supervision of a bonded smelting and refining warehouse and indemnification for any loss connected with a bonded smelting and refining warehouse (see condition 1, General Bond for Smelting and Refining Warehouses, Appendix D, NPRM).

Customs believes the language proposed was overly broad in scope. Customs intention was to limit liability to any expense caused by the transfer of merchandise on the discontinuance or suspension of the warehouse facility. Accordingly, Customs has now modified all three bonds to include this restrictive language.

One commenter noted that the proposed bond generally provides for liquidated damages of \$100 for each infraction. The commenter indicated that the amount was excessive for what could in some cases be minor violations and should be reduced to \$25. Two commenters were of the opinion that the bond should clearly state that assessments of liquidated damages are subject to mitigation.

Customs believes that \$25 is an insufficient liquidated damage assessment for recordkeeping and other infractions of the regulations since daily on-site supervision over the activities of a warehouse proprietor have been relinquished. With respect to the second comment, by virtue of section 623(c), Tariff Act of 1930, as amended (19 U.S.C. 1623(c)), and Part 172, Customs Regulations (19 CFR Part 172), which clearly provides for mitigation or cancellation of claims assessed against a bond, Customs is of the opinion there

is no need to provide in the bonds for the mitigation of assessments of liquidated damages.

On May 26, 1981, Customs published an ANPRM in the Federal Register (46 FR 28172), soliciting comments on a proposal to substantially change the Customs bond structure. One commenter suggested that the warehouse bonds be rewritten in the format proposed in that notice.

The project to modify the Customs bond structure is still in the developmental stage and has not yet been the subject of a NPRM. In addition, the bond format under development in that project is fundamentally different from the current bond format. To try at this point to implement a part of that project without public participation by means of comment on a NPRM would be unwise. However, because some form of revision of the bond structure will inevitably occur in the near future, and to avoid unnecessary printing costs to the public and the Government, Customs will allow the required bond forms which are set forth as appendices A through C of this document to be incorporated by reference in a manner similar to that used for the Air Carrier Blanket Bond (Customs Form 7605). The form to be used is set forth as Appendix F to this document.

Comments on Other Agency Requirements

One commenter expressed concern about the impact the elimination of the warehouse officer would have on the requirements of the Bureau of Alcohol, Tobacco and Firearms (ATF) which indicate that a Customs officer must certify the receipt of certain goods into warehouse.

Regulations contained in 27 CFR Part 252 require the Customs officer in charge of a Customs bonded warehouse or Customs manufacturing bonded warehouse to certify receipt of distilled spirits or wine transferred to such warehouses from a distilled spirits plant or bonded wine cellar. ATF regional offices currently clear a proprietor's (distilled spirits plant or bonded wine cellar) or exporter's bond covering untaxed distilled spirits or wine, or allow drawback of tax on distilled spirits, on the basis of such certification. Customs has been advised that ATF will modify its procedures to conform to the changes in this document.

The proprietor of a Customs bonded warehouse or Customs manufacturing bonded warehouse will be required to certify that distilled spirits or wines have been received at his installation. Until transaction forms can be modified

by ATF, the proprietor should use the spaces on the forms which are presently completed by Customs officers.

The transaction forms applicable to this new procedure are as follows:

1. ATF F 5100.11, Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation.

2. ATF F 1582 (5110.30), Drawback on Distilled Spirits Exported.

Beer, whether taxpaid or untaxpaid, may not be transferred to either a Customs bonded warehouse or a Customs manufacturing bonded warehouse, so the proposed change will not alter present exportation procedures relating to beer.

Executive Order 12291

The regulation is not a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required under E.O. 12291.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are applicable to this proposal. An initial regulatory flexibility analysis was prepared and attached to the NPRM. The final regulatory flexibility analysis is attached to this document as Appendix E.

Drafting Information

The principal author of this document was John E. Elkins, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Exports, Imports, Petroleum.

19 CFR Part 18

Customs duties and inspection, Common carriers, Freight forwarders, Imports, Motor carriers, Railroads, Surety bonds.

19 CFR Part 19

Customs duties and inspection, Exports, Freight, Surety bonds, Tobacco, Warehouse.

19 CFR Part 22

Customs duties and inspection, Claims, Imports.

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Imports, Taxes, Wages.

19 CFR Part 113

Customs duties and inspection, Imports, Surety bonds.

19 CFR Part 125

Common carriers, Customs duties and inspection, Imports.

19 CFR Part 127

Customs duties and inspection, Freight, Imports.

19 CFR Part 132

Customs duties and inspection, Imports, Quotas.

19 CFR Part 142

Customs duties and inspection, Imports.

19 CFR Part 144

Customs duties and inspection, Imports, Warehouses.

Amendments to the Regulations

Parts 10, 18, 19, 22, 24, 113, 125, 127, 132, 142, and 144, Customs Regulations (19 CFR Parts 10, 18, 19, 22, 24, 113, 125, 127, 132, 142, 144), are amended as set forth below

William von Raab,

Commissioner of Customs.

Approved: October 22, 1982.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. Section 10.62 is amended by revising paragraph (a) and paragraph (c)(2) to read as follows:

§ 10.62 Bunker fuel oil.

(a) *Withdrawal under section 309, Tariff Act of 1930, as amended.* When all the bunker fuel oil in a Customs bonded tank is intended only for lading duty free as supplies on vessels under section 309 of the Tariff Act of 1930, as amended, at the port where the tank is located, delivery of the oil, by Customs bonded carrier, cartman, or lighterman (including bonded pipelines), under withdrawals on Customs Form 7506, either single or monthly (blanket), may be made without the presence of a Customs officer. When a blanket withdrawal is filed and a partial release takes place, the partial release procedure set forth in § 19.6(d) of this chapter shall be followed for each partial release. However, each abstract copy of Customs Form 7506 shall include the following additional information:

(1) Type of oil withdrawn.

(2) Number or other identification of sales order therefor.

(3) Name of bonded carrier, date it received oil.

(4) Receipt signed by master or other person in charge of delivering conveyance identified by number, or name, and if Customs bonded lighterman or cartman, by the carrier's license number.

(5) Name is location of vessel obtaining oil.

(6) Quantity and identification of each type of oil received with date, and signature and title of receiving officer. If all the oil is laden on the receiving vessel at the port of withdrawal via pipeline from the bonded storage tank, paragraphs (a) (3) and (4) of this section shall be deemed to be inapplicable.

* * * * *

(c) * * *

(2) *Delivering transferer receipt.* The receipt of the delivering carrier on a copy of Customs Form 7506 for fuel oil which has been blended under paragraph (c)(1) of this section with components classifiable at different rates of duty shall show, for each warehouse entry number and withdrawal number involved, the types and quantity of oil received.

* * * * *

2. Section 10.62 is further amended by removing the last sentence of paragraph (e).

3. Section 10.62a is revised to read as follows:

§ 10.62a Blanket withdrawals for certain merchandise.

(a) *Generally.* Under this section, a blanket withdrawal on Customs Form 7506 may be filed for all or part of any merchandise withdrawn from warehouse except fuel oil covered under § 10.62, for use on qualified vessels. Such a withdrawal shall be made only for lading on board vessels at the port where the warehouse is located. The procedure for the blanket withdrawal and partial releases after the initial release are the same as those provided in § 19.6(d) of this chapter, except as noted in paragraph (b).

(b) *Partial release.* A partial release on Customs Form 7506, in duplicate, or in triplicate if an extra copy is required by the district director, shall be presented to the warehouse proprietor and placed in the proprietor's permit file folder under the partial release procedure set forth in § 19.6(d) of this chapter, as merchandise is needed for delivery to a using vessel. The original of the partial release document shall accompany the merchandise for delivery to the Customs officer who will supervise lading, or if a Customs officer does not physically supervise lading, to

the master of the vessel. The original shall be returned to the proprietor for record purposes after the Customs officer or master of the vessel, as appropriate, has certified lading of the goods described in the document.

4. The second sentence of paragraph (c)(3) and the first sentence of paragraph (c)(4) of § 10.65 are revised to read as follows:

§ 10.65 Cigars and cigarettes.

(c) * * *

(3) * * * In such event, the withdrawal shall be retained by the warehouse proprietor until delivery receipts are obtained for the entire quantity covered by the withdrawal, provided the total period of time prior to delivery to the using vessel or aircraft does not exceed 5 years. * * *

(4) Merchandise for which blanket withdrawals are filed shall be stored in a separate room or enclosure in a bonded warehouse under separate locks, and the merchandise clearly marked to show that it has been withdrawn.

(R.S. 251, as amended, secs. 309, 317, 555, 556, 557, 624, 646a, 46 Stat. 690, as amended, 696, as amended, 743, as amended, 744, as amended, 759, 67 Stat. 520 (19 U.S.C. 66, 1309, 1317, 1555, 1556, 1557, 1624, 1646a))

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. Section 18.2 is amended by revising paragraph (a) to read as follows:

§ 18.2 Receipt by carrier; manifest.

(a)(1) *Merchandise other than from warehouse delivered to bonded carrier.* Except as set forth in subparagraph (2) of this section, when merchandise is delivered to a bonded carrier for transportation in bond, the merchandise shall be laden on the conveyance under the supervision of Customs unless the transporting conveyance is not to be sealed with Customs approved seals or the lading inspector accepts the check of the carrier as to the merchandise laden thereon. The carrier's receipt shall be given immediately to the lading inspector on the Customs in bond document covering the merchandise. In the case of a TIR carnet, the receipt shall be given on the appropriate vouchers in the following form:

Received the cargo listed herein for delivery to Customs at the indicated port of destination or exportation, or for direct exportation. _____ Name of Carrier (or Exporter) _____ Attorney or Agent of Carrier (or Exporter) _____ (Date) _____

(2) *Merchandise delivered from warehouse.* When merchandise is delivered from a warehouse to a bonded carrier for transportation in bond, supervision of lading shall be accomplished in accordance with the procedure set forth in § 19.6(b) of this chapter.

2. Section 18.2(b) is amended by inserting a sentence between the third and fourth sentences to read as follows:

§ 18.2 Receipt by carrier; manifest.

(b) * * * Quantities of goods transported in bond from a Customs bonded warehouse shall be accounted for under the procedures set forth in § 19.6 of this chapter. * * *

3. Section 18.3(e) is amended by substituting "Part 125" for "Part 21".

4. A new paragraph (i) is added to § 18.4 to read as follows:

§ 18.4 Sealing conveyances and compartments; labelling packages; warning cards.

(i) *Removal of seals.* Except as provided in § 18.3(d) and section 19.6(e) of this chapter, seals affixed under this section shall be removed only under Customs supervision.

(R.S. 251, as amended, secs. 551, 551a, 555, 556, 557, 624, 646a, 46 Stat. 742, as amended, 743, as amended, 744, as amended, 759, 49 Stat. 1538, 67 Stat. 520 (19 U.S.C. 66, 1551, 1551a, 1555, 1556, 1557, 1624, 1646a))

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. Paragraph (a)(4), that portion of paragraph (c) before the colon and paragraph (c)(3) of § 19.1 are amended by revising them to read as follows:

§ 19.1 Classes of Customs warehouses.

(a) * * *

(4) *Class 4.* Bonded yards or sheds for the storage of heavy and bulky imported merchandise; stables, feeding pens, corrals, or other similar buildings or limited enclosures for the storage of imported animals; and tanks for the storage of imported liquid merchandise in bulk. If the district director deems it necessary, the yards shall be enclosed by substantial fences with entrances and exit gates capable of being secured by the proprietor's locks. The inlets and outlets to tanks shall be secured by means of seals or the proprietor's locks.

(c) *Construction.* When parts of buildings are used as Customs bonded

warehouses, the bonded and nonbonded portions thereof shall be effectively separated by partitions of substantial materials and construction erected in such a manner as to render it impossible for unauthorized personnel to enter the premises without such violence as to make the entry easy to detect. The partitions may be constructed of raised expanded metal (steel), steel chain-link fence fabric, or wood materials and shall comply with the following specifications:

(3) *Wood.* Wood partitions shall be constructed of not less than 1 inch boards (dressed if desired) of uniform length between supports, nailed with not less than ten penny nails to not less than 2 x 4 inch stud framing and held in place by 1/2 x 2 inch metal cover-strips secured over the nailed ends, with carriage bolts through the boards and partition framing. Plywood of not less than 1/2 inch thickness may be substituted for the 1 inch thick wood boards providing it is erected in the same manner prescribed for the boards. Gates may be constructed of any of the materials specified for partitions. Depending on their size and swing, the gates shall be constructed in such a manner, and of materials of sufficient strength, to preclude any possible sagging condition. The specifications set forth in this paragraph shall be applicable to all partitions (including gates) constructed, reconstructed, renovated, or otherwise installed or altered on or after October 28, 1978.

