information required under Rule § 17.00(a)(2) on a routine basis.[4]

The Commission is also amending Rule § 15.00(b)(1)(ii) to require that only persons with positions in excess of the quantity specified in Rule § 15.03(b) file reports in accordance with Part 19 of the Commission's regulations. Currently, persons with positions *equal to* or in excess of the quantities specified in Rule § 15.03(b) must file the reports specified in Part 19.

Reports filed pursuant to Part 19 of the regulations show details on commercial traders' fixed price cash commitments and are used by the Commission to check compliance with Federal speculative limits. The reporting levels specified in Rule § 15.03 at which a trader must file such reports correspond to the level of the Commission's speculative limits. However, speculative position limits permit speculators to hold positions equal to the specified level. Accordingly, the Commission is amending Rule § 15.00(b)(1)(ii) so that only traders with positions in excess of the speculative limits file reports pursuant to Part 19 of the regulations.

The Commission finds that its action to amend the regulations as discussed above relieves an existing burden and that the notice and other public procedures called for by 5 U.S.C. 553 are not required, 5 U.S.C. 553(b) (1976). The Commission, therefore, is adopting the amendments to Parts 15 and 17 effective December 5, 1984. The new reporting levels will, therefore, apply to positions held by traders as of the close of the markets on December 5, 1984.

The Regulatory Flexibility Act

As the Commission has not published a prior general notice of proposed rulemaking with respect to these amendments which are relief measures, the amendments are not "rules" as that term is defined in Section 3(a) of the Regulatory Flexibility Act ("RFA"), Pub. L. No. 96-354, 94 Stat. 1165 (5 U.S.C. 601(2)).[5]

Paperwork Reduction Act

The Paperwork Reduction Act of 1980, Pub. L. 96-511, 94 Stat. 2812 *et seq.* ("PRA"), imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by PRA. 44 U.S.C. 3501 *et seq.* OMB control number 3038-0009 has previously been assigned to those regulations within Parts 15, 17, and 18 which impose collection of information and recordkeeping requirements.[6]

List of Subjects in 17 CFR Parts 15 and 17

Brokers, Commodity futures, Reporting and recordkeeping requirements.

In consideration of the foregoing and pursuant to its authority under Sections 4g, 4i, 5(b) and 8a(5) of the Commodity Exchange Act, 7 U.S.C. Sections 6g, 6i, 7(b) and 12a(5) (1982), the Commission is amending Parts 15 and 17 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 15—REPORTS—GENERAL PROVISIONS

1. Section 15.00 is amended by revising paragraph (b)(1)(ii) as follows:

§ 15.00 Definitions of terms used in Parts 15 to 21 of this chapter:

* * * * *

(b) "Reportable position" means:

(1) * * *

(ii) For the purposes of reports specified in Part 19, any open contract position in any one future or in all futures combined, either gross long or gross short, of any commodity on any one contract market, excluding positions against which notices of delivery have been stopped by a trader or issued by the clearing organization of a contract market, which at the close of the market on the last business day of the week exceeds the quantity fixed in § 15.03(b) for reporting purposes for the particular commodity.

* * * * *

2. Section 15.03 is amended by revising paragraph (a) as follows:

§ 15.03 Quantities fixed for reporting.

(a) The quantities for the purpose of reports filed under Parts 17 and 18 of this chapter are as follows:

Commodity:	
Wheat (bushels)	500,000
Corn (bushels)	500,000
Soybeans (bushels)	500,000
Oats (bushels)	300,000
Cotton (bales)	5,000
Soybean oil (contracts)	150
Soybean meal (contracts)	150
Live cattle (contracts)	100
Hogs (contracts)	50
Sugar No. 11 (contracts)	150
Sugar No. 12 (contracts)	100
Copper (contracts)	150
Gold (contracts)	200
Silver bullion (contracts)	100
Silver coins (contracts)	50
Platinum	50
No. 2 Heating oil (contracts)	50
Crude oil	50
Leaded gasoline	50
Long-term U.S. Treasury bonds (contract)	300
GNMA (contracts)	100
Three-month (13-week) U.S. Treasury bills (contracts)	100
Long-term U.S. Treasury notes (contracts)	100
Domestic certificates of deposit (contracts)	50
Three-month Eurodollar time deposit rates (contracts)	100
Foreign currencies (contracts)	100
Standard and Poor's 500 stock price index (contracts)	300
New York Stock Exchange composite index (contracts)	100
AMEX major market stock index	100
All other commodities (contracts)	25

* * * * *

PART 17—[AMENDED]

3. Section 17.00 is amended by removing paragraph (a)(2), by redesignating paragraph (a)(3) as (a)(2), and revising it as follows:

§ 17.00 Information to be furnished by futures commission merchants, clearing members and foreign brokers.

