DECISION NO. NY84-3044

POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY CONSTRUCTION)

Class 1: Automated concrete spreader (CMI), automatic fine grader, backhoe (except tractor mounted, rubber tired), belt placer (CMI type), blacktop plant (automated), cableway, caisson auger, central mix concrete plant (automated), cherry picker (over 5 tons capacity), concrete pump (8" or over), crane, cranes & derrick (steel erection), dragline, dredge, dual drum paver, excavator (all purpose-hydraulically operated) (gradall or similar), fork lift (factory rated 15 ft. and over), front end loader (4 c.y. and over), head tower (sauerman or equal), hoist (2 or 3 drum), Holland loader mine hoist, mucking machine or mole, over headcrane (gantry or straddle type), piledriver, power grader, quad 9, quarry master (or equivalent), scraper, shovel, sideboom, slip form paver, tractor drawn belt-type loader, truck crane, truck or trailer mounted log chipper (self feeder), tug operator (except manned rented equipment); tunnel shovel.

Class 2: Backhoe (tractor mounted, rubber tired), bituminous spreader and mixer, blacktop plant (non-automated), blast or rotary drill (truck or tractor mounted), boring machine, cage-hoist, central mix plant (non-automated) and all concrete batching plants, cherry picker (5 tons capacity and under), compressors (4 or less) exceeding 2000 C.F.M. combined capacity, concrete paver (over 16S), concrete pump (under 8"), crusher, diesel power unit, drill rigs (tractor mounted), front end loader (under 4 c.y.), hi-pressure - boiler (15 lbs. and over), hoist (one drum); Kolman plant loader and similar type loaders, L.C.M. work boat operator, locomotive, maintenance engineer/greaseman/welder, mixer (for stabilized base self-propelled), monorail machine, plant engineer, pump crete, ready mix concrete plant, refrigeration equipment (for soil stabilazation), road widener, roller (all above subgrade), sea mule tractor with dozer and/or pusher, trencher, tugger-hoist, winch, winch cat.

Class 3: A-frame truck, ballast regulator (ride-on), compressors (4 not to exceed 2000 C.F.M. combined capacity; or 3 or less with more than 1200 C.F.M. but not to exceed 2000 C.F.M.), dust collectors, generator, pumps, welding machines, light plants (4 of any type of combination), concrete payment spreader and finishers, conveyor, drill-core, electric pump used in conjunction with well point system, farm tractor with accessories, fine grade machine, fork lift (under 15 ft.), grout pump gunite machine, hammers (hydraulic-self-propelled), hydra-spiker (ride-on), hydro-blaster water, post hole digger and post driver, power sweeper, roller (grade and fill), scarifier (ride-on spansaw (ride-on), submersible electric pump (when used in lieu of well point system), tamper (ride-on), tie extractor (ride-on), tie handler, tie inserter (ride-on), tie spacer (ride-on), track liner, tractor with towed accessories vibratory compactor, vibro tamp, well point.

DECISION NO. NY84-3044

POWER EQUIPMENT OPERATORS HEAVY & HIGHWAY (CONTINUED)

Class 4: Aggregate plant, boiler (used in conjunction with production), cement and bin operator, compressors (3 or less not to exceed 1200 C.F.M. combined capacity), dust collectors, generators, pumps, welding machines, light plants (3 or less of any type or combination), concrete paver or mixer (16S and under), concrete saw (self-propelled), fireman, form tamper, hydraulic pump (jacking system), light plants, mulching machine, oiler, parapet concrete or pavement grinder, power broom (towed), power heaterman, Revinius widener, shell winder, steam cleaner, tractor.

TRUCK DRIVERS (BUILDING (Except Ready-mix)

Class 1: Truck drivers, parts chasers.

Class 2: Tractor trailer drivers, farm tractor and fuel truck drivers.

Class 3: Material check and receiver.

Class 4: Euclid driver.

TRUCK DRIVER (Ready-mix)

Class 1: Ready-mix driver.

Class 2: Truck driver.

TRUCK DRIVERS (HEAVY & HIGHWAY) (Except Ready-mix in Area 2)

Class 1: Warehouseman, yardmen, pickups, panel trucks, flatboy material trucks (straight jobs), single axle dump trucks, dumpsters, material checkers and receivers, greases, truck tiremen and parts chaser

Class 2: Tandems, batch trucks, mechanics and dispatcher.

