

## Container Stations

### § 19.40 Establishment of container stations.

A container station, independent of either the importing carrier or bonded carrier, may be established at any port or portion of a port, or any other area under the jurisdiction of a district director upon the filing of an application therefor and its approval by the district director and the posting, in the sum of \$25,000 or such larger amount as the district director shall determine, of a bond in the following format:

Port of \_\_\_\_\_  
No. \_\_\_\_\_

#### United States Customs Service Containerized Cargo Bond (Term)

Whereas, the above-bounden principal has requested, or will request, permission to remove imported containers, truck trailers, lift vans or vehicles (hereinafter referred to as containers) containing merchandise or baggage (hereinafter referred to as merchandise) from the place of unloading from an importing vessel, vehicle or aircraft of the \_\_\_\_\_, for transportation to the \_\_\_\_\_ terminal(s) at \_\_\_\_\_, or to receive such containers at said location from a bonded carrier after transportation in-bond, for a period beginning on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and ending on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

both days inclusive; and

(5) And if pursuant to proper permit by the district director of Customs the above-bounden principal shall remove imported containers from the place of unloading from importing vessels, vehicles, or aircraft and land, place, or store any merchandise in the containers in the above-mentioned terminal(s) of the principal or on lighters, piers, landing places, or spaces adjoining thereto, or such other places permitted by the district director on special request made by the principal hereon, or shall receive such containers at said location from a bonded carrier after transportation in-bond, and shall retain such merchandise in the containers at such places until a permit for the removal thereof is granted, and, in the event that any such merchandise in the containers shall be removed therefrom before proper permits have been issued, shall pay all duties, taxes, charges, and exactions accruing on any part of the merchandise in the containers so removed; or in the event the merchandise in the containers so removed is free of duty, shall pay as liquidated damages an amount equal to the value of such merchandise contained in the containers, the damages on any one shipment not to exceed \$500 (it being understood and agreed that the amount to be collected in either case shall be based upon the quantity and value of such merchandise in the containers as determined by the district director, and that the decision of the district director as to the status of such merchandise, whether free or dutiable, together with the rate and amount of duties, taxes, charges, and exactions also shall be

binding on all parties to this obligation; it is further understood and agreed that liability under this instrument attaches for all shortages whether discovered before or after the filing of any form of entry);

2. Section 19.41, Customs Regulations (19 CFR 19.41), is revised to read as follows:

### § 19.41 Movement of containerized cargo to a container station.

Containerized cargo may be moved from the place of unloading to a designated container station, or may be received directly at the container station from a bonded carrier after transportation in-bond, before the filing of an entry of merchandise therefor or the permitting thereof (see Subpart A of Part 158 of this chapter) for the purpose of breaking bulk and redelivery of the cargo. In either circumstance, excess loose cargo, as part of containerized cargo, may accompany the container to the container station.

3. Section 19.43, Customs Regulations (19 CFR 19.43), is revised to read as follows:

### § 19.43 Filing of application.

The application, listing the containers by marks and numbers, may be filed at the customhouse or with the Customs inspector at the place where the container is unladen, or for merchandise transported in-bond, at the bonded carrier's facility, as designated by the district director.

4. Section 19.44, Customs Regulations (19 CFR 19.44), is revised to read as follows:

### § 19.44 Carrier responsibility.

(a) If merchandise is transferred directly to a container station from an importing carrier, the importing carrier shall remain liable under the terms of its bond for the proper safekeeping and delivery of the merchandise until it is formally receipted for by the container station operator.

(b) If merchandise is transferred directly from a bonded carrier's facility to a container station or is delivered directly to the container station by a bonded carrier, the bonded carrier shall remain liable under the terms of its bond for the proper safekeeping and delivery of the merchandise until it is formally receipted for by the container station operator.

(c) In either case under paragraph (a) or (b) of this section, the importing carrier and the bonded carrier, as applicable, shall be responsible for assuring that the provisions of Subpart A, Part 158 of this chapter, relating to quantity determinations, and

discrepancy reporting and accountability are followed.

(d) The importing carrier and the bonded carrier, as applicable, shall indicate concurrence in the transfer of the merchandise either by signing the application for transfer or by physically turning the merchandise over to the operator.