(a) *Special Accounts*—Reportable Futures Positions, Delivery Notices, and Exchanges of Futures for Cash.

* * * * *

(2) A report covering the first day upon which a Special Account is no longer reportable in a particular future shall also be filed showing the following information.

(i) The position in such future in such account;

(ii) Exchanges of futures for physicals for the accounts in such future;

(iii) Delivery notices for such future issued for the account by the clearing organization of the contract market on which delivery will occur; and

(iv) Delivery notices for such future stopped by the account.

* * * * *

The foregoing amendments to Parts 15 and 17 are adopted effective December 5, 1984. The Commission finds that the foregoing action relieves a burden heretofore imposed and therefore that the notice and other public procedures called for by 5 U.S.C. 553 are not required.

Issued in Washington, D.C., on November 15, 1984, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 84-30672 Filed 11-21-84; 8:45 am]

BILLING CODE 6351-01-M

[4] The Commission is also making conforming amendments to Rule § 17.00 by renumbering § 17.00(a)(3) as § 17.00(a)(2) and specifying the information which must be reported under the new Rule § 17.00(a)(2).

[5] That section defines the term "rules" as "any rule for which the agency publishes a general notice of proposed rulemaking pursuant to Section 553(b) of this title * * *"

[6] See 44 U.S.C. 3502(4) (Supp. V. 1981) defining the term "collection of information."

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 84-232]

Customs Regulations Amendment Relating to Payment of Tonnage Tax and Light Money

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to require that in addition to the certificate on Customs Form 1002, a cash receipt on Customs Form 5104 will be provided by Customs as proof of payment when tonnage taxes and light money are paid to Customs by the master of a vessel. Both of these forms are then to be presented to Customs by the master upon each entry of the vessel during the tonnage year. The forms will establish the date of commencement of the tonnage year and insure against overpayment. This change is part of Customs continuing efforts to develop a system to improve control over its collection process.

EFFECTIVE DATE: December 24, 1984.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Robert Hamilton, Office of Financial Management and Program Analysis, (202-566-2596) and Thomas Davis, Office of Inspection and Control (202-566-5354).

Legal Aspects: Donald Reusch, Carriers, Drawback and Bonds Division (202-566-5706); Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Generally, unless exempted, the U.S. imposes regular and special tonnage taxes, and a duty of a specified amount per ton, known as "light money," on all foreign vessels which enter U.S. ports (46 U.S.C. 121, 128). Section 4.23, Customs Regulations (19 CFR 4.23), currently provides that upon each payment of tonnage tax or light money, the district director shall give to the master of the vessel a certificate on Customs Form 1002. This certificate constitutes the official evidence of payment and is to be presented by the vessel master upon each entry during the tonnage year in order to establish the date of commencement of the tonnage year and to insure against overpayment.

As part of its continuing efforts to develop a system to improve control over its collection process, Customs is requiring that in addition to the Customs Form 1002, a cash receipt (Customs Form 5104) is to be provided by Customs as proof of payment when tonnage taxes and light money are paid by the master of a vessel. This additional form will provide further protection for the payer vessel while aiding Customs in safeguarding monies collected.

Executive Order 12291

It has been determined that this amendment is not a "major rule" within the criteria provided in § 1(b) of E.O. 12291, and therefore no regulatory impact analysis is required.

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 not applicable to this amendment because the rule will not have a significant economic impact on a substantial number of small entities.

Accordingly, it is certified pursuant to section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendment will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Inapplicability of Public Notice Requirement

Because this amendment merely implements a procedural protection requirement for the benefit of the master of the vessel who paid the tonnage taxes and light money, and because it imposes no additional duties or responsibilities on the public, it has been determined that good cause exists for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b)(B).

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Imports, Vessels.

Amendments to the Regulations

Part 4, Customs Regulations (19 CFR Part 4), is amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

Section 4.23 is revised to read as follows:

§ 4.23 Certificate of payment and cash receipt.

Upon each payment of tonnage tax or light money, the master of the vessel shall be given a certificate on Customs Form 1002 and the payer's receipt copy of the cash receipt (Customs Form 5104) upon which payment was recorded. This certificate, along with the payer's receipt copy of the Customs Form 5104, shall constitute the official evidence of such payment and shall be presented upon each entry during the tonnage year in order to establish the date of commencement of the tonnage year and to insure against overpayment. In the absence of the certificate and the payer's receipt copy of the Customs Form 5104, evidence of payment of tonnage tax shall be obtained from the district director to whom the payment was made.