Class 3: Semi-trailers, low-boy trucks, asphalt distributors trucks, agitator, mixer trucks and dumpcrete type vehicles, truck mechanic.

Class 4: Specialized earth moving equipment - euclid type or similar off-highway equipment, where not self-loaded, and straddle (ross) carrier.

Class 5: Off-highway tandem back-dump, twin engine equipment and double hitched equipment where not self-loaded.

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federal register

Friday
December 7, 1984

Part III

Department of Energy

Office of Civilian Radioactive Waste Management

Fees for Federal Interim Storage, Calendar Year 1985; Notices

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management

Fees for Federal Interim Storage, Calendar Year 1985

AGENCY: Department of Energy.

ACTION: Notice of Fees for Federal Interim Storage of Spent Nuclear Fuel from Civilian Nuclear Power Plants in the United States for Calendar Year 1985. The Fees established for Calendar Year 1984 are hereby rescinded on the effective date of this notice.

SUMMARY: This notice updates the fees to be levied against users of Federal Interim Storage (FIS) services for spent nuclear fuel as required by section 136(a)(2) of the Nuclear Waste Policy Act of 1982, Pub. L. 97–425, 42 U.S.C. 10101 et seq. (Act). The fees, shown in Table 1, have been updated to ensure full recovery of all costs incurred by the Department of Energy (Department) in providing these services. These fees are for calendar year 1985 and replace those in effect for calendar year 1984.

TABLE 1.—Fees for FIS Services Furnished by the Department of Energy, Dollars Per KGU(1) (2)

Capacity of FIS facility (MTU)	Initial fee	Final fee	Total fee
100	310	380	690
300	110	195	305
800	45	150	195
1,500	25	140	165
1,900	20	140	160

[1] The cost of transportation of spent fuel is not included in the above fees. Each user's actual transportation costs will be billed directly after delivery of the fuel is completed.

[2] KGU—the weight of uranium contained in fresh fuel assemblies at the time of insertion into the reactor.

EFFECTIVE DATE. The updated fees will be effective on January 1, 1985, and will remain effective for a period of twelve months from the effective date.

FOR FURTHER INFORMATION CONTACT: J. Roger Hilley, Associate Director, Office of Storage and Transportation Systems (RW–30), Office of Civilian Radioactive Waste Management, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–9433.

SUPPLEMENTARY INFORMATION: The updated fees shown above in Table 1 were developed by the Department to comply with the requirement of section 136 of the Act which requires each user to pay its pro rata share of costs in order to ensure complete recovery of costs incurred by the Department in supplying FIS services. The Department re-examined alternative methods for structuring fees for FIS services, as reported in 1984 Federal Interim Storage Fee Study: A Technical and Economic Analysis, (PNL–5231) July, 1984 (FIS Fee Study). Based on this reexamination, the Department again concluded that the combined interests of the Department and the users would be best served, and costs would be most appropriately recovered, by a two-part fee payment consisting of an Initial Payment upon execution of a contract for FIS services followed by a Final Payment upon delivery of the spent fuel to the Department. In addition, each user will be invoiced by the Department for the actual costs of transportation of its spent fuel from the reactor site to the FIS facility.

The Initial Payment shall be made within 30 days after execution of the contract for FIS service; it is an advance payment covering the pro rata share of the preoperational costs including:

(1) The capital construction costs of the transfer facilities and storage area required to accommodate the initial storage service commitments, including design and construction costs;

(2) Development costs;

(3) Government administrative costs, including storage fund management;

(4) Impact aid payments made in accordance with section 136(e) of the Act; and

(5) Interest paid on any funds borrowed from the Treasury Department to conduct preliminary work.

The effective Initial Fee will be determined by the quantity of spent fuel committed to FIS by the first contract or contracts entered into by the Department in accordance with the provisions of section 135(b) of the Act. Table 1 exhibits the appropriate fees for discrete quantities of contracted fuel, from 100 MTU to 1900 MTU. If the quantity of fuel covered by the first contracts is less than 100 MTU, the Initial Payment will be the product of the quantity of fuel to be stored and the Initial Fee shown in Table 1 for 100 MTU storage capacity. If the quantity of fuel covered by the first contracts exceeds 100 MTU and is not one of the discrete quantities shown, the Initial Fee will be recalcualted by the Department for the exact quantity of spent fuel committed to storage under these first contracts. The Initial Fee so determined by the first contracts will then be charged to all subsequent contractors of FIS services until the Fee Schedule is next revised.