(e) The importing carrier and the bonded carrier, as applicable, shall be responsible for ascertaining that the person to whom a container is delivered for transfer to the container station is an authorized representative of the operator.

(f) The importing carrier and the bonded carrier, as applicable, shall furnish an abstract manifest showing the bill of lading number, the marks and numbers of the container, and the usual manifest description for each shipment in the container.

(R.S. 251, as amended (19 U.S.C. 66), sec. 448, 46 Stat. 714, as amended (19 U.S.C. 1448), sec. 450, 46 Stat. 715, as amended (19 U.S.C. 1450), sec. 484, 46 Stat. 722, as amended (19 U.S.C. 1484), sec. 499, 46 Stat. 728, as amended (19 U.S.C. 1499), sec. 551, 46 Stat. 742, as amended (19 U.S.C. 1551), sec. 552, 46 Stat. 742 (19 U.S.C. 1552), sec. 565, 46 Stat. 747, as amended (19 U.S.C. 1565), sec. 623, 46 Stat. 759, as amended (19 U.S.C. 1623), sec. 624, 46 Stat. 759 (19 U.S.C. 1624)

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## 19 CFR Parts 24, 111 and 141

[T.D. 82-134]

### Discharge of an Importer's Liability for Duties

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide an alternative procedure for an importer of record to pay duties on imported merchandise through a licensed customhouse broker. Presently, when an importer uses a broker and pays by check or bank draft, the importer often furnishes the broker one check or bank draft covering both duties and the broker's fees and charges. The broker then pays the duties to Customs on behalf of the importer. Under the alternative procedure, the importer may elect to submit to the broker a separate check or bank draft for the duties, payable to the "U.S. Customs Service." The broker would then deliver the importer's check or bank draft to Customs.

This document also amends the Customs Regulations to require brokers

to provide a written notification to their clients advising that if the clients are importers of record, payment to the brokers will not relieve the clients of liability for Customs charges in the event the charges are not paid by the brokers. Clients also will be advised that if they elect to pay by check, they may pay Customs charges with a separate check payable to the "U.S. Customs Service." Brokers are required to provide this notification to all active clients annually during the month of February. Additionally, brokers are required to provide this information statement on, or attached to, a power of attorney executed on or after the effective date of this rule.

**EFFECTIVE DATE:** September 27, 1982.

**FOR FURTHER INFORMATION CONTACT:**

Legal Aspects: Edward B. Gable, Jr.,  
Office of Regulations and Rulings  
(202-566-5706).

Operational Aspects: Herbert H. Geller,  
Duty Assessment Division (202-566-  
5307), U.S. Customs Service, 1301  
Constitution Avenue, NW.,  
Washington, D.C. 20229.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 141.1(b), Customs Regulations (19 CFR 141.1(b)), provides that duties on imported merchandise, both regular and additional, are a personal debt of the importer which may be discharged only by payment in full to Customs, unless relieved by law or regulation. The importer may pay Customs by any of the applicable means provided in § 24.1(a), Customs Regulations (19 CFR 24.1(a)). One commonly used method of payment is direct payment from the importer to Customs. However, many importers use licensed customhouse brokers to transact Customs business on their behalf. In such cases, when the importer elects to pay by check or bank draft, the importer often issues the broker one check or bank draft covering both broker's fees and charges, and duties. The broker then pays the duties to Customs on behalf of the importer.

By notice published in the *Federal Register* on July 2, 1979 (44 FR 38571), Customs proposed to amend § 141.1(b) to provide an alternative procedure by which importers, who use brokers and pay by check, may elect to submit to a broker a separate check for duties, payable to the "U.S. Customs Service." The broker would then deliver the importer's check to Customs. Although payment of duties by a separate check to the broker does not discharge the liability of the importer, this voluntary alternative procedure, which has been in effect in New York and several other

Customs regions since February 1977, could help assure the importer that Customs receives the duty. Because this procedure is optional, importer could continue to submit one check to the broker covering both the duties and the broker's fees and charges.