(R.S. 251, as amended, secs. 2, 3, 23 Stat. 118, as amended, 119, as amended, sec. 624, 46 Stat. 759, sec. 101, 76 Stat. 72; (5 U.S.C. 301, 19 U.S.C. 66, 1202, 1624, 46 U.S.C. 2, 3, Gen. Hdnote 11, Tariff Schedules of the United States))

William von Raab,

Commissioner of Customs.

Approved: November 5, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 84-30719 Filed 11-21-84; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Part 24

[T.D. 84-231]

Customs Regulations Amendments Relating to Administrative Overhead Charges

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide for the inclusion of an administrative overhead charge of 15 percent of the identified costs of providing for reimbursable and overtime services, and various other services, performed by Customs officers. This charge will be collected from parties-in-interest who are required to reimburse Customs for compensation and/or expenses of Customs officers performing the reimbursable and overtime services, and other services for the benefit of such parties. There will be no charge if the imposition of such charge is precluded by law; there is a formal accounting system for determining administrative overhead for a service; or the charge for administrative overhead for a service is

specifically provided for elsewhere in the Customs Regulations.

The purpose of this document is to enable Customs to recover an important cost element that is not currently factored into the assessment of these charges.

EFFECTIVE DATE: January 6, 1985. Fees for vessel services, container stations, and warehouses will be published at a later date. The effective date for those services will be at the time the fee schedule applicable thereto is revised and published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Jim Kenny, Accounting Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-2021).

SUPPLEMENTARY INFORMATION:

Background

Various statutes provide Customs with the administrative authority to charge fees to recover the costs of particular services rendered to parties-in-interest. For example, 19 U.S.C. 58a permits the Secretary of the Treasury to charge such fees as may be necessary to recover the costs of providing certain vessel services. The fees are to be consistent with the User Charges Statute (31 U.S.C. 9701). Section 4.98(a), Customs Regulations (19 CFR 4.98(a)), sets forth the specific services and bases for calculating each flat fee. Similarly, Customs charges and bills parties-in-interest for reimbursement in connection with services rendered by Customs officers or employees during regular hours (see § 24.17, Customs Regulations (19 CFR 24.17)), or on Customs overtime assignments under 19 U.S.C. 267 or 1451 (see § 24.16, Customs Regulations (19 CFR 24.16)). The bill covers full compensation and/or travel and subsistence of the Customs officer performing the service. However, except for a 10 percent administrative overhead charge applicable to the annual fee required of each warehouse proprietor granted the right to operate a warehouse facility under § 19.5, Customs Regulations (19 CFR 19.5), and preclearance of air travelers and their baggage under section 24.18, Customs Regulations (19 CFR 24.18), there is no administrative overhead charge factored into the cost of providing a particular service.

The "User Charges Statutes" provides that each service or thing of value provided by an agency to a person is to be self-sustaining to the extent possible. The head of an agency may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations so prescribed are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be fair and based on the costs to the Government, the value of the service or thing to the recipient, public policy or interest served, and other relevant facts. The statute does not affect a law prohibiting the determination and collection of charges and the disposition of those charges, and prescribing bases for determining charges, but a charge may be redetermined under the statute consistent with the prescribed bases.

In a report dated March 10, 1975, "Services For Special Beneficiaries: Costs Not Being Recovered," the General Accounting Office stated that the User Charges Statute authorizes Customs to include administrative overhead in the billings of parties-in-interest for all reimbursable services performed during normal, and outside normal, working hours. The Office of Management and Budget (OMB), has stated that in the absence of a formal accounting system for determining administrative overhead, no new accounting system should be established solely to determine this cost. The cost should be determined or estimated from the best available records of the agency. In the absence of a formal accounting system for determining the cost of the charge for administrative overhead, the Treasury Department recommended that its bureaus use 15 percent of the identified costs of providing the service.

Customs has no formal accounting system for determining the cost of the charge for administrative overhead for reimbursable and overtime service. Therefore, using 15 percent of the identified costs of providing the service is applicable. The identified costs to Customs are the actual salaries, including overtime and other expenses of Customs personnel providing the service.

In a decision of the Comptroller General on the matter of user charges for administrative costs of special and overtime Customs services (B-114898, 55 Comp. Gen. 456, November 13, 1975), the Comptroller General held that Customs generally has authority to impose user charges under the User Charges Statute for administrative overhead from parties-in-interest for reimbursable and overtime services provided by Customs in addition to amounts payable for compensation and expenses of Customs officers. The proviso in the User Charges Statute that nothing contained therein was to be deemed to repeal or modify existing statutes fixing the amount of any such fee, charge or price (language of statute prior to recodification of Title 31 by Pub. L. 97-258, September 13, 1982), was deemed by the Comptroller General to preclude the imposition of additional user charges under the User Charges Statute only to the extent that another statute expressly or by clear design constitutes the only source of assessments for a service.