To ensure that the payments are equitable among the users of FIS services, the Department will annually update both the Initial and Final Fees to reflect changes in the costs for providing FIS Services as the amount of fuel under contract increases or as additional FIS facilities are activated. After all preoperational activities have been completed, the Department will determine the total costs incurred in connection with the preoperational activities (i.e., design, safety reviews, construction, and associated activities) and will determine the difference between the Initial Payments made by each user and the subsequently revised Initial Payments that take into account the increased quantities of spent fuel being committed to FIS. The Department will then credit or debit the Final Payment of each user with the difference between the amounts paid as Initial Payments and its then pro rata share of the revised total preoperational costs (net of its pro rata share of interest earned on advance payments made).

The Final Payment shall be billed to the user within 60 days after delivery of the spent fuel to the Department and shall be payable within 60 days thereafter. It will be calculated to cover the sum of the following;

(1) Any under- or over-estimation in the costs used to calculate the initial Payment of the fee, as described above;

(2) Module costs (i.e., storage casks, drywells, or silos) which will have been accurately determined by that time; and

(3) The total estimated cost of operation and decommissioning of the FIS facilities (including Government administrative costs, storage fund management and impact aid).

In addition, the Department will bill each individual user for the actual costs the Department incurs in the transportation of that user's spent fuel to the FIS facilities including, but not limited to, cask lease, freight charges, and security. Billing and payment will be on the same schedule as the Final Payment.

In addition to the Initial Payment and the Final Payment described above, the Department will make a final adjustment for each user after the decommissioning of the FIS facilities, or December 31, 2001, whichever is earlier. This adjustment will be based on a determination of the total costs incurred in design, construction, operation and decommissioning of the FIS system through December 31, 2001. The Department will make final adjustments to the extent that there is a difference between the total amounts paid by each user in Initial and Final Payments and the user's pro rata share of these total costs (net of its pro rata share of interest earned on advanced payments made). This adjustment may be either a payment to the Department of a refund to the user.

Any payments not made on a timely basis will be subject to interest charged at the quarterly Treasury rate plus 6%.

In order to factor the time value of money into the fee update calculation, the revenue/expenditure projections are based on the following assumptions concerning the schedule of constructing and operating FIS facilities. These assumptions reflect the changes in spent fuel storage requirements which occurred during 1984:

Assumption 1: Design and construction of FIS facilities would commence in 1985 and be completed so that storage operations could commence in mid 1988;

Assumption 2: The FIS facility would receive spent fuel during the three-year period between mid-1988 and mid-1991. It would ship spent fuel to a Monitored Retrievable Storage facility or waste repository during the three-year period commencing at the beginning of 1998 and terminating at the end of 2000. One-third of the storage capacity of the FIS facility would be received each year during the receiving period, and one-third would be shipped each year during the shipping period;

Assumption 3: Decontamination and decommissioning of FIS facilities would be conducted in the year 2001.

In accordance with the constraints imposed by the Act, the Department plans to expend no funds in connection with the FIS program other than the minimal expenses for planning until clear evidence of a need exists. At that time, the Department will commence the design of the FIS facilities on the basis of the contractual commitments that then exist for FIS services. These facilities will have the capacity for only that amount of spent fuel which is committed to storage under the then-existing contracts.

The Department has again assumed that canistered consolidated spent fuel rods would be acceptable for storage at the FIS facilities. However, consolidation would not be a criterion for acceptance, nor would the disassembly and consolidation of spent fuel be included in the capabilities of the FIS facilities. Until the cost effects of storing consolidated fuel has been accurately determined, the Department will collect the same fee for storage of canistered consolidated spent fuel rods as for intact fuel assemblies. At that time, any savings in operational costs which may result from receipt and handling of consolidated fuel rods will be factored into the annual recalculation of the fee, and a separate fee for consolidated fuel will be published.

If the revised initial fees are lower than any previously collected for consolidated fuel, a credit will be assigned to the Final Payment for that consolidated fuel. Any savings in transportation costs that result from shipping consolidated rods would be realized immediately.

Further information as to the Department's FIS services and charges is available in the cited report, PNL-5231.

Issued in Washington, D.C. on December 3, 1984.

Robert H. Bauer,

Associate Director, for Resource Management, Office of Civilian Radioactive Waste Management.