Interested parties were given until August 31, 1979, to submit comments on the proposal. Based upon the comments received and its own review, Customs decided to make several changes in the proposed rule, including amending Part 111, Customs Regulations (19 CFR Part 111). It was decided to add a new paragraph to § 111.29, Customs Regulations (19 CFR 111.29), to require brokers to state on their invoices or statements to clients that if the clients are importers of record, payment to a broker would not relieve the clients of liability for Customs charges in the event the charges are not paid by the broker. Clients also would be advised that if they elect to pay by check, they may pay Customs charges with a separate check payable to the "U.S. Customs Service."

By requiring brokers to so notify clients on invoices or statements, as well as Customs informing importers of their alternative methods of payment, Customs believed that importers will have more than adequate knowledge of the various methods available for paying Customs obligations.

Because the new paragraph to § 111.29, Customs Regulations, would have imposed a requirement on brokers, it became necessary to publish another notice of proposed rulemaking incorporating the substance of the proposed rule published on July 2, 1979, and the new requirement relating to Part 111. Accordingly, on September 3, 1981, Customs published another notice of proposed rulemaking in the *Federal Register* (46 FR 44195).

Pursuant to the notice, interested parties were given until November 2, 1981, to submit comments on the proposal. However, pursuant to a request from the public on October 13, 1981, Customs published a notice in the *Federal Register* (46 FR 50393), extending the period of time for the submission of comments to December 2, 1981.

Thirty-six commenters responded to the notice. Based on the comments received and Customs own review, the proposed amendments to Part 111 have been revised. The amendments to Parts 24 and 141 are being adopted as proposed except for minor technical clarifications.

**Discussion of Comments**

In general, comments about Customs proposals tended to be mixed. However, most negative comments related to the proposed requirement in Part 111 that brokers state on their invoices or statements to clients that if clients are importers of record, payment to the broker would not relieve the clients of liability for Customs charges in the event the charges are not paid by the broker. Clients also would be advised that if they elect to pay by check, they may pay Customs charges with a separate check payable to the "U.S. Customs Service."

One commenter notes that he supports the amendment as proposed because he believes it is a better approach than that originally considered which involved legislation requiring that all duty received from importers by brokers be placed in escrow by the brokers.

Several commenters noted that importers would be unable to use the option in situations involving quota merchandise and other merchandise requiring that entry and entry summary documents be presented to Customs with a check attached. If the option were used, release of the merchandise would be delayed pending receipt of a check from the broker made out to Customs in the proper amount.

Customs agrees that delays in releasing merchandise could occur if the importer elected to make his check payable to Customs. However, this is an option, and the importer should be aware of a possible delay if his check were not submitted timely for presentation.

Many commenters believe that the statement in proposed § 111.29 would create a burden on brokers and importers causing additional financial controls and recordkeeping requirements. Some brokers note that in a given import transaction, they would not know if the importer were forwarding one check or two checks. They observe that when the broker already has paid the duty and the importer then forwards a check to the broker for the duty payable to the "U.S. Customs Service," the broker must return the check to the importer and await another check payable to him. The commenters note that checks will be returned to importers when incorrect, thereby delaying payment of duties and causing additional expenses to importers as well as brokers. They state that penalty actions will also increase when checks are delayed in the mail.

Customs agrees that the procedure in which an importer makes the checks payable to Customs may cause the problems discussed. However, with the changes made to proposed § 111.29(b) and discussed below, Customs believes that these problems can be minimized as there will be more than adequate time for proper coordination between the broker and his client.

Some commenters note that problems would be caused when non-resident importers pay duty with checks drawn on a foreign bank which are not acceptable for Customs purposes. One commenter suggests that proposed § 111.29 should include a reference to the Customs Regulations that checks should be drawn on a national or state bank or trust company of the United States.

Customs believes that it is unnecessary to add that language to its statement because § 24.1(c) prohibits Customs acceptance of checks drawn on a foreign bank. However, if brokers desire to add this information to the Customs statement, Customs has no objection.

In this regard, many commenters request permission to substitute language in place of Customs proposed statement or to use language in addition to that proposed by Customs. Customs has no objection to a broker using additional language provided it (1) complements, (2) is not a substitute for, and (3) does not contradict the Customs statement.