2. Section 19.2 is amended by revising paragraphs (a), (c), and (d) and adding new paragraphs (f) and (g) to read as follows:

§ 19.2 Applications to bond; bond; annual fee.

(a) *Application.* An owner or lessee desiring to establish a bonded warehouse facility shall make written application to the district director wherein the warehouse is located, describing the premises, giving its location, and stating the class of warehouse desired. The application shall be accompanied by the fee required by § 19.5 of this chapter to establish a warehouse. If required by the district director, the applicant shall provide a list of names and addresses of all officers and managing officials of the warehouse and all persons who have a direct or indirect financial interest in the operation of the warehouse facility. Except in the case of a class 2 or class 7 warehouse, the application shall state whether the warehouse facility is to be operated only for the storage or

treatment of merchandise belonging to the applicant or whether it is to be operated as a public bonded warehouse. If the warehouse facility is to be operated as a private bonded warehouse, the application also shall state the general character of the merchandise to be stored therein, and provide an estimate of the maximum duties and taxes which will be due on all merchandise in the bonded warehouse at any one time. A warehouse facility will be determined by street address, location, or both. For example, if a proprietor has two warehouses located at one street address and three warehouses located at three different street addresses the two located at one address would be considered as one warehouse facility and the three located at three different addresses would each be considered as separate warehouse facilities. A warehouse facility shall be charged an annual fee as prescribed by section 19.5 of this chapter which will be paid to the Regional Commissioner within 14 days after the due date.

(c) *Bond, generally.* On approval of the application to bond a warehouse of class 2, 3, 4, 5, or 8, a bond shall be executed in the form prescribed by T.D. 82-204.

(d) *Bond for proprietor's manufacturing warehouse, class 6, and bonded smelting and refining warehouse, class 7.* On approval of the application to bond a proprietor's manufacturing warehouse, class 6, a bond shall be executed in the form prescribed by T.D. 82-204. In the case of a bonded smelting and refining warehouse, class 7, the bond shall be executed with the required number of copies and in the form prescribed by T.D. 82-204.

(f) As a condition of approval of the application, the district director may order an inquiry by a Customs officer into the qualification, character, and experience of the applicant (e.g. personal history, financial and business data, credit and personal references), and into the security, suitability, and fitness of the facility.

(g) The district director shall promptly notify the applicant in writing of his decision to approve or deny the application to bond the warehouse. If the application is denied the notification shall state the grounds for denial which need not be limited to those set forth in § 19.3(e). The applicant may seek review of the decision to deny under the provisions of § 19.3(f) of this chapter within 10 days after notification.

3. Section 19.3 is amended by revising it to read as follows:

§ 19.3 Bonded warehouses; alterations; relocation; suspensions; discontinuance.

(a) *Alterations or relocation.* Alterations to or relocation of a warehouse within the same district may be made with the permission of the district director of the district in which the facility is located. An application to alter or relocate a bonded warehouse shall be accompanied by the fee required by § 19.5 of this chapter.

(b) *Suspensions.* The use of all or part of a bonded warehouse or bonded floor space may be temporarily suspended by the district director for a period not to exceed one year on written application of the proprietor if there are no bonded goods in the area. Upon written application of the proprietor and upon the removal of all nonbonded goods, if any, the premises may again be used for the storage of bonded goods. If the application is approved, the district director shall indicate the approval by endorsement on the application. Rebonding will not be necessary as long as the original bond remains in force.

(c) *Discontinuance.* If a proprietor wishes to discontinue the bonded status of the warehouse, he shall make written application to the district director. The district director shall not approve the application until all goods in the warehouse are transferred to another bonded warehouse without expense to the Government. To reestablish the bonded warehouse, application shall be made and approved under the provision of § 19.2 of this chapter.

(d) *Employee lists.* The district director may make a written demand upon the proprietor to submit, within 30 days after the date of demand, a written list of the names, addresses, social security numbers, and dates and places of birth of all persons employed by the proprietor in the carriage, receiving, storage, or delivery of any bonded merchandise. If a list has been previously furnished the proprietor shall advise the district director in writing of the names, addresses, social security numbers, and dates and places of birth of any new personnel employed by him in the carriage, receiving, storage, or delivery of bonded merchandise within 10 days after such employment. For the purpose of this part a person shall not be deemed to be employed by a warehouse proprietor if he is an officer or employee of an independent contractor engaged by the warehouse proprietor to load, unload, transport, or otherwise handle bonded merchandise.

(e) *Revocation or suspension for cause.* The district director may revoke

or suspend for cause the right of a proprietor to continue the bonded status of the warehouse for any ground specified in this paragraph. An action to suspend or revoke the right to operate a bonded warehouse shall be taken in accordance with the procedures set forth in paragraph (f) of this section. If the bonded status is revoked or suspended for cause, the district director shall require all goods in the warehouse to be transferred to a bonded warehouse without expense to the Government. The bonded status of a warehouse may be revoked or suspended for cause if:

(1) The approval of the application to bond the warehouse was obtained through fraud or the misstatement of a material fact;

(2) The warehouse proprietor refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation relative to the operation or administration of a bonded warehouse;

(3) The warehouse proprietor or an officer of a corporation which has been granted the right to operate a bonded warehouse is convicted of or has committed acts which would constitute a felony, or a misdemeanor involving theft, smuggling, or a theft-connected crime;

(4) The warehouse proprietor does not provide secured facilities or properly safeguard merchandise within the bonded warehouse;

(5) The warehouse proprietor fails to furnish a current list of names, addresses, and other information required by § 19.3(d);

(6) The bond required by § 19.2(c) or (d) of this chapter is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with goods and sufficient sureties is not furnished within a reasonable time;

(7) Bonded merchandise has not been stored in the warehouse for a period of 2 years; or

(8) The warehouse proprietor or an employee of the warehouse proprietor discloses proprietary information in, or proprietary information contained on, documents to be included in the permit file folder to an unauthorized person.

(f) *Procedure for revocation or suspension for cause.* The district director may at any time serve notice in writing upon any proprietor of a bonded warehouse to show cause why his right to continue the bonded status of his warehouse should not be revoked or suspended for cause. Such notice shall advise the proprietor of the grounds for the proposed action and shall afford the proprietor an opportunity to respond in

writing within 30 days. Thereafter, the district director shall consider the allegations and responses made by the proprietor unless the proprietor in his response requests a hearing. If a hearing is requested, it shall be held before a hearing officer designated by the Commissioner of Customs or his designee within 30 days following the proprietor's request. The proprietor may be represented by counsel at such hearing, and all evidence and testimony of witnesses in such proceedings, including substantiation of the allegations and the responses thereto shall be presented, with the right of cross-examination to both parties. A stenographic record of any such proceeding shall be made and a copy thereof shall be delivered to the proprietor of the warehouse. At the conclusion of the hearing, the hearing officer shall promptly transmit all papers and the stenographic record of the hearing to the Regional Commissioner together with his recommendation for final action. The proprietor may submit in writing additional views or arguments to the Regional Commissioner following a hearing on the basis of the stenographic record, within 10 days after delivery to him of a copy of such record. The Regional Commissioner shall thereafter render his decision in writing, stating his reasons therefor. Such decision shall be served on the proprietor of the warehouse, and shall be considered the final administrative action.

4. Section 19.4 is amended by revising it to read as follows:

§ 19.4 Customs supervision over warehouses.

The character and extent of Customs supervision to be exercised in connection with any warehouse facility or transaction provided for in this part shall be in accordance with § 161.1 of this chapter. Independent of any need to appraise or classify merchandise, the district director may authorize a Customs officer to supervise any transaction or procedure at the bonded warehouse facility. Such supervision may be performed through periodic audits of the warehouse proprietor's records, quantity counts of goods in warehouse inventories, spot checks of selected warehouse transactions or procedures or reviews of conditions of recordkeeping, security, or storage in a warehouse facility. The warehouse proprietor shall permit access to the warehouse by any Customs officer.

5. Section 19.5 is revised to read as follows:

§ 19.5 Fees.

Each warehouse proprietor will be

charged a fee to establish, alter, or relocate a warehouse facility which shall be determined under the provisions of 31 U.S.C. 483a. Each warehouse proprietor granted the right to operate a warehouse facility shall be charged an annual fee which shall be determined under the provisions of 19 U.S.C. 1555. The fees will be revised annually and published in the *Federal Register* and *Customs Bulletin*.

6. Section 19.6 is amended by revising it to read as follows:

§ 19.6 Deposits, withdrawals, partial releases and sealing requirements.

(a) (1) *Deposit in warehouse.* The district director may authorize the deposit of merchandise in designated bonded warehouses, without physical supervision by a Customs officer. Goods for which a warehouse or rewarehouse entry has been accepted, according to the procedures in Part 144, Subpart B, of this chapter, shall be examined or inspected at the place of unlading, bonded warehouse, or other location as ordered by the district director. When merchandise is deposited in a proprietor's warehouse the proprietor will be responsible for the quantity and condition of merchandise reflected on entry documentation adjusted by (i) any allowance made under Part 158, Subparts A and B, of this chapter by the district director, and (ii) any discrepancy report made jointly on the appropriate cartage documents as set forth in § 125.31 of this chapter by the warehouse proprietor and the bonded carrier or licensed cartman or lighterman delivering the goods to the warehouse, or an independent weigher, gauger, measurer, and signed by an authorized representative of the above within 15 calendar days after deposit. A copy of any joint report of discrepancy shall be made within two business days of agreement and provided to the district director on the appropriate cartage documents as set forth in § 125.31 of this chapter.

(2) *Allowance after deposit.* After merchandise has been deposited in the warehouse the proprietor's liability may be further modified by any adjustment for duties allowed by the district director for concealed shortages (i.e., § 158.5(a)), casualty loss (i.e., Part 158, Subpart C), destruction (i.e., § 158.43), or manipulation (i.e., § 19.11, 19 U.S.C. 1562).

(b) (1) *Withdrawal and removal from warehouse.* The district director may authorize the withdrawal and removal of merchandise, without physical supervision or examination by a Customs officer under permit issued under the procedure set forth in § 144.39

of this chapter. When a withdrawal or removal is not physically supervised by a Customs officer, the warehouse proprietor will be relieved of responsibility only for the merchandise in its warehouse in the condition and quantity as shown on the application for withdrawal or removal. In the case of merchandise to be carted or transported in bond from the warehouse, the proprietor will be relieved of responsibility only if it receives the signed receipt on the withdrawal or removal document of the carrier named in the document. The proprietor's responsibility may be adjusted by any discrepancy report made jointly by the warehouse proprietor, and the licensed cartman or lighterman, bonded carrier, weigher, gauger, or measurer and signed by the authorized representative of the above within 15 calendar days after removal from the warehouse. The adjustments shall be noted on the permit copy of the withdrawal or removal document. A copy of any joint report of discrepancy shall be promptly provided to the district director.

(2) *Retention in warehouse after withdrawal.* Merchandise for which a permit for withdrawal has been issued, whether duty-paid or not, need not be physically removed from the warehouse. However, such merchandise must be segregated or physically marked to maintain its identity as merchandise for which a withdrawal permit has been issued. Duty-paid or unconditionally duty-free merchandise which has been withdrawn, but not removed, from a warehouse is no longer deemed to be in Customs custody. All other goods which have been withdrawn, but not removed, remain in Customs custody until the end of the 5-year warehouse entry bond period.

(c) *Customs determination of liability.* When a Customs officer physically supervises the deposit or removal of merchandise under paragraphs (a)(1) or (b)(1) of this section, the Customs officer's report of merchandise received or removed shall be determinative of the quantity and condition of merchandise received or removed from the warehouse for Customs purposes.

(d) *Partial releases.*—(1) *Generally.* Goods in Customs custody may be withdrawn without payment of duty when permitted by law within the same port by blanket withdrawal and thereafter removed from the warehouse in partial releases by the warehouse proprietor. Blanket withdrawals are not authorized for transportation in bond to another port. When a withdrawer desires to use the partial release procedure for all or part of the merchandise covered by a warehouse

entry, he shall submit to the district director a blanket withdrawal on the appropriate withdrawal form. The form shall bear the words "BLANKET WITHDRAWAL" in capital letters conspicuously printed or stamped in the top margin. The summary statement described in § 144.32 of this chapter shall not be included. Merchandise for which a duty-paid withdrawal is required is not eligible for the partial release procedure under this section, except as provided in § 10.62(e) of this chapter.