On December 21, 1983, Customs published a document in the **Federal Register** (48 FR 56399) proposing to amend Part 24, Customs Regulations, (19 CFR Part 24), "Customs Financial and Accounting Procedure," by adding a new § 24.21 entitled "Administrative overhead charges" to provide for inclusion of an administrative overhead charge of 15 percent of the identified costs of providing for reimbursable and overtime services performed by Customs officers under §§ 24.17 and 24.16, Customs Regulations, respectively. This charge would be collected from parties-in-interest who are required to reimburse Customs for compensation and/or expenses of Customs officers performing the reimbursable and overtime services for the benefit of such parties.

New § 24.21 also would provide for the inclusion of an administrative overhead charge of 15 percent of the identified costs of providing for various user-type services performed by Customs officers to parties-in-interest. These fees, whether billed or not, include, but are not limited to:

1. Section 4.98—Navigation fees for vessel services;

2. Section 19.5—Annual fee to operate, and fees to establish, alter, or relocate a warehouse facility; (An administrative overhead charge of 10 percent is currently assessed for the annual fee to operate a warehouse facility. Therefore, there would be only a 5 percent increase to that charge);

3. Section 19.40—Fee to establish container stations;

4. Section 24.12(a)(3)—Fee for furnishing the names and addresses of importers of merchandise appearing to infringe a registered patent;

5. Section 24.12(c)—Charge for storing merchandise in a Government-owned or rented building;

6. Section 24.13(f)—Charge for the sale of in-bond an in-transit seals;

7. Section 24.14(b)—Charge for the sale of Customs forms;

8. Section 24.18—Charge for preclearing aircraft in a foreign country; (An administrative overhead charge of 10 percent is currently assessed. Therefore, there would be only a 5 percent increase to that charge);

9. Section 111.12(a)(2)—Fee for issuing a customhouse broker's license;

10. Section 112.12(a)—Fee for designating a carrier or freight forwarder as a carrier of Customs bonded merchandise;

11. Section 112.22(a)(2)—Fee for issuing a Customs bonded cartman's license;

12. Section 133.3—Fee for recording of trademarks;

13. Sections 133.5(d), 133.6(b), 133.7(a)(3)—Fee for renewing, or recording a change in name of owner, or of ownership of, a trademark;

14. Section 133.13(b)—Fee for recording of trade name;

15. Section 133.33(b)—Fee for recording a copyright; and

16. Sections 133.35(b)(2), 133.36(b), 133.37(a)(3)—Fee for renewing, or recording a change in name of owner, or of ownership of, a copyright.

However, there would be no 15 percent charge if (1) imposition of such charge is precluded by law, such as administrative overhead costs associated with any inspection service required at airports of entry as a result of the operation of aircraft pursuant to Pub. L. 94–353, the Airport and Airway Development Act Amendments of 1976 (49 U.S.C. 1741(e)); (2) there is a formal accounting system for determining administrative overhead for a service, in which case that system would be used for determining the cost of the charge for administrative overhead; or (3) the charge for administrative overhead for a service is specifically provided for elsewhere in the Customs Regulations.

Customs would not assess an administrative overhead charge of 15 percent for (1) traveling in a Government-owned vehicle on official travel at the request of a private party, or (2) carting merchandise in a Government-owned vehicle because fees relating to these areas are regulated by the Federal Property Management Regulations (see 41 CFR Part 101–7, Federal Travel Regulations).

The notice advised that the administrative overhead charge of 15 percent will result in the recovery of costs associated with the operation and depreciation of buildings and equipment, rent, postage, maintenance, and expenses associated with Customs management and supervision.

Commenters had until February 21, 1984, to submit comments. After careful consideration of the 11 comments received in response to the notice, and further review of the matter, Customs has determined to adopt the final rule as proposed. A discussion of the comments follows.

Discussion of Comments

Comment: The proposed rule is inconsistent with the requirements of the Independent Offices Appropriations Act (IOAA) (User Charges Statute, 31 U.S.C. 9701). All of the fees for administrative overhead charges proposed in the notice are invalid including the underlying "non-administrative" fee charged by Customs for preclearance services. Preclearance fees in force and proposed are *prima facie* unlawful.

Numerous court cases and other sources, such as federal agencies, are cited to support the position that the preclearance service primarily benefits the general public. It is argued that Customs has not calculated properly the cost basis for each fee assessed, and that Customs administrative overhead charged for preclearing aircraft is not based on what the administrative overhead costs actually are, but rather on a percentage of what the non-overhead costs are. It is claimed that The Report of March 10, 1975, of the General Accounting Office, and the opinion of the Comptroller General, *supra.*, relied on by Customs, were prepared before the controlling decisions of the federal appellate courts were rendered.