One commenter notes that the importer must write multiple checks for duty, freight, and the broker if he elects the alternative procedure. Customs agrees. If the importer elects to write a check for duties payable to "U.S. Customs Service," he must write multiple checks.

Two commenters suggest that Customs provide additional time (over 48-hours) for presentation of checks for additional duties following a rejection of an entry summary. It is Customs policy to provide a "grace period" for the correction of entry summaries and deposit of additional duties. Customs has determined not to extend the 48-hour grace period.

Many commenters view the statement proposed by Customs as an attack on the integrity of brokers. Customs does not mean to imply any lack of integrity on the part of brokers. For the most part, brokers conduct their business in an exemplary fashion. Unfortunately, there have been cases where, due to a broker's bankruptcy, an importer who had paid duty once to his broker has had to pay the duty again to Customs. To avoid such situations, Customs

believes that the proposal is valid as an alternative payment procedure.

Two commenters note that there is no concomitant obligation on the importer to pay a broker and suggest Customs issue regulations that a broker's bill to an importer be paid within 10 days. This suggestion is not being adopted because it is a matter between the broker and his client. It is outside the scope of the Customs Regulations.

Several commenters note that the alternative method of payment is already well established and, therefore, question the need for a regulation. Customs agrees that many importers are aware of and do in fact use the alternative method. However, new or casual importers may not be aware of the option.

One commenter suggests that the regulations provide that a broker will not be obligated to advance duties on behalf of importers who are importers of record. Several commenters suggest that the regulations should prohibit a broker from advancing funds for any account. Customs notes that there is no requirement for a broker to advance funds on behalf of an importer. The broker has an option whether or not to advance funds. It is the individual broker's decision.

One commenter suggests that the regulations provide that in the event of errors, the importers pay by wire transfer, pay interest to the broker for an advance of funds, and pay a penalty to the broker. Customs believes these areas are outside the scope of the Customs Regulations and are more properly matters to be resolved between a broker and his client.

Several commenters made suggestions for editorial changes in the proposal. Customs has adopted some and rejected others.

Several commenters state that along the northern United States border, the broker most often is the importer of record on the entry summary as well as on the immediate delivery release. Since it is the customary practice on the northern United States border for the broker to release the merchandise under his own immediate delivery bond, the commenters believe that no notification is required. A commenter further notes that even if the broker is not the importer of record on the entry summary, the broker would still be liable for the duty and entry summary as his immediate delivery bond is posted. Customs agrees that when the broker is the importer of record, the statement would serve no useful purpose. Of course, in the circumstance that the broker does not post his immediate delivery bond at the time of release, but

requests release under his client's bond, the broker is under no obligation to pay the duty for his client. In that circumstance, notification is in order.

Many of the commenters object to Customs proposal because of the requirement that the information must appear on an invoice or statement. Some commenters note the expense that would be required to have new invoices printed. Other commenters suggest that the information be attached to the broker's invoice or statement rather than be printed or stamped on the invoice. Many commenters suggest alternatives to the proposal that the invoice or statement be used by the brokers as the means of informing their clients. Other options suggested include use of the power of attorney, Customs Form 7501, an annual notice, and notification by surety companies.

In light of the many comments adverse to Customs proposal, Customs has determined to make the following changes to § 111.29(b):

1. Delete the requirement that the information shall appear on the invoice or statement.
2. Require brokers to provide the written notification to all active clients annually during the month of February; and
3. Require brokers to provide the written notification on, or attached to, a power of attorney, executed on or after the effective date of this rule.

Additionally, based upon the comments, Customs has determined to make two changes to the information statement itself. The first sentence of the statement is being revised by adding the phrase "[duties, taxes, and other debts owed Customs]" after the term "Customs charges". The second sentence of the statement is being revised by deleting the period at the end of the sentence and adding "which shall be delivered to Customs by the broker."

#### Executive Order 12291

As indicated in the proposed rule, this document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

#### Regulatory Flexibility Act

As indicated in the proposed rule, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule will not have a significant economic impact on a substantial number of small entities.