(2) *Form Distribution.* The blanket withdrawal shall be executed in triplicate, or in quadruplicate if an additional copy is required for control purposes in local administration. Upon approval of the blanket withdrawal by the district director, the original shall be returned to the withdrawer for forwarding to the warehouse proprietor to serve as a permit to withdraw the merchandise covered therein upon the filing of requests for partial release under subparagraph (e) of this section. The original shall be retained in the warehouse proprietor's records, as provided in § 19.12(a)(2). One copy shall be returned to the withdrawer for use in preparing requests for partial release. One copy (statistical) shall be forwarded by Customs to the Bureau of the Census, where applicable. Merchandise for which a blanket withdrawal has been approved may thereafter be released by the warehouse proprietor in the individual partial releases, but the goods are still in Customs custody while physically located in the warehouse.

(3) *Numbering of forms, discrepancy report.* Each partial release shall be documented by the withdrawer through presentation of a copy of the blanket withdrawal document to the warehouse proprietor, or by placing a copy in the proprietor's permit file folder. Each such release shall be consecutively numbered, and the number shall appear immediately after the serial number of the blanket withdrawal. Each copy shall bear the summary statement described in § 144.32 of this chapter. Any joint discrepancy report of the proprietor and the bonded carrier, licensed cartman or lighterman, or weigher, gauger, or measurer for a partial release shall be made on the copy. A copy of any joint report of discrepancy shall be within two business days provided to the district director. A copy of the partial release document shall be retained in the records of the warehouse proprietor, as provided in § 19.12(a)(2). The warehouse proprietor shall account for all goods covered by a blanket

withdrawal through individual partial release documents before the permit file folder is transmitted to Customs under § 19.12(a)(4).

(4) *Quantity of release.* Partial releases may not be removed in a quantity of less than an entire package or, if in bulk, less than one ton in weight.

(e) *Affixing or breaking of seals.* The district director may authorize a warehouse proprietor to: (1) break Customs in bond seals affixed under § 18.4 of this chapter, or under any Customs order or directive, on any vehicle or container of goods entered for warehouse upon arrival of the vehicle or container at the warehouse; or (2) affix Customs in bond seals to any vehicle or container of goods for which a withdrawal document has been approved for movement in bond. The affixing or breaking of seals so authorized, shall be deemed to have been done under Customs supervision. The proprietor shall report to the district director any seal found, upon arrival of the vehicle or container at the warehouse, to be broken, missing, or improperly affixed, and hold the vehicle or container and its contents intact pending instructions from the district director.

7. Section 19.8 is amended by removing the words "and under the supervision of the Custom warehouse office" from the first sentence.

8. Part 19 is amended by adding a new § 19.9 to read as follows:

§ 19.9 General order, abandoned, and seized merchandise.

(a) *Acceptance of merchandise.* A proprietor of a general order warehouse shall accept general order, abandoned, or seized goods and articles into the warehouse only upon order of the district director on Customs Form 6043 (Delivery Ticket), as presented by the cartman or lighterman. A joint determination shall be made by the warehouse proprietor and the cartman or lighterman of the quantity and condition of the goods or articles so delivered to the warehouse. Any discrepancy between the quantity and condition of the goods and that reported on Customs Form 6043 shall be reported to the district director within two business days of agreement.

(b) *Recording and storing.* General order, abandoned, and seized goods and articles shall be recorded and stored in the warehouse as prescribed by § 19.12.

(c) *Release of merchandise.* Merchandise in general order may be released by the warehouse proprietor, after Customs inspection or examination as ordered by the district director, to the person named in a release order under

§ 141.11 of this chapter. The release may only be made by the proprietor upon presentation of a permit to release or delivery authorization signed by the appropriate Customs officer on Customs Form 3461, 7501, 5119-A, or other Customs form as designated by the district director. General order goods which have been unclaimed under § 127.11 of this chapter, voluntarily abandoned, or seized and forfeited may be released for transfer to the place of sale upon presentation to the warehouse proprietor of an approved copy of Customs Form 5251 (Order to Transfer Merchandise for Public Auction (Sale)), and an approved copy of Customs Form 6043 (Delivery Ticket). The quantity and condition of the goods so transferred shall be determined jointly by the proprietor and the cartman or lighterman picking up the goods for delivery to the place of sale. Any discrepancies shall be noted on the delivery ticket, a copy of which shall be sent to the district director within two business days of agreement. Seized goods that are released for a purpose other than sale may be released from warehouse only upon such written terms and conditions as directed by the district director.

9. Section 19.10 is amended by revising it to read as follows:

§ 19.10 Examination packages.

Merchandise sent from a bonded warehouse to the appraiser's stores for examination shall be returned by the district director to the warehouse for delivery unless the warehouse proprietor endorses the duty-paid permit to authorize delivery to another person.

10. Section 19.11(d) is amended by adding the following new sentences between the second and third sentences:

§ 19.11 Manipulation in bonded warehouses and elsewhere.

(d) * * * The district director may approve a blanket application to manipulate on Customs Form 3499, for a period of up to one year, for a continuous or a repetitive manipulation. The warehouse proprietor must maintain a running record of manipulations performed under a blanket application, indicating the quantities before and after each manipulation. The record must show what took place at each manipulation describing marks and numbers of packages, location within the facility, quantities, and description of goods before and after manipulation. The district director is authorized to revoke a blanket approval to manipulate and

require the proprietor to file individual applications if necessary to protect the revenue, administer any law or regulation, or both. * * *

11. Section 19.12 is amended by revising it to read as follows:

§ 19.12 Warehouse recordkeeping, storage and security requirements.

(a) *Recordkeeping.* The warehouse proprietor shall comply with the following recordkeeping requirements:

(1) *Record transactions.* All merchandise entered, manipulated, manufactured or removed from the bonded warehouse shall be recorded in the warehouse proprietor's accounting and inventory records by bond lot number. The records to be maintained are those which a prudent businessman in the same type of business can be expected to maintain. The records are to be kept in sufficient detail to permit effective and efficient determination by Customs of the proprietor's compliance with these regulations and the correctness of his annual submission;

(2) *Maintain permit file folders.* Permit file folders shall be maintained and kept up to date by filing all receipts, damage or shortage reports, manipulation requests, specific removals and blanket removals and the partial release/permit copy for each removal within two business days after the event occurs;

(3) *Extraordinary shortage or damage.* Extraordinary (one percent or more of the value of merchandise in an entry) shortage or damage shall be immediately brought to the attention of the district director; and confirmed in writing within 2 business days after the shortage or damage has been brought to the attention of the district director;

(4) *Review of permit file folder.* When the final withdrawal of merchandise relating to a specific warehouse entry, general order or seizure occurs, the warehouse proprietor shall (i) review the permit file folder to insure that all necessary documentation is in the file folder accounting for the merchandise covered by the entry and (ii) file the permit file folder with Customs within 10 business days after final withdrawal.

(5) *Warehouse proprietor submission.* Except as provided in § 19.19(b), relating to the manufacturer engaged in smelting or refining, or both, the warehouse proprietor shall file with the Regional Director, Regulatory Audit, within 45 days from the end of his business year, a Warehouse Proprietor's Submission in the form prescribed by T.D. 82-204.

(6) *Merchandise not withdrawn.* The permit file folder for merchandise not withdrawn during the general order period shall be submitted to the district

director upon receipt from Customs of the Customs Form 6043.

(7) *Disclosure of information only to authorized personnel.* The warehouse proprietor or his employees shall safeguard and shall not disclose proprietary information contained

15. Section 19.14 (b), (c), and (d) are amended by revising them to read as follows:

§ 19.14 Materials for use in manufacturing warehouse.

(b) *Bond required.* Before the transfer of the merchandise to the manufacturing warehouse is permitted, a bond on Customs Form 7571 in an amount equal to double the estimated duties shall be required unless the appropriate bond in the form prescribed by T.D. 82-204 has been given.

(c) *Domestic merchandise.* When the proprietor of any bonded manufacturing warehouse desires to receive therein any domestic merchandise, except merchandise subject to internal-revenue tax, to be used in connection with the manufacturer of articles permitted to be manufactured in such warehouse, including packages, coverings, vessels, and labels used in putting up such articles, an application in the following form shall be sent to the district director for approval and after approval retained by the warehouse proprietor:

Application To Receive Free Materials

Port of _____, 19____.

To the District Director:
Application is hereby made to receive into the bonded manufacturing warehouse known as _____, situated at _____, the following described articles and materials:

Marks	Nos.	Description	Quantity	Value

(Signature) _____
Port _____, 19____.

To the warehouse proprietor in charge of the bonded manufacturing warehouse specified above:

The above described articles and materials are hereby permitted to be received into the warehouse in your charge, to be used therein in connection with the manufacture of articles as authorized by law.
District Director _____

(d) *Domestic spirits and wines.* For the transfer of domestic spirits from the bonded premises of a distilled spirits plant to a bonded manufacturing warehouse, or for the transfer of domestic wines from a bonded wine cellar to a bonded manufacturing warehouse, a bond on Customs Form 7571 shall be required unless the warehouse is covered by the appropriate bond in the form prescribed by T.D. 82-204.

16. Section 19.15(a) is amended by substituting the word "Customs" for "a Customs officer" in the last sentence.

17. Section 19.15(j) is amended by substituting the words "certified by the warehouse proprietor" for "verified by the Customs warehouse officer in charge of the warehouse" in the first sentence.

18. The first and last sentences of paragraph (a), paragraphs (b) and (c), the last sentence of paragraph (g)(1), and the "Application and Permit for Transfer of Scraps, Cuttings, and Clippings" in paragraph (h) of § 19.16 are revised to read as follows:

§ 19.16 Cigar-manufacturing warehouses.

(a) *Manufacture of cigars under section 311, Tariff Act of 1930, as amended.* Tobacco to be used in the manufacture of cigars in bond under the provisions of section 311, Tariff Act of 1930, as amended, shall be entered for warehouse but may be transferred directly from the importing vessel or from a bonded warehouse of class 2 or 3 into a bonded manufacturing warehouse of class 6 and stored in separate compartments therein under the warehouse proprietor's locks pending its withdrawal for use in the manufacture of cigars. * * * The cigars so returned shall be verified by the warehouse proprietor against the schedule which shall be certified by him as to the cigars returned, and the original and one copy returned to the taxpayer who returned the cigars.

(b) *Entry of Cigars.* Upon the removal of cigars from the warehouse the proprietor shall make appropriate entry in his records of the quantity and class of the cigars.

(c) *Record.* A record of all tobacco received in a bonded manufacturing warehouse and delivered from storage compartments to the manufacturing department shall be kept by the warehouse proprietor.

(g) * * *
(1) * * * The taxes covered by the return shall be secured by the Proprietor's Manufacturing Warehouse Bond in the form prescribed by T.D. 82-204.

(h) * * *
Application and Permit for Transfer of Scraps, Cuttings and Clippings

Port of _____, 19____.
The District Director.

Sir: Application is hereby made to transfer _____ pounds of scraps, cuttings, and clippings of tobacco upon which duty has been paid from our bonded manufacturing warehouse, class 6, to _____, factory No. _____, district _____, state of _____.

Proprietor of Bonded Manufacturing Warehouse, Class 6.

Port of _____, 19____.
The above application is hereby granted.

District Director

Port of _____, 19____.
I hereby certify that _____ pounds of scraps, cuttings, and clipping of tobacco upon which duty has been paid have been delivered from the bonded manufacturing warehouse, class 6, of _____ for transfer to _____.

Warehouse Proprietor

19. Paragraphs (a), (c), (e) and the first sentence of paragraph (g) of § 19.17 are revised to read as follows:

§ 19.17 Application to establish warehouse; bond.

(a) *Application.* Application for the bonding of a plant of a manufacturer engaged in the smelting or refining, or both, of metal-bearing materials as provided for in section 312, Tariff Act of 1930, as amended,²² to reduce the metal content thereof to an unwrought metal, or metal in the form of oxides or other compounds which are obtained directly from the treatment of the dutiable materials provided for in Schedule 6, Part 1 or 2, Tariff Schedules of the United States (19 U.S.C. 1202), shall be made by the manufacturer, to the district director of the district in which such plant is situated, giving the location of the premises and setting forth the work proposed to be carried on therein, accompanied by the fee to establish a warehouse as prescribed by section 19.5.