Response: Customs believes these claims are without merit.

Preclearance is the tentative examination and inspection of air travelers and their baggage at foreign places where United States Customs Service personnel are stationed for that purpose. At the specific request of an airline, travelers on a direct flight from a foreign place to the United States may be precleared prior to departure from that foreign place. A charge based on the excess cost to Customs of providing preclearance services is made to the airline. The reimbursable excess cost is the difference between (1) the cost of examining and inspecting air travelers and their baggage upon arrival in the United States, assuming no preclearance was provided, and (2) the cost of providing clearance for air travelers at the place of departure. The reimbursable excess cost is determined for each preclearance installation. The charge to each airline for preclearance service is its prorated share of the applicable excess cost prorated to the aircraft receiving such services during the specified billing period (see generally, 19 CFR 24.18).

It is clear that an airline is making a specific request for Customs officers to preclear air travelers and their baggage. The charge to each airline is its prorated share of the applicable excess cost prorated to the aircraft receiving such services. Therefore, there is a specific charge for a specific service to a specific airline.

An airline making a request for Customs preclearance services is an identifiable beneficiary. The recipient airline is receiving appropriate value because the fee charged by Customs to the airline does not exceed the cost of the service rendered. The fact that the public interest also may benefit does not preclude an airline from being assessed the full charge.

The formula for setting a fee, including an amount for administrative expenses, need not be rigid. The fee need bear only a reasonable relationship to the cost of the service rendered by Customs. Courts have approved OMB's position that (1) in the absence of a formal accounting system for determining administrative overhead, no new accounting system need be established to determine this cost; and (2) the cost is to be determined or estimated from the best available records.

The 1975 decision of the Comptroller General, discussed above, and the 1980 decision of the Comptroller General discussed below, are dispositive. No other federal agency commented on this proposal. Customs fees and the assessment of an administrative overhead charge of 15 percent of the identified costs of providing the services proposed are proper.

The legislative history to Pub. L. 95–410, the "Customs Procedural Reform and Simplification Act of 1978," clearly establishes that Congress intended that the general authority of the User Charges Statute shall be used as a means to determine the fees to be collected by Customs to recover its costs to furnish vessel services. An allowance for overhead costs is specifically mandated (House Report 95–621, 95th Cong., 1st Sess., at 28).

Comment: The proposed rule is inconsistent with international commitments and policies of the United States. The Customs proposal ignores the United States commitment to the objectives of the General Agreement on Tariffs and Trade (Article VIII), to limit fees assessed to the approximate cost of services rendered and to reduce the number and diversity of fees and charges.

Preclearance in Canada, Bermuda, and the Bahamas is established and governed by formal International Agreements. The "Agreement Between The Government Of The United States Of America And The Government of Canada On Air Transport Preclearance"

(Preclearance Agreement) (Ottawa, May 8, 1974, TIAS 7825), is cited to support the principle that preclearance is to facilitate air travel.

It is claimed that Customs offers no explanation for the propriety of its proposal in light of section 6.55 of Annex 9 entitled "International Standards and Recommended Practices—Facilitation To The Convention On International Civil Aviation" (Convention), (61 Stat. 1180). Paragraph 6.55 provides that "Contracting States shall provide sufficient services of the public authorities concerned without charge to operators during working hours established by those authorities." No notice has been provided to the Council of the International Civil Aviation Organization pursuant to Article 38 of the Convention. Article 38 provides in part that any State ". . . which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the International Civil Aviation Organization of the differences between its own practice and that established by the international standard . . ."

Response: Customs believes that adoption of the proposal is not inconsistent with the General Agreement on Tariffs and Trade. Article VIII is intended to apply to the transit of merchandise internationally, rather than to preclearance of passengers and their baggage. Furthermore, Customs is implementing no new fees, but merely recalculating how existing fees are to be determined to recover the cost of a service. Article VIII contains no legal prohibition to Customs adoption of its proposal.

The Preclearance Agreement contains no prohibition to Customs preclearance procedure as set forth in section 24.18, Customs Regulations, nor the proposal to charge administrative overhead. Article VI of the Preclearance Agreement provides that an air carrier has the option to use either preclearance or post-clearance procedures. Article VII(b) provides that "The inspecting Party shall be responsible for the normal cost of its inspection personnel." Article VII(c) provides that "Any charges upon air carriers related to preclearance shall be based on participation at a particular airport location and shall be assessed in an equitable and non-discriminatory manner."