**Drafting Information**

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

**Federal Register Thesaurus**

On January 22, 1981, the Office of the Federal Register published a final rule (46 FR 7162) which requires agencies to identify major topics and categories of persons affected in their regulations by using standard terms established in the Federal Register Thesaurus of Indexing Terms.

Accordingly, the index terms listed below are applicable to this regulatory project:

**List of Subjects****19 CFR Part 24**

Accounting.

**19 CFR Part 111**

Brokers.

**19 CFR Part 141**

Importers.

**Amendments to the Regulations**

Parts 24, 111, and 141, Customs Regulations (19 CFR 24, 111, 141), are amended as set forth below.

William Von Raab,

Commissioner of Customs.

Approved: June 10, 1982.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

**PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE**

The introductory paragraph of § 24.1(a), Customs Regulations (19 CFR 24.1(a)) is revised to read as follows:

**§ 24.1 Collection of Customs duties, taxes, and other charges.**

(a) Except as provided in paragraph (b) of this section, the following procedure shall be observed in the collection of Customs duties, taxes, and other charges (see §§ 111.29(b) and 141.1(b) of this chapter):

(R.S. 251, as amended, R.S. 3009, 3473, section 1, 36 Stat. 965, as amended, section 648, 46 Stat. 762, as amended (19 U.S.C. 66, 197, 198, 1648))

**PART 111—CUSTOMHOUSE BROKERS**

§ 111.29, Customs Regulations (19 CFR 111.29) is amended by adding a new heading to the present paragraph and designating that paragraph as paragraph (a), and by adding a new paragraph (b) to read as follows:

**§ 111.29 Diligence in correspondence and paying monies.**

(a) *Due diligence by broker.* \* \* \*  
(b) *Notice to client of method of payment.* (1) All brokers shall provide their clients with a written notification as follows:

If you are the importer of record, payment to the broker will not relieve you of liability for Customs charges (duties, taxes, or other debts owed Customs) in the event the charges are not paid by the broker. Therefore, if you pay by check, Customs charges may be paid with a separate check payable to the "U.S. Customs Service" which shall be delivered to Customs by the broker.

(2) Brokers shall provide the information statement in paragraph (b)(1) as follows:

(i) On, or attached to, any power of attorney executed on or after (60 days from the date of publication in the Federal Register); and

(ii) To each active client annually during the month of February beginning in February 1983, and during each February thereafter. An active client means a client from whom a broker has obtained a power of attorney.

(R.S. 251, as amended, sections 624, 641, 46 Stat. 759, as amended, 77A Stat. 14; (5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gn. Hdnote. 11), 1624, 1641))

**PART 141—ENTRY OF MERCHANDISE**

§ 141.1(b), Customs Regulations (19 CFR 141.1(b)), is revised to read as follows:

**§ 141.1 Liability of Importer for duties**

(b) *Payment of Duties.*—(1) *Personal debt of importer.* The liability for duties, both regular and additional, attaching on importation, constitutes a personal debt due from the importer to the United States which can be discharged only by payment in full of all duties legally accruing, unless relieved by law or regulation. Payment to a broker covering duties does not relieve the importer of liability if the duties are not paid by the broker. The liability may be enforced notwithstanding the fact that an erroneous construction of law or regulation may have enabled the importer to pass his goods through the customhouse without payment. Delivery of a Customs bond with an entry is solely to protect the revenue of the United States and does not relieve the importer of liabilities incurred from the importation of merchandise into the United States.

(2) *Means of Payment.* An importer or his agent may pay Customs by using any of the applicable means provided in § 24.1(a).

(3) *Methods of payment.* An importer may pay duties either—

(i) Directly to Customs whether or not a licensed customhouse broker is used; or

(ii) Through a licensed customhouse broker. When an importer uses a broker and elects to pay by check or bank draft, the importer may issue the broker either—

(A) One check or bank draft payable to the broker covering both duties and the broker's fees and charges, in which case the broker shall pay the duties to Customs on behalf of the importer, or

(B) Separate checks or bank drafts, one covering duties payable to the "U.S. Customs Service," for transmittal by the broker to Customs, and the other covering the broker's fees and charges. The importer's check or bank draft for duties shall be delivered to Customs by the broker.