(c) *Discontinuance.* At the request of the proprietor the bonded status of the warehouse may be discontinued at any time provided the district director approves such discontinuance and the proprietor complies with directions of the district director with respect to the disposition of merchandise which may remain in the warehouse. The number of warehouses covered by a blanket smelting and refining bond may be reduced by discontinuance without necessitating a new bond unless the proprietor so desires.

(e) *Bond.* Upon the arrival of imported metal-bearing material in any form for the purpose of being smelted or refined, or both, in bond at a port where a bonded smelting or refining warehouse

is established; it shall be entered for warehouse. A bond on Customs Form 7555 shall be filed with each warehouse entry unless a blanket smelting and refining bond in the form prescribed by T.D. 82-204 has been filed. The district director shall thereupon issue a permit to the inspector to send such metal bearing materials from the importing vessel or vehicle by designated bonded vessels or vehicles to the smelting and refining warehouse named in the entry.

(g) *Statement of inventory and bond charges.* Where two or more smelting and refining warehouses are included under one blanket smelting and refining bond, an overall statement shall be filed by the principal named in the bond with each Regional Director, Regulatory Audit, involved by the 28th of each month, showing the inventory as of the close of the preceding month, of all metals on hand at each plant covered by the blanket bond and the total of bonded charges for all plants * * *

20. Section 19.19 is amended by revising the third sentence of paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 19.19 Manufacturer's records; annual statement.

(a) * * * If losses are to be claimed under paragraph (c) of said headnote, a record shall be kept which will become a part of the annual statement described in paragraph (b) of this section * * *

(b) Every manufacturer engaged in smelting or refining, or both, shall file with the Regional Director, Regulatory Audit for the district in which the plant is located an annual statement for the fiscal year for the plant involved not later than 60 days after the termination of that fiscal year. The annual statement for the smelting or refining warehouse or both, shall be in lieu of the warehouse proprietors submission required by § 19.12. * * *

21. Section 19.21(b) is modified by adding "§ 19.4 and" before the words "the commercial practice".

22. Section 19.29 is amended by revising it to read as follows:

§ 19.29 Sealing of bins or other bonded space.

The outlets to all bins or other space bonded for the storage of imported wheat shall be sealed by affixing locks or in bond seals to the rope or chain which controls the gear mechanism for opening the outlets, or such other method which will effectively prevent the removal of, or access to, the wheat in the bonded space except under such supervision as required by §§ 19.4 and 181.1 of this chapter.

§ 19.34 [Amended]

23. Section 19.34 is amended by substituting "appropriate Customs officer" for "supervising Customs agent" in the third sentence of the section.

(R.S. 251, as amended, secs. 311, 312, 501, 555, 556, 557, 623, 624, 646a, 46 Stat. 691, as amended, 692, as amended, 743, as amended, 744, as amended, 759, as amended, 65 Stat. 290, 67 Stat. 520 (19 U.S.C. 66, 1311, 1312, 1555, 1556, 1557, 1623, 1624, 1646a, 31 U.S.C. 483a))

PART 22—DRAWBACK

Section 22.28(d) is amended by revising it to read as follows:

§ 22.28 Continuous custody.

(d) *Merchandise entered for warehouse.* For purpose of this part, in the case of merchandise entered for warehouse, Customs custody shall be deemed to cease when duty has been paid and the district director has authorized the withdrawal of the merchandise.

(R.S. 251, as amended, secs. 311, 312, 555, 556, 557, 623, 646a, 46 Stat. 691, as amended, 692, as amended, 743, as amended, 744, as amended, 759, 65 Stat. 290 (19 U.S.C. 66, 1311, 1312, 1555, 1556, 1557, 1624, 1646a))

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. Section 24.12(a)(1) is amended by removing the paragraph and marking it "Reserved".

2. The first and fourth sentences of paragraph (c) and the first sentence of paragraph (f) of § 24.13 are amended by revising them to read as follows:

§ 24.13 Car, compartment, and package seals; kind, procurement.

(c) *Purchase of seals.* Bonded carriers of merchandise, commercial associations representing the foregoing or comparable organizations approved by the district director under paragraph (f) of this section, and bonded warehouse proprietors may purchase quantity supplies of in-bond and in-transit seals from manufacturers approved under the provisions of § 24.13a. * * * Carriers and bonded warehouse proprietors may purchase small emergency supplies of in-bond and in-transit seals from district directors, who will keep a supply of such seals for this purpose. * * *

(f) *District director approval required.* In-bond seals may be purchased only by a Customs bonded warehouse proprietor, a customs bonded carrier, a nonbonded carrier permitted to transport articles in accordance with

section 553, Tariff Act of 1930, as amended (19 U.S.C. 1553) or in the case of red in-bond and high security red in-bond seals, the carrier's commercial association or comparable representative approved by the district director. * * *

3. Section 24.17(d) is amended by revising it to read as follows:

§ 24.17 Other services of officers; reimbursable.

(d) *Computation charge for reimbursable services.* The charge to be made for the services of a Customs officer on a regular workday during his basic 40-hour workweek shall be computed at a rate per hour equal to 137 percent of the hourly rate of regular pay of the particular employee with an addition equal to any night pay differential actually payable under 5 U.S.C. 5545. The rate per hour equal to 137 percent of the hourly rate of regular pay is computed as follows:

	Hours	Hours
Gross number of working hours in 52 40-hour weeks		2,080
Less:		
9 Legal public holidays—New Years Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day	72	
Annual Leave—26 days	208	
Sick Leave—13 days	104	384
Net number of working hours		1,696
Gross number of working hours in 52 40-hour weeks		2,080
Working hour equivalent of Government contributions for employee uniform allowance, retirement, life insurance and health benefits computed at 11½ percent of annual rate of pay of employee		239
Equivalent annual working-hour charge to Customs appropriation		2,319

Ratio of annual number of working hours charged to Customs appropriation to net number of annual working hours 2,319/1,696 = 137 percent.

(1) The charge to be made for the reimbursable services of a Customs officer to perform on a holiday or outside the established basic workweek shall be the amount actually payable to the employee for such services under the Federal Employees Pay Act of 1945, as amended (5 U.S.C. 5542(a), 5546), or the Customs overtime laws (19 U.S.C. 267, 1451), or both, as the case may be. When services of a Customs employee temporarily assigned to act as a Customs officer are performed by an intermittent when-actually-employed employee, the charge for such services shall be computed at a rate per hour equal to 108 percent of the hourly rate of the regular pay of such employee to provide for reimbursement of the

Government's contribution under the Federal Insurance Contributions Act, as amended (25 U.S.C. 3101, *et seq.*), and employee uniform allowance. The time charged shall include any time within the regular working hours of the employee required for travel between the duty assignment and the place where the employee is regularly employed excluding lunch periods, charged in multiples of 1 hour, any fractional part of an hour to be charged as 1 hour when the services are performed during the regularly scheduled tour of duty of the officer or between the hours of 8 a.m. and 5 p.m. on weekdays when the officer has no regularly scheduled tour of duty. In no case shall the charge be less than \$1.

(2) The necessary transportation expenses and any authorized per diem expenses of a Customs employee assigned to perform reimbursable services at a location at which he is not regularly assigned shall be reimbursed by the responsible party.

(3) When a Customs officer is regularly assigned to duty at more than one location, the charge for his compensation and transportation expenses in going from one location to another shall be equitably apportioned among the parties concerned. However, no charge shall be made for transportation expenses when a Customs employee is reporting to as a first assignment, or leaving from as a last assignment, a place where he is regularly assigned to duty.

(4) Upon a failure to pay such charges when due, or to comply with the applicable laws and regulations, the district director shall report the facts to the Regional Commissioner who shall take appropriate action to collect the charges.

(Sec. 5, 36 Stat. 901, as amended, secs. 451, 555, 556, 46 Stat. 715, as amended, 743, as amended, 68A Stat. 416, as amended [5 U.S.C. 5332, 5504, 5542, 5545, 5546, 6101, 19 U.S.C. 267, 1451, 1555, 1556, 26 U.S.C. 3111]; R.S. 251 as amended, sec. 624, 46 Stat. 759 [19 U.S.C. 66, 1624])

PART 113—CUSTOMS BONDS

§ 113.13 [Amended]

1. Section 113.13 is amended by removing paragraph (a) and marking it "Reserved" and by substituting "Public gauger bond" for the paragraph heading in paragraph (b).

2. Section 113.14(a) is amended by revising it and by adding new paragraphs (hh) and (ii) to § 113.14 to read as follows:

§ 113.14 Bonds approved by the district director. * * *

(a) *Proprietor's Warehouse Bond.* Proprietor's Warehouse Bond, in the form set forth in T.D. 82-204 in the amount of \$5,000 on each building or area covered, but not to exceed \$50,000 on all buildings or areas, unless the district director believes additional security is necessary. Buildings connected by loading platforms or sheds shall be considered as separate buildings. All reports, documents, and drawings submitted in connection with the bonding of the warehouse shall be filed with the bond.

(hh) *Proprietors Manufacturing Warehouse Bond, Class 6.* Proprietors Manufacturing Warehouse Bond, Class 6, in the form prescribed by T.D. 82-204 in such amounts as the district director deems necessary, but not less than \$5,000 on each building or area and not more than \$50,000 on all buildings or areas.

Buildings connected by loading platforms or sheds shall be considered as separate buildings.

(ii) *Blanket smelting and refining bond.* Blanket smelting and refining bond in the form prescribed by T.D. 82-204 in such amount as the district director deems necessary.

Sufficient copies of the bond shall be submitted to enable the district director to transmit one to each port at which the principal seeks to conduct business.

§ 113.27 [Reserved]

3. Section 113.27 is amended by removing it and marking the section "Reserved".

4. Section 113.39(b) and the "Power of Attorney and Agreement" which appears after the colon in § 113.39(b) are amended by substituting a reference to "Treasury Department Circular No. 154, Revised, dated July 1, 1978" for the reference to "Treasury Department Circular 154 dated October 31, 1969, as amended" in § 113.39(b) and the reference to "Treasury Circular No. 154, dated October 31, 1969, as amended" in the "Power of Attorney and Agreement".

(R.S. 251, as amended, secs. 311, 312, 555, 556, 557, 623, 624, 646a, 46 Stat. 691, as amended, 692, as amended, 743, as amended, 744, as amended, 759, as amended, 67 Stat. 520 [19 U.S.C. 66, 1311, 1312, 1555, 1556, 1557, 1623, 1624, 1646a])

PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

1. Section 125.31 is amended by revising it to read as follows:

§ 125.31 Documents used.

When merchandise is carted or lightered to and received from a bonded

store or bonded warehouse, it shall be accompanied by one of the following tickets or documents:

(a) Customs Form 6043—Delivery Ticket.

(b) Customs Form 7502—A—Warehouse or Rewarehouse Entry (Permit).

(c) Customs Form 7505—A—Warehouse Withdrawal for Consumption (Permit).

(d) Customs Form 7506—Warehouse Withdrawal Conditionally Free of Duty and Permit.

(e) Customs Form 7512—Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit.

2. Section 125.33(b) is amended by revising it to read as follows:

§ 125.33 Procedure on receiving merchandise.

(b) *From bonded warehouse.* In case of withdrawals from bonded warehouse, the merchandise shall be released only to the proprietor of the warehouse, who shall acknowledge such release on the appropriate withdrawal or removal document.

(R.S. 251, as amended, secs. 311, 312, 555, 556, 557, 565, 623, 624, 646a, 46 Stat. 691, as amended, 692, as amended, 743, as amended, 744, as amended, 747, as amended, 759, as amended, 67 Stat. 520 [19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1565, 1623, 1624, 1646a])

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

Section 127.14(c)(1) is amended by revising it to read as follows:

§ 127.14 Disposition of merchandise in Customs custody beyond time fixed by law.

(c) * * *

(1) Merchandise upon which all duties and charges have been paid.

(R.S. 251, as amended, secs. 311, 312, 555, 556, 557, 623, 624, 646a, 46 Stat. 691, as amended, 692, as amended, 743, as amended, 744, as amended, 759, as amended, 67 Stat. 520 [19 U.S.C. 66, 1311, 1312, 1555, 1556, 1557, 1623, 1624, 1646a])

PART 132—QUOTAS

§ 132.15 [Removed]

Part 132 is amended by removing § 132.15.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 [19 U.S.C. 66, 1624])

PART 142—ENTRY PROCESS**§ 142.5 [Amended]**

Bond Rider "R" which is set forth in § 142.5 is amended by removing the comma from between the words "default" and "plus" in the third paragraph of the rider.