As noted above, an airline requests the preclearance service, and agrees to the conditions relative thereto. Airlines are not responsible for the normal cost of Customs inspection personnel. Airlines are charged only the reimbursable excess cost of the operation on a prorated basis, certainly an equitable and non-discriminatory approach. Customs also notes that Article IX provides for consultation concerning the interpretation, application, and modification of the Agreement and of its Annexes.

Customs believes that Convention is inapplicable here. Paragraph 6.55 of Annex 9 to the Convention does not state, nor imply that airlines have a right to free preclearance. The Preclearance Agreement controls. Even if applicable, however, the Convention must be read consistent with the Preclearance Agreement. The issue is not whether or not a service will be provided "without charge to operators during working hours," under section 6.55. The issue is whether or not under the Preclearance Agreement charges for normal costs or reimbursable excess costs upon airlines for preclearance are proper.

Assuming *arguendo* that Article 6.55 is applicable, Article 38 of the Convention provides the procedure for Customs to file a notice of any difference. Customs would not, after filing the appropriate notice, be prohibited from implementing these fees. Furthermore, Articles 84, 85, and 86 provide a mechanism for the settlement of disputes.

Comment: The proposed rule conflicts with the express direction of Congressional committees. A Decision of the Comptroller General (59 Comp. Gen. 389, B–196342, April 15, 1980), which cited many of the court cases discussed above, determined that pursuant to the User Charges Statute, Customs may continue to assess a user charge against airlines and recover that portion of its costs (including Treasury Enforcement Communications System) that are increased by its conducting passenger preclearance on foreign soil. It is claimed that the House Appropriations Committee in House Rep. No. 96–1090 rejects the Comptroller General's analysis and "eviscerates" the opinion.

Customs proposal is similar in nature to a previous Customs proposal to establish a schedule for commercial aircraft processing fees (47 FR 23182, May 27, 1982) and, therefore, Customs ignores the will of Congress. It is claimed that Committees from both the House and Senate directed Customs to refrain from attempting to assess the new user fees. Senate Report No. 97–547 (97th Cong. 2d Sess., 23), states:

> It is the intent of the Committee to defer the collection of Customs inspection and clearance user fees or charges on commercial aircraft until these and related issues are carefully analyzed and resolved by the Congress. For this reason, none of the funds appropriated in this bill shall be used to collect such fees and charges.

House Report No. 97–959 (97th Cong. 2d Sess., 11) states:

> It is the Committee's intention that none of the funds provided in this Act are to be used by the United States Customs Service to collect inspection and/or clearance fees on commercial aircraft as outlined in the proposed amendment to Part 6, Customs Regulations (19 CFR Part 6), adding a new section 6.26 establishing a schedule for commercial aircraft fees. For policy reasons, the Committee is not in agreement with this proposal, and directs that it be vacated.

Response: House Report No. 96–1090 (96th Cong. 2d Sess., 12) states:

> * * * In view of the fact that this system is used solely for law enforcement purposes and does not provide an identifiable benefit to airlines or the travelling public, the Committee feels that the cost should be borne by the Customs Service. Funds in the bill may be used for that purpose.

Although this language does not lend support to the 1980 opinion of the Comptroller General, Customs does not believe that this language negates that opinion. It is the position of the Customs Service that this regulation is supported by the decision of the Comptroller General.

The 1982 Senate and House reports stated only that none of the funds provided by the relevant act (for the fiscal year ending September 30, 1983) were to be used to collect inspection and clearance fees for commercial aircraft such as those proposed in 1982. The new proposal does not violate the referenced Congressional statements because that fiscal year has passed and the new fees are different from those proposed in 1982. The 1982 fees were new fees. This document merely adds a charge for administrative overhead to existing fees.

Comment: The notice violates section 2(a) of Executive Order 12291 in that the proposal should be based on "adequate information concerning the need for and consequences of proposed governmental action."

Response: Customs has carefully considered both the need for and consequences of the regulation and has determined that the regulatory action is appropriate.

Comment: Customs must—

1. Withdraw the notice of December 21, 1983;

2. Pursuant to section 4(e) of the Administrative Procedure Act (5 U.S.C. 553(e)), repeal section 24.18, Customs Regulations (19 CFR 24.18), which "unlawfully imposes costs on carriers for preclearance services;" and

3. Institute a new rulemaking proceeding to establish "a refund mechanism which will enable airlines and other companies to recover unlawful assessments made in contravention of IOAA."

Response: For the reasons discussed above, Customs has determined that the imposition of administrative overhead charges contained in this document is appropriate and within its authority.

Preclerance fees are assessed only against a carrier that has requested and received the services for which the fees are charged. Customs believes that the requesting carrier receives a special benefit.