(R.S. 251, as amended, section 448, 484, 624, 46 Stat. 714, as amended, 722, as amended, 759 (19 U.S.C. 66, 1448, 1484, 1624))

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration****21 CFR Parts 1 and 166**

[Docket No. 79P-0402]

**Multiunit and Multicomponent Food Packages; Exemption From Required Label Statements**

**AGENCY:** Food and Drug Administration.  
**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is permitting (1) wrappers on subdivisions of oleomargarine and margarine in a multiunit retail food package, and (2) unit containers of other foods in a multiunit or multicomponent retail food package to be exempted from the requirement that the name and place of business of the manufacturer, packer, or distributor be declared on the label. FDA also is permitting all retail packages to be exempted from bearing the statement "Inner Units Not Labeled For Retail Sale." These exemptions are applicable when the retail package and inner units are otherwise properly labeled and when the inner units do not constitute separate units for retail sale. The purpose of these exemptions is to reduce industry labeling costs, thereby reducing cost to consumers.

**EFFECTIVE DATE:** July 27, 1982.

**FOR FURTHER INFORMATION CONTACT:**

Howard N. Pippin, Bureau of Foods (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-3092.

**SUPPLEMENTARY INFORMATION:**

Based on a National Association of Margarine Manufacturers' petition, FDA issued a proposal in the *Federal Register* of May 15, 1981 (46 FR 26790) to exempt wrappers on subdivisions of oleomargarine and margarine in a multiunit retail food package from the requirement that the name and place of business of the manufacturer, packer, or distributor be declared on the label. The proposal also provided this exemption for unit containers of other foods in a multiunit or multicomponent retail package when the inner units are otherwise properly labeled and when they do not constitute separate units for retail sale. Another condition for receiving an exemption was that the retail package, the wrappers, and the unit containers had to be labeled with a disclaimer informing consumers that the inner units are not labeled for retail sale. This final rule further exempts the retail packages from the requirement to bear this disclaimer.

Comments came from industry and a local government agency. Sixteen comments entirely supported the proposal; five comments suggested modifications. FDA has considered the comments, and its responses follow:

1. Two comments said the phrase "not labeled for retail sale" could lead consumers to believe the product is for some reason (other than labeling) unacceptable for sale to the consumer. They said that a better choice of words might be "not labeled for individual sale."

Although FDA has no evidence that consumers have a negative perception of the current terms, it recognizes that the term "individual" equally well conveys the intent of the regulations. Therefore, FDA is amending the regulations to permit the use of either the term "individual" or the term "retail" or both.

2. One comment said that the labeling cost to the industry and consumers would be the same whether the manufacturer had to declare the name and place of business of the manufacturer, packer, or distributor or the statement "This Unit Not Labeled For Retail Sale." The comment said that it would be more useful to the consumer to state the name and place of business of the manufacturer, packer, or distributor because many consumers continue to separate units from multiunit containers.

This final regulation will permit a generic inner wrapper or container to be used for a food made by one manufacturer but distributed by several packers and distributors under their own private labels. The use of the generic inner wrapper or container reduces the cost for printing private inner labels for each manufacturer, packer, and distributor. To this extent, FDA concludes that the regulation helps reduce production costs, thus benefitting manufacturers, retailers, and, ultimately, consumers.

3. One comment said that deleting all labeling requirements for unit containers where the retail package is labeled "Inner Units Not For Retail Sale" would allow the use of plain, unprinted papers or films for inner units.

Except for margarine, FDA lacks authority to require a unit container within a multiunit or multicomponent food package to bear written, printed, or graphic matter, because this type of wrapper is not a "label" or "labeling" as defined in section 201(k) and (m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(k) and (m)). Wrappers on interior sticks of margarine cannot be devoid of all written, printed, or graphic matter. Section 407(b)(4) of the act (21 U.S.C. 347(b)(4)) requires the wrappers on interior sticks of margarine to bear the word "oleomargarine" or "margarine." Consequently, such wrappers are "labels" within the meaning of section 201(k) of the act and must bear all mandatory labeling under the act, subject to exemptions provided by regulations promulgated under the authority of the act.