(R.S. 251, as amended, sec. 623, 46 Stat. 759, as amended (19 U.S.C. 66, 1623))

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS**§ 144.1 [Amended]**

1. Section 144.1 is amended by removing the paragraph (b) and marking it "Reserved".

2. Section 144.22 is amended by revising it to read as follows:

§ 144.22 Endorsement of transfer on withdrawal form.

Transfer of the right to withdraw merchandise entered for warehouse shall be established by an appropriate endorsement on the withdrawal form by the person primarily liable for payment of duties before the transfer is completed, i.e., the person who made the warehouse or rewarehouse entry or a transferee of the withdrawal right of such person. Endorsement shall be made on whichever of the following withdrawal forms is applicable:

(a) Customs Form 7506 for merchandise to be withdrawn as vessel or aircraft supplies and equipment under § 10.60(b) of this chapter, or other conditionally free merchandise;

(b) Customs Form 7512 for merchandise to be withdrawn for transportation, exportation, or transportation and exportation; or

(c) Customs Form 7505 for (i) a duty paid warehouse withdrawal for consumption or (ii) withdrawal with no duty payment (diplomatic use).

3. Section 144.32 is amended by adding a new paragraph (c) and revising the section heading to read as follows:

§ 144.32 Statement of quantity; charges and liens.

(c) *Charges and liens.* Upon receipt of an application to withdraw merchandise the appropriate Customs officer shall determine whether there are any cartage, storage, labor, or any other charges due the Government in connection with the goods remaining unpaid or whether there is on file any notice of lien filed by a carrier. If there are no charges or liens or all charges and liens have been satisfied, and all other requirements of law or regulations have been met, the proprietors have

been met, the proprietors application to withdraw shall be approved.

4. Section 144.34(a) is amended by revising it to read as follows:

§ 144.34 Transfer to another warehouse.

(a) *At the same port.* With the concurrence of the proprietors of the delivering and receiving warehouses, merchandise may be transferred from one bonded warehouse to another at the same port under Customs supervision and at the expense of the importer upon his written request to the district director, who shall issue an order for such transfer on Customs Form 6043. However, the district director may require the filing of a rewarehouse entry under § 144.41 if he determines it necessary for proper control of the merchandise. All charges shall be paid before merchandise is transferred from a warehouse of class 1 (see § 19.1 of this chapter for classes of warehouses). The quantities of goods so transferred shall be subject to the joint determination of the warehouse proprietor and the cartman, lighterman, or private bonded carrier, as provided in § 19.6 of this chapter.

5. § 144.38(e) is amended by revising it to read as follows:

§ 144.38 Withdrawal for consumption.

(e) *Permit for release of merchandise.* When the duties and other charges have been paid, and all other requirements of law and regulations have been met, a permit on Customs Form 7505-A shall be issued and delivered to the person making the warehouse withdrawal.

6. Part 144 is amended by adding a new § 144.39 to read as follows:

§ 144.39 Permit to transfer and withdraw merchandise.

If all legal and regulatory requirements are met the appropriate Customs officer shall approve the application to transfer or withdraw merchandise from a bonded warehouse by endorsing the permit copy and returning it to the applicant. The approved permit shall be presented by the withdrawer to the warehouse proprietor as evidence of Customs authorization of the transfer or withdrawal. The approved permit copy shall thereafter be retained in the warehouse entry file of the proprietor. Goods covered by permit may be retained in the bonded warehouse at the option of the proprietor.

7. Section 144.41(g) is amended by revising it to read as follows:

§ 144.41 Entry for rewarehouse.

(g) *Failure to enter.* If the rewarehouse entry is not filed before the expiration of 5 days after its arrival or any authorized extension, it shall be sent to the general order warehouse but shall not be sold or otherwise disposed of as unclaimed until the expiration of the original warehouse entry bond period.

(R. S. 251, as amended, secs. 311, 312, 555, 556, 557, 623, 624, 646a; 46 Stat. 691, as amended, 692, as amended, 743, as amended, 744, as amended, 759, as amended, 67 Stat. 520 (19 U.S.C. 66, 1311, 1312, 1555, 1556, 1557, 1623, 1624, 1646(a)))

Appendix A.—Proprietor's Warehouse Bond for Storage and Manipulation of Merchandise, Classes 2, 3, 4, 5, and 8

No. _____

Know all men by these presents that _____

of _____, as principal, and _____, of _____, and _____, of _____, as sureties, are held and firmly bound into the United States of America in the sum of _____ dollars (\$ _____), for the payment of which we bind ourselves, our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this _____ day of _____, 19____.

Whereas, under the warehouse laws of the United States and the regulations of the U.S. Customs Service made in pursuance thereof, the above-bounden principal has made application to bond the warehouse, or premises located in Customs District _____, at the place and for the purposes specified below, namely:

Location (number, street, city, and State)	Class (specify whether class 2, 3, 4, 5, or 8)	Purpose

Now, therefore, the condition of this obligation is such that—

1. *Agreement to secure against loss.* If the principal is authorized to operate a bonded warehouse under 19 U.S.C. 1555, obligors agree to reimburse the United States for any loss or expense connected with or arising from the deposit, storage, manipulation, or removal of merchandise in the facility, including an expense caused by discontinuance or suspension of the bonded status of the facility.

2. *Agreement with respect to the deposit of merchandise.* If authorized to operate a bonded warehouse under 19 U.S.C. 1555, principal acknowledges that Customs may conduct unannounced inventory checks of the facility and agrees to:

(a) Receive only merchandise covered by an appropriate Customs permit;

(b) Mark each package with the correct general order number, warehouse entry number, or seizure number and the corresponding date of the order, entry, or seizure delivery ticket;

(c) Store separately any package that has an exception for loss or damage or that has a discrepancy between its contents, its marks and numbers or the marks and numbers on the permit; and

(d) Store together in one place within the facility all merchandise in a general order shipment, in a warehouse entry, or in a seizure unless Customs permits commingled storage, or the merchandise is covered by paragraph (c).

If principal defaults, obligors agree to pay liquidated damages of \$100 for each default.

3. *Agreement to keep records.* If authorized to operate a warehouse under 19 U.S.C. 1555, principal agrees to:

(a) Record the shipping marks and numbers of all packages, (or the weigher's or gauger's numbers of weighable or gaugeable packages that lack shipping marks and numbers) in accordance with Customs Regulations and file a copy of the record pertaining to a specific warehouse entry, general order shipment, or a seizure in a separate permit file folder;

(b) File in that same file folder, and record in accordance with Customs Regulations, within 2 business days after the event occurs, all receipts, damages/shortage reports, manipulation requests, specific removals, and blanket removals and the partial release permit copy for each removal made under the blanket authority, referred to in 19 CFR 19.6;

(c) Maintain that permit file folder in the facility and allow inspection of it by Customs at all reasonable hours.

If principal defaults, obligors agree to pay liquidated damages of \$100 for each item that is incorrectly recorded or filed, or not recorded or filed, or each instance of a refusal to allow Customs inspection of a permit file folder covering a warehouse entry, general order shipment, or seizure.

4. *T3 Agreement to secure facility.* If principal is authorized to operate a bonded warehouse under 19 U.S.C. 1555, principal agrees to:

(a) Secure the facility by meeting each of the general standards and recommended specifications that are listed in T.D. 72-56; so long as they do not conflict with the provisions of paragraph (b);

(b) Meet every applicable Federal, state, and local requirement (such as fire codes) for the safe and sanitary storage of merchandise in the facility and remove all trash and waste from the bonded area;

(c) Place merchandise in the facility so that no door, entrance, or exit is blocked;

(d) Establish and maintain aisles in the facility so that Customs has ready access to all merchandise at all reasonable hours;

(e) Hold the facility open for Customs inspection at all reasonable hours; and

(f) Secure inlets and outlets of bonded tanks with locks or Customs approved inbond seals.

If principal defaults, obligors agree to pay liquidated damages of \$100 for each failure to comply.

5. *Agreement to notify and file documents with Customs.* If principal is authorized to

operate a bonded warehouse under 19 U.S.C. 1555, principal agrees to:

(a) Before any removal, insure that Customs has given either specific or blanket permission for the removal;

(b) Within 10 business days after a final removal of merchandise covered by a warehouse entry, general order shipment, or seizure, file with Customs the complete permit file folder on that merchandise, together with a complete accounting of all merchandise in the entry, shipment, or seizure;

(c) Before any manipulation, notify Customs of the intended manipulation and obtain Customs specific or blanket approval;

(d) Within 45 days from the end of the principal's business year (fiscal or calendar), file the Warehouse Proprietor Submission in the form prescribed by T.D. 82-204 which includes a complete accounting of the beginning and ending inventories of merchandise in each facility during the year and of all receipts, manipulations, and removals during the year;

(e) Notify Customs if any merchandise in an entry or in a general order shipment is not withdrawn during the applicable 5-year warehousing period or the applicable 1-year general order period, on expiration of that period, and file with Customs the permit file folder on that entry or shipment when requested by Customs;

(f) Notify Customs in writing by close of business of the next business day on discovery of any extraordinary (one percent or more of the value of merchandise in an entry) overage, or shortage of, or damage to any merchandise in the facility; and

(g) Notify Customs in writing by close of business of the next business day on discovery of any discrepancy (i.e. overage, shortage, damage, etc.) in merchandise in a general order shipment or seizure.

If principal defaults, obligors agree to pay liquidated damages of \$100 for each failure to comply. In addition, if any merchandise is removed without Customs approval, obligors agree to pay liquidated damages equal to five times the duty and tax due, as calculated by Customs, on any dutiable or taxable merchandise and liquidated damages equal to the value of any nondutiable merchandise.

6. *Agreement on sealing conveyances.* If principal is authorized to operate a bonded warehouse under 19 U.S.C. 1555, principal agrees to:

(1) Affix and break Customs seals in accordance with the Customs Regulations or an order or directive from Customs;

(2) Report to Customs any seal that is found to be broken, missing, or improperly affixed; and

(3) Hold the vehicle, container, and contents intact for Customs.

If principal defaults, obligors agree to pay liquidated damages of \$100 for each failure to comply with any of the above requirements.

7. *Agreement to pay annual fee.* If authorized to operate a bonded warehouse under 19 U.S.C. 1555 and the audit-inspection program, principal agrees to pay the annual fee established by regulation within 14 days of the due date.

If principal defaults, obligors agree to pay liquidated damages of \$100 for each day the annual fee remains unpaid.

Then this obligation to be void; otherwise to remain in full force and effect.

Signed, sealed, and delivered in the presence of—

(Name) _____
(Address) _____
(Name) _____
(Address) _____
(Principal) _____
(Seal) _____
(Name) _____
(Address) _____
(Address) _____
(Surety) _____
(Seal) _____
(Name) _____
(Address) _____
(Name) _____
(Address) _____
(Surety) _____
(Seal) _____

*If the principal or surety is a corporation, the name of the State in which incorporated also shall be shown.

Certificate as to Corporate Principal

I, _____, certify that I am the _____ secretary of the corporation named as principal in the within bond; that _____, who signed the said bond on behalf of the principal, was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for in behalf of said corporation by authority of its governing body.

_____ [corporate seal]

Note.—To be used when no power of attorney has been filed with the district director of Customs.

Appendix B.—Proprietor's Manufacturing Warehouse Bond, Class 6

No. _____

Know all men by these presents that*

of _____, as principal, and* _____, of _____, and _____, of _____, as sureties, are held and firmly bound into the United States of America in the sum of _____ dollars (\$ _____), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this _____ day of _____, 19____.

Whereas, under the warehouse laws of the United States and the regulations of the U.S. Customs Service made in pursuance thereof, the above-bounden principal has made application to bond the warehouse, or premises located in Customs District No. _____, at the place and for the purpose of manufacturing certain articles specified below, namely:

*May be executed by the secretary, assistant secretary, or other officer of the corporation.

Location (number, street, city, and State)	For the manufacture of (specify articles in detail)

Now therefore, the condition of this obligation is such that—

1. *Agreement to comply with statute and regulations.* If principal is authorized to operate a bonded manufacturing warehouse, principal agrees to:

- (a) Use the warehouse exclusively for the purpose for which it is bonded;
- (b) Properly enter and pay duty on any imported implement, machinery, or apparatus that is for the construction of the warehouse or for the prosecution of its business;
- (c) Insure that all operations conform strictly to any manufacturing formula filed with Customs;
- (d) Maintain within the warehouse a separate storage area, secured in accordance with the standards and specifications in T.D. 72-56, for storage and all imported merchandise, domestic spirits, and other merchandise subject to an Internal Revenue tax transferred to the warehouse for manufacturing; and
- (e) Maintain within the warehouse a separate area, secured in accordance with the standards and specifications in T.D. 72-56, for the storage of products manufactured in the warehouse.