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federal register

Friday
December 7, 1984

Part IV

Department of Energy

Western Area Power Administration

Order Confirming, Approving, and Placing in Effect the Rate Adjustment, on an Interim Basis, for the Pick-Sloan Missouri Basin Program; Notice

DEPARTMENT OF ENERGY

Western Area Power Administration

Order Confirming, Approving, and Placing in Effect the Rate Adjustment, on an Interim Basis, for the Pick-Sloan Missouri Basin Program

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate adjustment for the Pick-Sloan Missouri Basin Program (P-SMBP).

SUMMARY: Notice is given of Rate Order No. WAPA-24 of the Deputy Secretary placing the rate adjustment for the P-SMBP into effect on the first day of the first full billing period after January 1, 1985, on an interim basis, for power marketed by the Western Area Power Administration (Western).

The FY 1982 P-SMBP power repayment study indicated that the existing rate schedules do not yield sufficient revenue to satisfy the cost recovery criteria through the study period. The revised rate schedules will yield adequate revenue to satisfy these criteria.

FOR FURTHER INFORMATION CONTACT:

Mr. Conrad Miller, Chief, Rates and Statistics Branch, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-1535.

Mr. Ronald K. Greenhalgh, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G061, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-5581.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664, December 14, 1983), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, to the Deputy Secretary the authority to confirm, approve, and place such rates in effect on an interim basis, and to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove, rates developed by the Administrator under the delegation.

The rate adjustment for the P-SMBP has been conducted in accordance with the procedural rules applicable to Western.

Proceedings were initiated on June 29, 1984, with publication of a **Federal Register** notice (49 FR 26797) which officially announced the proposed rate adjustment and procedures for public participation. A series of public information forums were held on July 16 through July 19, 1984, in Thornton, Colorado; Sioux Falls, South Dakota; Fargo, North Dakota; and Billings, Montana. A series of comment forums were held August 20 through August 23, 1984, at the same locations. The consultation and comment period extended through September 29, 1984. During this period, interested parties made comments to Western concerning the proposed rate adjustment.

Various comments were received at the meetings and during the consultation and comment period. Several issues were raised. After reviewing and considering the comments received, and the records of the meetings, this rate order was assembled to respond to the comments offered during the public rate adjustment process. Western has concluded that the P-SMBP rate adjustment is needed to meet cost recovery criteria.

Therefore, Rate Order No. WAPA-24 confirming and approving the P-SMBP 1982 rate adjustment on an interim basis is hereby issued, and the new rate schedules will be promptly submitted to the FERC for confirmation and approval on a final basis.

Issued in Washington, D.C. November 28, 1984.

Danny J. Boggs,

Deputy Secretary.

DEPARTMENT OF ENERGY

Deputy Secretary

[Rate Order No. WAPA-24]

Order Confirming, Approving, and Placing in Effect a Rate Adjustment for the Pick-Sloan Missouri Basin Program

November 28, 1984.

In the matter of: Western Area Power Administration—Rate Adjustment for the Pick-Sloan Missouri Basin Program (P-SMBP).

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), the power marketing functions of the Secretary of the Interior under the Reclamation Act of 1902, 43 U.S.C. 372 et seq., as amended and supplemented by subsequent enactments, particularly by section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485h(c), for the Bureau of Reclamation (USBR), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664), the Secretary of Energy delegated: (1) To the Administrator of the Western Area Power Administration (Western) the authority to develop power and transmission rates; (2) to the Deputy Secretary the authority to confirm, approve, and place such rates in effect on an interim basis; and (3) to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place in effect on a final basis, to remand, or disapprove rates developed by the Administrator under the delegation.

This rate order is issued pursuant to the delegation to the Deputy Secretary and the rate adjustment procedures at 10 CFR Part 903 (45 FR 86975, December 31, 1980, as corrected at 46 FR 6864, January 22, 1981).

Effective Date

The new rates would become effective on the first day of the first full billing period beginning after January 1, 1985, and would remain in effect until superseded.

Description of Rates

The proposed composite Eastern and Western Division wholesale firm power rate for the Pick-Sloan Missouri Basin Program (P-SMBP) will yield 7.44 mills/kWh versus the current 6.10 mills/kWh, which constitutes a 1.34 mill/kWh increase over the current wholesale firm power rate. P-SMBP power is sold in two marketing areas known as the Eastern Division and the Western Division.

When considering the Eastern Division of the P-SMBP alone, the proposed firm rate yields 7.14 mills/kWh versus the current 5.80 mills/kWh yield.