4. Several comments opposed the provision that requires both the label of the retail package and the labels of the inner units to bear a disclaimer informing consumers that the inner units are not labeled for retail sale. One comment asked that the disclaimer be required to appear on the retail package only. Three other comments contended that the choice of where the disclaimer should appear should be left to the manufacturer or packer. Another comment suggested that manufacturers be permitted to have the choice of where the disclaimer should appear in all cases except for margarine.

The agency believes that the disclaimer should appear on at least one designated label. Therefore, FDA concludes that the disclaimer should appear on the labels of the inner units, when these wrappers constitute labels, because they could become separated from the retail package. Accordingly, the final regulation is revised to reflect this change.

5. Two comments asked that the labels on the unit containers be exempted from bearing a declaration of the net quantity of contents.

The declaration of net quantity of contents on unit containers is required only for margarine. FDA believes that the absence of the quantity of contents statements from the labels of the inner unit containers for margarine would result in consumers not knowing the exact number of unit containers to constitute the retail package should the inner unit container be separated from the package. For this reason, FDA is not exempting the labels on the unit container for margarine from bearing a declaration of net quantity of contents.

In accordance with Executive Order 12291, the economic effects of this proposal were carefully analyzed at the time it was published in the *Federal Register* of May 15, 1981, and it was determined that the proposed rule was not a major rule as defined by that Order. The basis for this determination is that, for foods packaged in multiunit containers that do not constitute separate units for retail sale, this rulemaking removes an existing mandatory requirement that the name and address of the manufacturers be declared on the unit package label. Manufacturers will, therefore, be able to use up existing labels, and they will be able to omit the existing mandatory information from new labels. No increase in manufacturers' labeling costs is, therefore, expected. After reevaluating the regulation in light of the comments received, the agency concludes that it has no reason to believe that there has been a change in economic conditions to cause reevaluation of that determination. Therefore, FDA still considers valid the regulatory impact analysis assessment made at the time of the proposal.

In accordance with the Regulatory Flexibility Act (Pub. L. 96-354), it was certified at the time the proposal was published in the *Federal Register* of May 15, 1981, that this proposed rulemaking would not impact on small entities, including small businesses. The agency determined that, because the effect of this proposed regulation is to exempt unit containers in multiunit or multicomponent retail food packages from certain labeling requirements, thus reducing labeling costs, no small business economic impact will result from this action. After reevaluating the regulation in light of the comments received, the agency concludes that there is no reason to believe that this rule will have an economic impact on small businesses. Therefore, the

certification made at the time of the proposal remains valid.

#### List of Subjects in 21 CFR Parts 1 and 166

Cosmetics, Drugs, Exports, Food standards; Imports, Margarine, Labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 403, 407, 701, 52 Stat. 1040-1042 as amended, 1047-1048 as amended, 1055-1056 as amended, 64 Stat. 20 (21 U.S.C. 321, 343, 347, 371)) and under 21 CFR 5.11 (see 46 FR 26052; May 11, 1981), Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

#### PART 1—GENERAL REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

1. In Part 1 by revising § 1.24(a)(14) to read as follows:

##### § 1.24 Exemption from required label statements.

(a) \* \* \* \* \*

(14) The unit containers in a multiunit or multicomponent retail food package shall be exempt from compliance with the requirements of section 403 (e)(1), (g)(2), (i)(2), and (k) of the act with respect to the requirements for label declaration of the name and place of business of the manufacturer, packer, or distributor and label declaration of ingredients when (i) the multiunit or multicomponent retail food package labeling meets all the requirements of this part; (ii) the unit containers are securely enclosed within and not intended to be separated from the retail package under conditions of retail sale; and (iii) each unit container is labeled with the statement "This Unit Not Labeled For Retail Sale" in type size not less than one-sixteenth inch in height. The word "Individual" may be used in lieu of or immediately preceding the word "Retail" in the statement.