(f) Properly enter and pay duty on any article, waste, or byproduct that is withdrawn for consumption.

If principal defaults, obligors agree to pay liquidated damages of \$1,000 for each default under subparagraph (a) and/or (c), and \$100 for each default under subparagraphs (b), (d), (e) and/or (f).

2. *Agreement to secure against loss.* If principal is authorized to operate a bonded manufacturing warehouse, obligors agree to reimburse the United States for any loss or expense connected with the deposit, storage, manufacturing or removal of merchandise in the warehouse, including duty and tax due and an expense due to the transfer of merchandise on the discontinuance or suspension of the bonded status of the facility.

3. *Agreement with respect to deposit of merchandise.* If principal is authorized to operate a bonded manufacturing warehouse, principal agrees to:

- (a) Receive only merchandise covered by an appropriate Customs permit;
- (b) Store merchandise received in the manner required by statute or regulation;
- (c) Transfer merchandise from a storage area in the warehouse to a manufacturing area in the warehouse in the manner required by regulation;
- (d) Mark each package with the correct warehouse entry number and date until manufacturing takes place; and after manufacture, mark each package of the finished product with the correct warehouse entry and date.

If principal defaults, obligors agree to pay liquidated damages which equals \$100 and the amount of duty on any merchandise involved in the default.

4. *Agreement to keep records.* If principal is authorized to operate a bonded manufacturing warehouse, principal agrees to:

- (a) Record all deposits of merchandise, for manufacturing or prosecution of warehouse business in accordance with Customs Regulations;
- (b) Record all transfers from any storage area to a manufacturing area in the facility in accordance with Customs Regulations;
- (c) Record all transfers from any manufacturing area to finished product storage area within the facility in accordance with Customs Regulations;
- (d) Record all manufacturing operations performed within the warehouse with sufficient detail to enable a Customs officer to determine whether there has been compliance with any manufacturing formula filed with Customs and to enable a Customs officer to audit use and disposition of the merchandise;
- (e) Record all withdrawals and removals from the facility in accordance with Customs Regulations;
- (f) File in a separate folder pertaining to each entry into the facility each document (receipt, permit, transfer permit, manufacturing abstract, and removal permit) on that entry within 2 business days after the event covered by the document occurs;
- (g) Maintain each permit file folder in the facility and allow inspection of it by Customs at all reasonable hours; and
- (h) Take an annual physical inventory as well as file a warehouse proprietor submission.

If principal defaults, obligors agree to pay liquidated damages of \$100 for each item that is incorrectly recorded, incorrectly filed, or not recorded or filed, or for each failure to inventory, or each instance of a refusal to allow Customs inspection of a permit file folder covering a warehouse entry.

5. *Agreement on removals.* If principal is authorized to operate a bonded manufacturing warehouse, principal agrees to:

- (a) Not remove or suffer the removal of any merchandise except under a Customs permit;
- (b) Within 10 business days after final removal of any merchandise in a warehouse entry, file the complete permit file folder on that entry with Customs;
- (c) At the end of each month, file a detailed statement of all imported merchandise and merchandise on which Internal Revenue tax has not been paid which was used by the proprietor in the manufacture of articles;
- (d) Notify Customs upon expiration of the warehouse period if any imported merchandise in an entry is not withdrawn within 5 years from the date of importation and simultaneously file with Customs the permit file folder on that entry;
- (e) If any imported merchandise in an entry is not withdrawn within 5 years from the date of importation notify Customs of that fact on expiration of that period and simultaneously file with Customs the folder on that entry;
- (f) Notify Customs in writing by close of business of any extraordinary (one percent or more of the value of merchandise in an entry) overage or shortage of or damage to any merchandise in the facility; and

(f) Properly mark each package of cigars that is to be withdrawn for consumption.

If principal defaults, obligors agree to pay liquidated damages of \$100 for each failure to comply. In addition, if any merchandise is removed without Customs approval, or if it consists of improperly marked packages of cigars, obligors agree to pay liquidated damages equal to five times the duty and tax due on any dutiable and/or taxable merchandise involved in the default and liquidated damages equal to the value of any nondutiable merchandise involved in the default.

6. *Agreement to furnish proof of exportation.* If principal is authorized to operate a bonded manufacturing warehouse, principal agrees to furnish any consular invoices, declaration of owners or consignees, certificates of origin, certificates of exportation or other document that may be demanded by Customs to show compliance with the law and regulations within six months from the date of demand.

If principal defaults, obligors agree to pay liquidated damages equal to the duty or tax on any merchandise involved in the default.

7. If principal is authorized to operate a bonded manufacturing warehouse, principal agrees to:

- (1) Affix and break Customs seals in accordance with the Customs Regulations or an order or directive from Customs;
- (2) Report to Customs any seal that is found to be broken, missing, or improperly affixed; and
- (3) Hold the vehicle, container, and contents intact for Customs.

If principal defaults obligors agree to pay liquidated damages of \$100 for each failure to comply with any of the above requirements.

8. *Agreement to pay annual fee.* If authorized to operate a bonded warehouse under 19 U.S.C. 1311 and the audit-inspection program, principal agrees to pay the annual fee established by regulation within 14 days of the due date.

If principal defaults, obligors agree to pay liquidated damages of \$100 for each day the annual fee remains unpaid.

Then this obligation to be void, otherwise to remain in full force and effect.

Signed, sealed, and delivered in the presence of—

(Name) _____
 (Address) _____
 (Name) _____
 (Address) _____
 (Principal) _____
 (SEAL) _____
 (Name) _____
 (Address) _____
 (Name) _____
 (Address) _____
 (Surety) _____
 (SEAL) _____
 (Name) _____
 (Address) _____
 (Name) _____
 (Address) _____
 (Surety) _____
 (SEAL) _____

*If the principal or surety is a corporation, the name of the State in which incorporated also shall be shown.

Certificate as to Corporate Principal

I, _____, certify that I am the _____ secretary of the corporation named as principal in the within bond; that _____, who signed the said bond on behalf of the principal, was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for in behalf of said corporation by authority of its governing body.

_____[corporate seal]

Note.—To be used when no power of attorney has been filed with the district director of Customs.

Appendix C.—General Bond for Smelting and Refining Warehouses

No. _____

Know all men by these presents, that _____, of _____, as principal, and _____, of _____, and _____, of _____, as sureties, are held and firmly bound unto the United States of America in the sum of _____ dollars (\$ _____), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this _____ day of _____, 19____.

Whereas, the said _____ have (has) been authorized to smelt or refine, or both, imported metal-bearing materials in bond without the payment of duty thereon, as provided in section 312, Tariff Act of 1930, as amended, in the premises situated at _____, and more particularly described by metes and bounds in exhibits _____, attached hereto and made a part hereof, which premises are owned, controlled, and operated by _____; and

Whereas, metal-bearing materials will be entered for warehouse to be smelted or refined, or both; and

Whereas, metal-bearing materials (as well as merchandise generally) will be entered for consumption or for warehouse, and in warehouses of classes 2, 3, or 4 at any of the following ports of entry _____

—; and _____

Whereas, certain merchandise, in whole or in part, may be entered under the provisions of section 484, Tariff Act of 1930, as amended, and duties deposited under the provisions of section 505(a), Tariff Act of 1930, as amended; and

Whereas, pursuant to the regulations promulgated under section 448(b), Tariff Act of 1930, the said principal may find that immediate delivery of the merchandise will be necessary and desires the release of such merchandise prior to the making of formal entry therefor and payment of duties thereon; and

Whereas, imported merchandise generally, and dutiable metal-bearing materials (including products partly smelted or refined) will, to the extent permitted by law and regulations and in accordance therewith, be transferred from one warehouse to another,

or be withdrawn for consumption, for transportation and rewarehousing, for exportation, for transportation and exportation, or for any other purpose provided for by law and regulations, as shown in the required documents.

Whereas, the above-bounden principal may request that the merchandise be examined elsewhere than at the public store, wharf, or other place in charge of a Customs officer;

Now, therefore, the condition of this obligation is such, that—

1. *Agreement to pay costs and expenses.* If principal is allowed to operate a bonded smelting and refining warehouse and enters any metal-bearing material without payment of duty, obligors agree to pay any costs or expense associated with Customs supervision of the warehouse and indemnify Customs for any loss associated with the entry, deposit, storage, smelting, refining, withdrawal, transfer, or removal of any metal-bearing material or any product of a metal-bearing material in or from the warehouse, including any expense caused by the transfer of merchandise on the discontinuance or suspension of the bonded status of the facility.

2. *Agreement on recordkeeping.* If principal operates a bonded smelting and refining warehouse, principal agrees to:

(a) Maintain complete smelting and refining records in accordance with Customs Regulations showing the receipt and disposition of each shipment of materials (hereinafter includes metal-bearing materials, products of metal-bearing materials, and dutiable metal) received (actual and theoretical), into the warehouse.

(b) File with the Regional Director, Regulatory Audit Division, for the district in which the plant is located, at end of the principal's business year, a complete statement of the annual smelting and refining operations done which shows:

(i) The quantity of metal-bearing materials in the warehouse and their dutiable metal content at the beginning of the year;

(ii) The quantity of metal-bearing materials received during the year and their dutiable metal content;

(iii) The quantity of metal-bearing materials in the warehouse at the end of the year and their dutiable metal content;

(iv) The quantity of metal-bearing materials worked during the year which shall include the quantity of foreign material and the quantity of domestic material put in process;

(v) The quantity and kind of metal and intermediate products produced;

(vi) Disposition of all materials transferred, withdrawn, or removed (actually or theoretically) from the warehouse during the year;

(c) Maintain the report of sampling, weighing, and assaying on each shipment of metal-bearing materials received into the warehouse for five years from the date of liquidation;

(d) Maintain for five years from date of liquidation any report of sampling, weighing, and assaying on any smelting and unrefined product or bullion obtained from the smelting of imported material that is to be transferred to another warehouse in a separate permit

file folder and file the completed folder on that entry with Customs within 10 business days after final removal of merchandise on the entry;

(e) Maintain all Customs permits (blanket or specific) to enter, transfer, withdraw, or remove (actual or theoretical) any materials into or from the warehouse;

(f) Complete and file with Customs within 30 days after exportation of metal under the memorandum withdrawal procedure set forth in 19 U.S.C. 1312(b)(1) and the Customs Regulations all records on the exportation;

(g) File with Customs a complete monthly inventory of all metals in the warehouse as required by the Customs Regulations; and

(h) Notify Customs upon expiration of the warehouse period if any imported merchandise on an entry is not withdrawn within 5 years from the date of importation and simultaneously with notification file with Customs the permit file folder on that entry.

If principal defaults, obligors agree to pay liquidated damages of \$100 for each default.

3. *Agreement on entry and withdrawals.* If principal operates a bonded smelting and refining warehouse, principal agrees to:

(a) Receive actual or theoretical deposit of any metal-bearing material, a product of a metal-bearing material, or any metal, which may be subject to duty, only after receipt of a Customs permit;

(b) Keep separate any metal-bearing material which may be subject to duty from all other materials until that material has been sampled, weighed, and assayed; and

(c) Obtain Customs permit to transfer, withdraw, or remove (physically or theoretically) any material before transfer, withdrawal, or removal is begun.

If principal defaults, obligors agree to pay liquidated damages equal to the amount of duty on all materials involved in the default.

4. *Agreement to pay duty.* If principal operates a bonded smelting and refining warehouse, obligors agree to pay on demand all duty determined to be due on liquidation or by regulation with respect to any material withdrawn for consumption and any dutiable metal found to be missing from the warehouse without a proper withdrawal or removal.

5. *Agreement to secure facility.* If principal operates a bonded smelting and refining warehouse, principal agrees to:

(a) Secure the warehouse by meeting each of the general standards and recommended specifications that are listed in T.D. 72-56; so long as they do not conflict with those provisions of paragraph 5(b);

(b) Meet every applicable Federal, state and local requirement (such as fire codes) for the safe, sanitary, and secure storage of materials in the warehouse;

(c) Place materials in the warehouse so that no door, entrance, or exit is blocked;

(d) Establish and maintain the warehouse so that Customs has ready access to all materials at all reasonable hours; and

(e) Hold the warehouse and all records open for Customs inspection at all reasonable hours.