Accordingly, Customs is not withdrawing the notice of December 21, 1983. Moreover, Customs does not believe that § 24.18, Customs Regulations (19 CFR 24.18), is contrary to its authority and therefore will not take any action to repeal such section or institute rulemaking proceedings to establish a refund mechanism with respect to fees collected pursuant to such section.

Comment: Foreign countries will be more inclined to levy similar and perhaps higher fees for customs services performed by their respective government entities.

Response: Customs disagrees. Implementation of this proposal is entirely consistent with its international obligations. It is unlikely to result in retaliation by other nations because Customs is simply redefining how it calculates the cost of existing fees, which are totally acceptable in the international community.

Comment: The 15 percent charge is too high and arbitrary; it is inflationary. A one to three percent charge, or a flat $2.00 charge, is appropriate.

Response: The Office of Management and Budget has established guidelines concerning the determination of administrative overhead where no formal accounting system exists. In the absense of such a system, the guidelines direct that no new system be developed solely to determine administrative overhead costs. Instead, administrative overhead costs are to be determined or estimated from the best available records of the agency. On this basis, the Treasury Department estimated such costs to be 15 percent of identified costs of providing services, and recommended that this figure be used by Treasury bureaus, including Customs. For these reasons, Customs does not believe that the 15 percent charge is excessive or arbitrary. Moreover, since it is projected that $6.7 million will be collected annually as administrative overhead charges, Customs does not believe such an amount will exert inflationary pressure on the economy.

Comment: The increased costs will be passed on to the consumer.

Response: It is Customs view that it is unlikely that there will be a full cost pass-through to consumers. In any event, the actual cost-pass-through will be negligible.

Comment: A 5 percent additional charge to the existing 10 percent administrative overhead charge for the warehouse operation program would mean an effective overhead charge of 15.5 percent. Therefore, any and all overhead fees should be applied against the base rate.

Response: The administrative overhead charge will not exceed 15 percent.

Executive Order 12291

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

Pursuant to the provisions of 5 U.S.C. 605(b), (Regulatory flexibility Act, Pub. L. 96–354), it is hereby certified that the regulations will not have a significant economic impact on a substantial number of small entities. It is estimated that the total impact of this document will reach $6.7 million, However, the economic impact is concentrated on large entities, and in any event, the costs to all businesses will be spread over many transactions. Thus, the impact is likely to be slight. Accordingly, the regulations are not subject to the regulatory analysis of 5 U.S.C. 604.

Drafting Information

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

Lists of Subjects in 19 CFR Part 24

Customs duties and inspection, Imports Accounting.

Amendments to the Regulations

Part 24, Customs Regulations (19 CFR Part 24), is amended by adding a new § 24.21 entitled "Administrative overhead charges" in the table of contents, and the regulations as set forth below.

Approved: October 1, 1984.

Williams von Raab

Commissioner of Customs.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

§ 24.21 Administrative overhead charges.

(a) *Reimbursable and overtime services.* An additional charge for administrative overhead costs shall be collected from parties-in-interest who are required to reimburse Customs for compensation and/or expenses of Customs officers performing reimbursable and overtime services for the benefit of such parties under §§ 24.17 and 24.16, respectively, of this part. The cost of the charge for administrative overhead shall be 15 percent of the compensation and/or expenses of the Customs officers performing the service.

(b) *Other services.* An additional charge for administrative overhead costs shall be collected from parties-in-interest who are required to reimburse Customs for compensation and/or expenses of Customs officers performing various services for the benefit of such parties. The cost of the charge for administrative overhead shall be 15 percent of the compensation and/or expenses of the Customs officers performing the service. The fees, whether billed or not, include, but are not limited to:

(1) Navigation fees for vessel services in § 4.98;

(2) Annual fee to operate, and fees to establish, alter, or relocate a warehouse facility in §19.5;

(3) Fee to establish container stations in § 19.40;

(4) Fee for furnishing the names and addresses of importers of merchandise appearing to infringe a registered patent in § 24.12(a)(3);

(5) Charge for storing merchandise in a Government-owned or rented building in § 24.12(c);

(6) Charge for the sale of in-bond and in-transit seals in § 24.13(f);

(7) Charge for the sale of Customs forms in § 24.14(b);

(8) Charge for preclearing aircraft in a foreign country in § 24.18;

(9) Fee for issuing a customhouse broker's license in § 111.12(a)(2);

(10) Fee for designating a carrier or freight forwarder as a carrier of Customs bonded merchandise in § 112.12(a);

(11) Fee for issuing a Customs bonded cartman's license in § 112.22(a)(2);

(12) Fee for recording of trademarks in § 133.3;

(13) Fee for renewing, or recording a change in name of owner, or of ownership of, a trademark in §§ 133.5(d), 133.6(b), 133.7(a)(3);

(14) Fee for recording of trade name in § 133.13(b);

(15) Fee for recording a copyright in § 133.33(b); and

(16) Fee for renewing, or recording a change in name of owner, or of ownership of, a copyright in §§ 133.35(b)(2), 133.36(b), 133.37(a)(3);

(c) *No administrative overhead charge.* No additional charge for administrative overhead costs discussed in paragraphs (a) and (b) of this section shall be collected if (1) imposition of such charge is precluded by law; (2) there is a formal accounting system for determining administrative overhead for a service, in which case that system shall be used for determining the cost of the charge for administrative overhead; or (3) the charge for administrative overhead for a service is specifically provided for elsewhere in this chapter.