\* \* \* \* \*

#### PART 166—MARGARINE

2. In Part 166 by revising § 166.40(i) to read as follows:

##### § 166.40 Labeling of margarine.

(i) The wrappers on the subdivisions of oleomargarine or margarine contained within the package sold at retail are labels within the meaning of section 201(k) and shall contain all of the label information required by sections 403 and 407 of the Federal Food, Drug, and Cosmetic Act, just as in

the case of 1-pound cartons, except that wrappers on the subdivisions contained within the retail package shall be exempt from compliance with the requirements of section 403 (e)(1), (g)(2), (i)(2), and (k) of the act with respect to the requirements for label declaration of the name and place of business of the manufacturer, packer, or distributor and label declaration of ingredients when (1) the subdivisions are securely enclosed within and are not intended to be separated from the retail package under conditions of retail sale; (2) the wrappers on the subdivisions are labeled with the statement "This Unit Not Labeled For Retail Sale" in type size not less than one-sixteenth inch in height. The word "Individual" may be used in lieu of or immediately preceding the word "Retail" in the statement.

\* \* \* \* \*

*Effective date.* This amendment shall become effective July 27, 1982.

(Secs. 201, 403, 407, 701, 52 Stat. 1040-1042 as amended, 1047-1048 as amended, 1055-1056 as amended, 64 Stat. 20 (21 U.S.C. 321, 343, 347, 371))

Dated: June 16, 1982.

Arthur Hull Hayes, Jr.,  
Commissioner of Food and Drugs.

Dated: July 1, 1982.

Richard S. Schweiker,  
Secretary of Health and Human Services.

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#### DEPARTMENT OF JUSTICE

##### 28 CFR Part 41

[Order No. 984-82]

##### Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs

**AGENCY:** Justice Department.

**ACTION:** Final rule; Technical Amendment.

**SUMMARY:** This document replaces an obsolete appendix to regulations concerning coordination of enforcement of nondiscrimination on the basis of handicap in federally assisted programs.

**EFFECTIVE DATE:** July 27, 1982.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sara Kaltenborn, Attorney/Advisor, Coordination and Review Section, Civil Rights Division, United States Department of Justice, 320 First Street, NW., Room 841, Washington, D.C. 20530, Telephone (202) 724-2225 (Voice) or 724-7379 (TDD).

**SUPPLEMENTARY INFORMATION:** Section 504 of the Rehabilitation Act of 1973, as

amended (29 U.S.C. 794), prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance and conducted by the Federal government. Executive Order 11914 (3 CFR 1977 Comp., p. 117) authorized the Department of Health, Education, and Welfare (HEW) to coordinate enforcement of section 504 for federally assisted programs. This authority was later transferred to the Department of Health and Human Services (HHS). On November 2, 1980, this authority was transferred to the Attorney General by Executive Order 12250 (3 CFR, 1980 Comp., p. 298). Section 1-502 of the Order provides that the HEW (later HHS) guideline "shall be deemed to have been issued by the Attorney General pursuant to this Order and shall continue in effect until revoked or modified by the Attorney General."

On August 11, 1981, the Department of Justice issued a final rule transferring the guideline issued by HEW at 45 CFR Part 85 to title 28 of the Code of Federal Regulations and redesignating it as 28 CFR Part 41. 46 FR 40686. The rule also made nomenclature changes. Inadvertently, however, it failed to remove Appendix A to the guideline which set out Executive Order 11914 (revoked by Executive Order 12250). As a result, in the recently published recodification of title 28 of the Code of Federal Regulations, Appendix A to Part 41 is Executive Order 11914, incorrectly identified as Executive Order 12250. This rule therefore replaces Executive Order 11914 in Appendix A with Executive Order 12250.

Publication of this rule as a proposal for public comment is unnecessary because it is solely a replacement of an obsolete appendix.

The Department of Justice has determined that, because this rule is solely a replacement of an obsolete appendix, it is not a major rule for purposes of Executive Order 12291, no environmental impact analysis is required, and no regulatory flexibility analysis is required.

##### List of Subjects in 28 CFR Part 41

Civil rights, Equal employment opportunity, Financial assistance, Grant programs, Handicapped.

(Executive Order 12250 (3 CFR, 1980 Comp., p. 298))

William French Smith,  
Attorney General.

July 19, 1982.

Accordingly, Appendix A to Part 41 of Chapter I of Title 28, Code of Federal