If principal defaults, obligors agree to pay liquidated damages of \$100 for each failure to comply.

* May be executed by the secretary, assistant secretary, or other officer of the corporation.

6. If principal operates a bonded smelting and refining warehouse, principal agrees to:

(1) Affix and break Customs seals in accordance with the Customs Regulations or an order or directive from Customs;

(2) Report to Customs any seal that is found to be broken, missing, or improperly affixed; and

(3) Hold the vehicle, container, and contents intact for Customs.

If principal defaults, obligors agree to pay liquidated damages of \$100 for each failure to comply with any of the above requirements.

7. *Agreement to pay annual fee.* If authorized to operate a bonded warehouse under 19 U.S.C. 1312, and the audit-inspection program, principal agrees to pay the annual fee established by regulation within 14 days of the due date.

If principal defaults, obligors agree to pay liquidated damages of \$100 for each day the annual fee remains unpaid.

Then this obligation to be void; otherwise to remain in full force and effect.

Signed, sealed, and delivered in the presence of—

(Name) _____
(Address) _____
(Name) _____
(Address) _____
(Principal) _____
(Seal) _____
(Name) _____
(Address) _____
(Name) _____
(Address) _____
(Surety) _____
(Seal) _____
(Name) _____
(Address) _____
(Name) _____
(Address) _____
(Surety) _____
(Seal) _____

* If the principal or surety is a corporation, the name of the State in which incorporated also shall be shown.

Certificate as to Corporate Principal

I, _____, certify that I am the _____ secretary of the corporation named as principal in the within bond; that _____, who signed the said bond on behalf of the principal, was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for in behalf of said corporation by authority of its governing body.*
_____[corporate seal]

Note.—To be used when no power of attorney has been filed with the district director of Customs.

Appendix D

U.S. Customs Service, Bonded Warehouse Proprietor, Submission Instructions

The preparation and filing of this submission, with the Regional Director, Regulatory Audit Division, U.S. Customs Service, is to occur within 45 days subsequent to the company's year end. Should you have questions regarding this submission, contact the Regional Director, Regulatory Audit Division.

* May be executed by the secretary, assistant secretary, or other officer of the corporation.

A warehouse proprietary is required to file a submission for each warehouse facility. The definition of a warehouse facility is as follows: A warehouse facility will be determined by street address, location, or both. For example, if a proprietor has two warehouses located at one street address and three warehouses located at three different street addresses, the two would be considered as one warehouse facility and the three warehouses would each be considered as separate facilities.

The following instructions are to assist you in preparing the "Bonded Warehouse Proprietor Submission."

On the front page of each warehouse submission record the information requested as shown below.

Name of warehouse facility
Address
Telephone number
IRS number
Contact person

The Warehouse Proprietor Submission form is set forth below. The form is divided into eight sections labeled A through H.

In:

Column (A). Record the number and date of all entries which were included in:

1. The beginning inventory of the year just ended.

2. The ending inventory based on the physical inventory just taken.

3. Also, include all entries which were opened and closed during the year which do not appear in either the beginning or ending inventory listings.

Column (B). Provide an adequate description of all merchandise covered by those entries listed in column (A). The description should be specific enough to identify the commodity, e.g. "scotch" rather than "liquor." For entries listing multiple commodities, the term "various" may be used, however this will not be acceptable for all situations.

Column (C). Record in column (C) the quantity stated on the entry for each commodity described in column (B).

Column (D). Record any quantity actually received that is over/short that recorded in column (C).

Column (E) and (F). Record the quantities relating to all breakage occurring upon arrival and/or in the warehouse pertaining to each commodity listed in column (B).

Column (G). Record the quantity of merchandise that is on hand at the end of the business year.

Column (H). Record the date on which the entry was closed and forwarded to Customs.

An authorized representative of the company must sign the document where indicated prior to presenting it to Customs.

WAREHOUSE PROPRIETOR SUBMISSION

Entry and date	Description of merchandise	Quantity		Breakage		Ending inventory quantity	Date entry closed and forwarded to customs
		Per entry	Over/short on receipt	Upon receipt quantity	In warehouse quantity		
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)

Certification: I hereby certify that the information contained in this submission completely and accurately represents all entry transactions as well as beginning and ending inventories of (name) _____ warehouse facility for the year ending _____.

(Signed)
(Title)
(Company)
(Date)

Appendix E

Final Regulatory Flexibility Analysis on Customs Regulations Amendments Relating to Bonded Warehouses

Introduction

The U.S. Customs Service is amending selected portions of the Customs Regulations, relating to the control of merchandise in Customs bonded warehouses. The amendments entail major changes in the method of control of merchandise in such warehouses. The principal changes are the elimination of the physical supervision or warehouse transactions by Customs warehouse officers and the elimination of recordkeeping by Customs warehouse officers that tends to duplicate the recordkeeping of warehouse proprietors. The new warehouse control system will make use of periodic audits and spot checks of warehouse inventories. Warehouse proprietors will incur certain additional

responsibilities and will be accountable for the proper management of their operations.

The amendments will have an economic impact on Customs bonded warehouses as well as on the U.S. Treasury. The Regulatory Flexibility Act requires that "regulatory flexibility" analyses be prepared on proposed regulations unless the regulations will not have a "significant economic impact on a substantial number of small entities." Since many Customs bonded warehouses could be considered to be "small entities," and since the proposed warehouse amendments were likely to have a "significant economic impact" on those small entities, an initial regulatory analysis was prepared by the Customs Service and was published in the Federal Register on March 4, 1982, along with the Notice of Proposed Rulemaking on Customs bonded warehouses. The initial regulatory flexibility analysis and the Notice generated over 50 public comments on the proposed amendments. These public comments have been taken into

consideration during the preparation of the final rule on this project. The final regulatory flexibility analysis (as required by the Regulatory Flexibility Act) on the bonded warehouse amendments appears below; this analysis also fulfills any regulatory analysis requirements under Executive Order 12291.

Statement of the Problem and Rationale for Customs Action

The current bonded warehouse control system utilized by the Customs Service often necessitates the physical presence of a Customs warehouse officer. This is deemed by the Customs Service to be an outdated system, and is therefore being changed. Indeed, in 1974 a General Accounting Office report stated that: "We reviewed the necessity of having warehouse officers in view of the inventory document controls maintained at the customhouse and the periodic physical inventories performed by Customs on goods in bonded warehouses. The existing procedures for centrally controlling bonded goods at the customhouse, together with the bond protection of the Customs duties and the periodic physical inventory checks, are adequate for protecting Government revenues without having a warehouse officer present." (emphasis added).

In order to help establish a viable alternative to the current Customs bonded warehouse control system, the Customs Service carried out successful pilot test at two selected bonded warehouses between October 1979 and April 1980. The test utilized a reporting system with post audit application, i.e., recordkeeping and other functions were carried out by warehouse proprietors without the constant physical presence of a warehouse officer, but with followup audit by the Customs Service. This new control method was deemed by the Customs Service to be both cost-efficient and mission-effective. Accordingly, a Program Development Model was prepared which described the benefits of the new control method and compared it with a number of alternative methods. Customs management decided to pursue the complete modification of the current system into a system that uses spot checks and post audit techniques rather than the physical presence of Customs warehouse officers. Accordingly, subsequent to the receipt and study of public comments on the proposed new control system, the Customs Service is now announcing the final rule which implements the new system.

The Number of Warehouses and "Small Entities" Affected

A Customs bonded warehouse is a building or other secured area in which merchandise may be stored, manipulated, or undergo manufacturing operations without payment of duty. A recent Customs Service survey indicated that there were 1,538 Customs bonded warehouses in the United States as of March 1982. These warehouses are divided into eight "classes," according to the type of storage, manipulation, manufacturing, or smelting that takes place in each warehouse. The two predominate types of bonded warehouses are (1) warehouses used exclusively for the storage of merchandise

belonging or consigned to the proprietor thereof, and (2) public bonded warehouses used exclusively for the storage of merchandise not belonging or consigned to the proprietor. Of the 1,538 warehouses, many (i.e., those with relatively few transactions) can be considered to be "small" warehouses. However, not all such warehouses would be "small entities" under the Regulatory Flexibility Act because they may be owned by large corporations or are only a small segment of a larger warehouse (or other) operation. The number of warehouses by Customs region is shown below:

Region I (Boston).....	373
Region II (New York).....	96
Region III (Miami).....	303
Region IV (New Orleans).....	79
Region V (Houston).....	193
Region VI (Los Angeles).....	260
Region VII (Chicago).....	234
Total.....	1,538

In fiscal year 1981, \$489.6 million in duties were collected from bonded warehouse withdrawals.

The Current System and Current Costs

The Customs Service is responsible for controlling bonded warehouses. Currently, Customs' control is generally carried out via Customs warehouse officers who supervise the entry or withdrawal of goods from the warehouse and oversee the manipulation, manufacture, or destruction of such goods. Warehouse proprietors are required to reimburse the Customs Service for the salaries and certain other costs of full-time Customs warehouse officers and temporarily detailed officers. In March 1982 there were 265 full-time reimbursable Customs warehouse officers (as late as September 1980, there were 390 authorized positions for Customs warehouse officers, of which 361 were filled).

In many, if not most, warehouses, activity is sporadic and Customs warehouse officers are called upon to perform their tasks on an as-needed basis. The Customs Service must not only provide Customs warehouse officers and other officers to control the warehouses, but must also allocate the time of various Customs personnel (clerks, aids, supervisors, etc.) to maintain, file, and process the entry and withdrawal documentation at the customhouse. In March 1982 there were 111 such full-time (and nonreimbursable) individuals, a slight decrease from the 119 individuals of September 1980.

The annual direct cost of the current Customs warehouse control system is \$8.39 million. The current cost would be well above \$8.39 million if the number of Customs warehouse officers had not already diminished from 361 in September 1980 to 265 at present (an October 1980 Customs Headquarters study calculated the cost of the program at \$10 million per year). The current cost of \$8.39 million is divided as follows:

- (1) a \$4.43 million cost to warehouse proprietors to reimburse Customs for the 265 full-time officers;
- (2) an estimated \$1.2 million cost to warehouse proprietors to reimburse Customs for part-time officers assigned;

(3) an estimated \$1.1 million cost to warehouse proprietors to reimburse Customs for overtime charges; and

(4) a \$1.66 million cost to the Customs Service to pay for the 111 nonreimbursable Customs employees who are engaged in warehouse-related tasks.

Accordingly, warehouse proprietors are currently paying \$6.73 million (i.e. \$4.43 million plus \$1.2 million plus \$1.1 million, as shown above) in reimbursable fees to the Customs Service. This results in an average cost per warehouse of nearly \$4,400. However, the actual reimbursable cost per each given warehouse fluctuates greatly, depending upon whether the warehouse is large (e.g. has a large volume of transactions), or is small (e.g., has a limited number of transactions). Many warehouses are believed to currently pay the Customs Service less than \$500 per year in reimbursable expenses, while some (large volume) warehouses incur expenses of thousands or even tens of thousands of dollars.

There is also an indirect cost to warehouse proprietors under the current system: the delays, lost sales, and other costs incurred when Customs is unable to provide prompt and around-the-clock supervision of warehouse transactions.

With regard to the general U.S. economy, the current bonded warehouse program is beneficial, and especially beneficial to the importing community. For example, bonded warehouses allow importers to defer the payment of duties on a substantial amount of merchandise. However, Customs Service management believes that equivalent benefits can be realized at a lower cost if the current bonded warehouse control system is comprehensively changed.

The "New" Bonded Warehouse Control System and Estimated Costs

The Customs Service, via the attached "final rule," is hereby instituting a new system of supervising merchandise in bonded warehouses. This new system entails a complete revision in the type and scope of Customs' physical supervision of bonded warehouse operations. Among the changes which will occur are:

- (1) the elimination of Customs warehouse officer positions at bonded warehouses;
- (2) the elimination of the 111 nonreimbursable warehouse related positions;
- (3) the increased accountability of warehouse proprietors for the proper management of their warehouse operations; new responsibilities would include certain recordkeeping requirements, including the preparation of an annual "Proprietor's Submission" at the end of each warehouse's fiscal year;

(4) a higher fee to establish (\$820), and new fees to alter (\$356) or relocate (\$356) a warehouse facility (the fee to establish a warehouse would have been raised even under the current bonded warehouse control system);

(5) the establishment of an annual fee of \$650 in the first year on warehouses to cover the cost of Customs spot checks and regulatory audits; and

(6) perhaps the securing of modified bond coverage for a number of warehouses.