(R.S. 251, as amended (19 U.S.C. 66), 46 Stat. 759 (19 U.S.C. 1624); 97 Stat. 1051 (31 U.S.C. 9701))

[FR Doc. 84-30712 Filed 11-21-84; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Revisions of Rules Pertaining to Investigations of Unfair Practices in Import Trade

AGENCY: International Trade Commission.

ACTION: Final rules.

SUMMARY: These rules revise part 210 of the Commission's Rules of Practice and Procedure governing investigations under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337. Part 210 covers investigations of unfair practices in import trade. These final rules reflect public comment on proposed rules published on May 10, 1984, 49 FR 19830. The changes consolidate the rules pertaining to unfair trade practices investigations and clarify details or practice before the Commission.

EFFECTIVE DATE: November 23, 1984.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., or Catherine R. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone (202) 523-0311 or (202) 523-0189, respectively.

SUPPLEMENTARY INFORMATION: The Commission is authorized under 19 U.S.C. 1335 to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337. The Commission also derives authority for this rulemaking from the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, which authorizes the adoption of certain procedures in an adjudicative proceeding when an agency does not preside over the evidentiary hearing.

These amendments to the Commission's rules clarify procedures and conform the rules to practices that have developed under section 337. The Commission has also consolidated the rules pertaining to section 337 investigations in Part 210.

Analysis of Public Comments on Proposed Rules

The Commission received comments on the proposed rules from the ITC Trial Lawyers Association, the Delegation of the Commission of the European Communities, and three law firms. Generally, these parties commented favorably on the proposed rules and made recommendations concerning additional changes that they believed desirable.

The following is a summary and analysis of the comments received. The analysis explains why suggested changes were accepted or rejected.

Section 210.6 Confidential business information defined and identified.

The Commission received a suggestion from one law firm that the Commission adopt a definition of confidential information in section 337 investigations that differs from the definition applied under § 201.6 of its rules. Under § 201.6 and proposed rule § 210.6 the Commission would accord information confidential treatment if it meets either of two criteria. The first criterion is whether the disclosure of the submitted information is likely to impair the government's ability to obtain such information in the future. The second criterion is whether the information qualifies as a trade secret. The firm contends that the first criterion should be eliminated from rule § 210.6 because pre-trial discovery practice and the availability of compulsory process sufficiently protect the Commission's interest in securing information in a section 337 investigation. The firm notes that there is less reliance on voluntary compliance with requests to provide information in a section 337 investigation than in other types of Commission investigations.

With regard to the second criterion, the submitted information's status as a trade secret, the firm suggests that the Commission define the term trade secret more broadly than the definition used in connection with exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and that the Commission adopt a procedure for notifying submitters when their documents are the subject of a request for release. At that time, the submitter could demonstrate whether the information qualifies for confidential treatment under exemption 4.

The Commission does not believe that the suggested changes are warranted for several reasons. First, the Commission is to a large extent dependent on voluntary compliance with discovery requests. Although compulsory process is available in section 337 investigations, the strict time constraints on the discovery process limit the feasibility of resorting repeatedly to compulsory process. Moreover, in instances involving receipt of information from foreign respondents, voluntary compliance is the most expeditious means of developing a complete record.

The Commission has adopted a definition of business confidential information consistent with that in the Freedom of Information Act. A submitter of information must establish that the information qualifies for business confidential treatment when it is submitted to the Commission. Thus it is unnecessary for the Secretary to the Commission to redetermine the confidential status of the information each time the Commission receives a request for release of the information. The Commission's current procedure has allowed reasonable access to information while protecting confidential information. Interpretation of the term "trade secret" has not posed difficulties in prior Commission investigations and broadening the interpretation would require the Commission to redetermine the status of the information if it is requested under the Freedom of Information Act. Thus, the Commission has decided against changing its definition of business confidential information.

Section 210.10 Commencement of proceedings.

The Delegation of the Commission of the European Communities (EC) commented on rule § 210.10 and suggested that the Commission should require service of the complaint upon the governments of the proposed foreign