Under the new system, proprietors will be held accountable for recordkeeping functions similar to those currently being carried out by Customs warehouse officers. However, recordkeeping requirements for most warehouses will probably not impose substantial burdens on proprietors since proprietors already keep substantive records of transactions (it should be noted that such records are needed for billing purposes and tax purposes).

Nevertheless, a few (generally large) warehouses, especially in Customs Region II (New York), have indicated that the new recordkeeping requirements and Proprietor's Submission will contribute to increased costs for their operations. A number of proprietors have claimed that it will be necessary for each of them to hire a new employee to prepare the Proprietor's Submission and carry out related recordkeeping. The annual cost of this employee would range from \$15,000 (low estimate) to up to \$25,000 (high estimate), according to estimates provided to the Customs Service.

Other alleged costs would be for possible reprogramming and computer expenses, possible increased security costs, and a cost in preparing any physical inventory which may be necessary for warehouses during the conversion period.

Certain large warehouses may indeed incur the "additional" expense of hiring a bookkeeper/clerk to prepare the Proprietor's Submission, especially since the Proprietor's Submission may necessitate a different recordkeeping format from that already kept by the warehouse proprietor. However, it is likely that such personnel will be hired at a cost which is lower than the currently reimbursable cost of the Customs warehouse officer who is assigned to the particular warehouse. Accordingly, while some large warehouses will incur certain new costs relating to the Proprietor's Submission, these costs are likely to be less than the savings which such warehouses will reap under the new control system. The cost effect of the Proprietor's Submission on small warehouses is not expected to be substantial, due to the relatively few number of transactions handled in most small warehouses. The Customs Service's original calculation of the total amount of time which will be spent by the warehouse community to prepare the Proprietor's Submission has now been revised substantially downward due to new information and a better understanding of the effect on warehouses. The aggregate cost of the Proprietor's Submission and related recordkeeping will be approximately \$1.8 million.

The annual cost of the new system on existing warehouses is estimated to be less than \$3.4 million, i.e., significantly less than the cost of the current system. The estimated cost is based upon the following components:

(1) a cost for recordkeeping and the preparation of the annual Proprietor's Submission of \$1.8 million (there may also be a "one-time" cost of a complete inventory/reconciliation which would be taken before the new system is implemented). In addition, warehouses will experience the occasional

cost of interruptions due to Customs audits and spot checks;

(2) a cost (as estimated by the initiating office) of \$1.0 million during the first year for Customs regulatory audit and inspector services; the estimated \$1.0 million for these services represents the aggregate "annual fee;" and

(3) possible increased costs of bonding coverage and certain fees for the establishment, alteration, or location of warehouse facilities—these costs are believed to be less significant than the amounts specified in (1) and (2) above.

The aggregate cost of the new warehouse control system on bonded warehouses is expected to be less than under the current system, although there are likely to be absolute increased costs (mainly as a result of the annual fee) on a number of small warehouses. The aggregated cost to warehouse proprietors under the new system is estimated at less than \$3.4 million per year, compared to \$6.73 million under the current system, for a savings of at least \$3.33 million per year.

The economic impact of the new system on the U.S. Treasury (U.S. taxpayer) will also be beneficial. The Customs Service would save up to \$1.66 million per year in indirect warehouse control costs which are currently being incurred to support 111 nonreimbursable warehouse-related positions, although there will be a (minimal) new expense involved in collecting, processing, and analyzing information on the Proprietor's Submission. The new system will also result in the elimination of many Customs warehouse officer positions from the Customs employment ceiling. Customs management also believes that the new system will not have any adverse effects on enforcement or on the collection of revenue.

Consideration of Public Comments

The Regulatory Flexibility Act requires that regulatory flexibility analyses contain a summary of the issues raised by public comments, a summary of the agency assessment of such issues, and a statement of any changes made pursuant to the comments.

The Federal Register notice on bonded warehouses of March 4, 1982 requested public comments on the Notice of Proposed Rulemaking as well as on the initial regulatory flexibility analysis. Fifty comments were received; 27 of these generally supported the proposed amendments and 19 were opposed.

The remaining commenters did not take a firm position but rather made general comments and observations about the proposed amendments. A few comments delineating alleged adverse economic consequences were received after the comment deadline. Many of the public comments dealt with procedural matters of relevance to only individual warehouses or commenters; the Customs Service's responses to such matters are fully explained in the accompanying Notice of Final Rulemaking. However, a number of major issues, including economic issues, were raised repeatedly throughout the comments. The principal such issues raised were:

(1) concern with the proposed Proprietor's Submission and perceived related reprogramming expenses;

(2) concern with the proposed annual fee on bonded warehouses; and

(3) requests for more study and deliberation prior to the final modification of the current bonded warehouse control system.

The Proprietor's Submission.—Many commenters expressed concern over the proposed Proprietor's Submission and other perceived reporting requirements. Some commenters argued that the preparation of the Proprietor's Submission would entail significant increased costs and considerable reprogramming. It was pointed out that the Customs data requirements (presently kept by the Customs warehouse officers) are different from the proprietors' records and that warehouses would have to hire additional personnel to satisfy Customs' data requirements. One commenter recommended that reporting requirements should be "in a manner ordinarily recorded in the industry."

The Customs Service has decided to retain the requirement for an annual Proprietor's Submission, as proposed in the Notice of Proposed Rulemaking. A standard format such as the Proprietor's Submission will be necessary to effectively compare and control warehouse operations. Moreover, many warehouses are relatively small and will not necessitate significant amounts of time or money to collect appropriate data and prepare the required forms. Some large warehouses may incur the additional expense of hiring inventory clerk, but this expense is not expected to substantially affect the cost structure or operations of such warehouses, and indeed will probably result in a net savings to many warehouses which will no longer be required to reimburse the Customs Service for Customs warehouse officers. Accordingly, the proposed Proprietor's Submission has been left intact.

The Annual Fee.—Approximately ten commenters expressed opposition to the proposed annual fee which will be assessed on warehouses. Some of the commenters expressed the view that simply dividing total Customs' audit and inspection costs by the number of warehouses would discriminate against small warehouses, i.e. that small warehouses will be required to pay the same annual fee as large warehouses. A few commenters felt that it may be more equitable to bill individual proprietors for the costs of audits and spot checks that occur at their particular warehouses. One commenter argued that the fee-setting should be the subject of a separate Notice of Proposed Rulemaking.

The Customs Service recognizes the concern over the equity of an "averaged" annual fee, and indeed will further evaluate the method of assessing the fees as experience is gained with the new warehouse control system. In the meantime, however, the average fee will be retained. This average fee (which will be \$650 in the first year) will be a significant saving for large warehouses that are currently paying \$15,000 or more for a Customs warehouse officer. With regard to small warehouses, an average fee will entail

an increased cost for many of the very small or virtually inoperative warehouses and could result in a few warehouses voluntarily giving up their Customs warehouse status. The Customs Service did attempt to devise a "tiering" system to tailor the fees on small warehouses (to minimize the economic impact), but no effective tiering system was ultimately developed; indeed, no specific viable tiering system was provided by the public comments either. However, as previously stated, the Customs Service will continue to evaluate various methods of assessing the fee as experience is gained with the new warehouse control system. Indeed, the entire fee structure will be reviewed for reasonableness and equity immediately after the first 2 full years of operation under the new system, and will be changed if necessary.

Appropriate Study of the New System.—Approximately 13 commenters recommended that more time be taken to study the new bonded warehouse control system before it is implemented. It was felt that the 60-day period for the submission of public comments was not enough to adequately assess the proposed new system, especially with the many unanswered questions and unknowns that existed. Accordingly, a postponement of the final rule on this project was recommended.

Customs Headquarters has studied the bonded warehouse control conversion for several years. A pilot test of the new system was successfully concluded. Substantial data-gathering and expertise have been devoted to this project, although further study of the situation via (for example) the preparation of questionnaires by selected warehouses would indeed significantly assist in measuring the economic impact on individual warehouses. However, to further delay the implementation of the final rule on this project could, in the view of Customs' management, be counterproductive and would result in the continuation of the current Customs warehouse officer costs and other costs for many bonded warehouses.

Alternatives to the Proposed Warehouse Control System

The Regulatory Flexibility Act also requires final regulatory analyses to describe any alternatives which may minimize any significant economic impact on small entities, and which were considered by the agency in the preparation of a new rule. In addition, a statement of the reasons why each of the alternatives was rejected is also required.

The Customs Service investigated various methods of reforming the current warehouse control system. One alternative was a "modified" current system in which various changes to the current system would be implemented in a step-by-step manner; this system was rejected because of Customs management's belief that a relatively rapid and complete modification of the current system would result in greater cost savings for both the Customs Service and the importing community.

Other alternatives considered were (1) the "roving team" approach, under which the positions and functions of Customs warehouse officers would be eliminated and

replaced by the establishment of roving teams which would make unannounced inspections and would carry out inventories, and (2) contracting out to a third party. The roving team approach was not deemed to be a viable cost-effective approach by the Regulatory Audit Division, while the alternative of contracting out to a third party would probably require a change in legislation.

After examination of various alternative warehouse control systems, the Customs Service has now chosen the system discussed in the attached "Final Rule." This "new" system is also deemed to be the most cost-effective by Customs management.

The Customs Service considered implementing the new system gradually (over a 1-year period). However, due to operational considerations, the system will now be implemented immediately, i.e., after appropriate notice is given to warehouse proprietors and the general public via this notice of final rule. In order to ensure an orderly transition to the new system and to help minimize any problems or costs for warehouses that may result from the system's immediate implementation, Customs will provide appropriate assistance or information to warehouses. The overall economic effect of the new system's immediate implementation may be beneficial to large warehouses, since such warehouses will soon no longer be subject to the reimbursable fees for Customs warehouse officers.

Appendix F—Proprietor's Warehouse Bond

By this instrument _____ as principal, of _____, and _____ as surety, of _____ agree to be bound to the UNITED STATES OF AMERICA in the sum of _____ dollars (\$_____), the payment of which is jointly and severally binding on us, our heirs, executors, administrators, successors, and assigns.

WHEREAS, the principal intends to operate as the proprietor of a Customs bonded warehouse under 19 U.S.C. 1311, 1312, or 1555, and by this instrument, the principal and surety intend to secure the principal's performance under those laws and the Customs Regulations.

WHEREAS, the principal and surety agree to be bound to the same extent as if they executed a bond that contained the conditions set forth in appendixes A, B, or C, to T.D. 82-204, as appropriate.

THEREFORE, the condition of this obligation is such that—

1. *Agreement of a proprietor of a warehouse for storage and manipulation of merchandise, classes 2, 3, 4, 5, and 8.* If principal is authorized to operate a bonded warehouse under 19 U.S.C. 1555, principal and surety agree to comply with all of the conditions and obligations of the bond set forth in appendix A to T.D. 82-204 with respect to any activity of that warehouse.

2. *Agreement of a proprietor of a Customs bonded manufacturing warehouse, class 6.* If principal is authorized to operate a Customs bonded manufacturing warehouse under 19 U.S.C. 1311, principal and surety agree to comply with all conditions set forth in appendix B to T.D. 82-204 with respect to any activity of that warehouse.

3. *Agreement of a proprietor of a Customs bonded smelting and refining warehouse.* If principal is authorized to operate a Customs bonded smelting and refining warehouse under 19 U.S.C. 1312, principal and surety agree to comply with all conditions and obligations of the bond set forth in appendix C to T.D. 82-204 with respect to any activity of that warehouse.

Then this obligation to be void, otherwise to remain in full force and effect.

Signed, sealed, and delivered in the presence of—

(Name) _____
(Address) _____
(Name) _____
(Address) _____
(Principal) _____
(SEAL) _____
(Name) _____
(Address) _____
(Name) _____
(Address) _____
(Surety) _____
(SEAL) _____
(Name) _____
(Address) _____
(Name) _____
(Address) _____
(Surety) _____
(SEAL) _____

*If the principal or surety is a corporation, the name of the State in which incorporated also shall be shown.

Certificate as to Corporation Principal

I, _____ certify that I am the _____ secretary of the corporation named as principal in the within bond; that _____, who signed the said bond on behalf of the principal, was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for in behalf of said corporation by authority of its governing body.

_____ (corporate seal)

Note.—To be used when no power of attorney has been filed with the district director of Customs.

[FR Doc. 82-29742 Filed 10-29-82; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3280

[Docket No. R-82-1017]

Manufactured Home Construction and Safety Standards

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule makes editorial changes to material