Presently, the Western Division of the P-SMBP by itself has a wholesale firm power rate which yields 7.20 mills/kWh. Under the proposed rate, the Western Division's wholesale firm power yield will increase to 8.54 mills/kWh.

The present and proposed wholesale power rates for the Eastern Division have been structured as follows:

Class of power	Present	Proposed
Firm Capacity (kW).	$1.35/kW-month......	$1.65/kW-month.
Firm Energy (kWh) up to and including 60 percent monthly load factor.	3.62 mills/kWh	4.41 mills/kWh.
Above 60 percent monthly load factor.	7.00 mills. kWh	7.79 mills/kWh.
Peaking Capacity (kW).	$1.35/kW-month......	$1.65/kW-month.
Peaking Capacity (kWh).	3.62/mills/kWh........	4.41 mills/kWh.

The present and proposed wholesale power rates for the Western Division have been structured as follows:

Class of power	Present	Proposed
Firm Capacity (kW).	$1.43/kW-month	$1.65/kW-month.
Firm Energy (kWh).	4.3 mills/kWh	5.1 mills/kWh.
Peaking Capacity (kW).	$1.43/kW-month	$1.65/kW-month.
Transmission Service.	1.1/mills/kWh or $9.60/kW-year.	1.3 mills/kWh or $11.40/kW-year.

Description of Changes in Rate Structure and Level

As shown above, the structure of the proposed rate schedules has not changed from that of the present rate schedules. However, the level of rates has changed for all of the above classes of power.

In the Eastern Division of P–SMBP, the firm capacity charge has increased under the proposed schedule $0.30/kW-month from $1.35 to $1.65/kW-month. The firm energy charge for energy up to and including 60-percent monthly load factor has increased from 3.62 to 4.41 mills/kWh or .79 mills/kWh. For energy above 60-percent monthly load factor, the energy charge has also increased 0.79 mills/kWh, from 7.00 to 7.79 mills/kWh.

The proposed capacity is $1.65/kW-month versus the current charge of $1.35/kW-month, an increase of $0.30/kW-month. Peaking energy under the proposed rate schedule has increased 0.79 mills/kWh from 3.62 to 4.41 mills/kWh.

In the Western Division of P-SMBP, the firm capacity charge has increased under the proposed rate schedule $0.22/kW-month, from $1.43 to $1.65/kW-month. The firm energy charge has increased from 4.3 mills to 5.1 mills/kWh, or .80 mills/kWh.

The proposed peaking capacity charge is $1.65/kW-month versus the current charge of $1.43/kW-month, an increase of $0.22/kW-month.

Transmission service for the Western Division will increase 0.2 mills/kWh under the proposed rate schedule, raising the current rate of 1.1 mills/kWh to 1.3 mills/kWh.

Expected Changes in Annual Revenue

The rate adjustment would increase average annual firm revenues about $12.7 million, which is necessary to satisfy the cost recovery criteria as set forth in DOE Order No. RA 6120.2.

Statement of Revenue and Related Costs

A breakdown of costs by class of service is not available. The following table provides revenue data for firm power and peaking sales through the proposed rate period. The Western Division is currently finalizing a marketing plan. That plan provides for Western Division peaking sales; however, it is not expected to be implemented until after 1989; thus there is no Western Division peaking revenue shown in the table below.

Year	Eastern division peaking winter	Eastern division peaking summer	Eastern division firm	Western division firm
1985	$3,564,000	$3,604,500	$56,827,260	$16,159,140
1986	3,564,000	3,604,500	56,827,260	16,159,140
1987	3,564,000	3,604,500	56,827,260	16,159,140
1988	3,564,000	3,604,500	56,827,260	16,159,140
1989	3,564,000	3,604,500	56,827,260	16,159,140

The data shown above reflect estimates used in the 1982 Power Repayment Study (PRS) for the proposed rate approval period. It should be noted that the PRS contains only one variable—the composite rate for future firm power (capacity and energy combined) sales on a per kWh basis. Revenues from othe sources are estimated and entered into the study. The study adjusts this composite rate until sufficient revenues are generated to meet cost recovery criteria. The actual rates designed to yield these revenues are determined after the PRS is completed by adjusting both capacity and energy rates, and not just energy rates. Actual revenues collected for each class of service will vary from those estimated in the published 1982 PRS.

Revenues from the Western Division's transmission service rate are not shown separately in the published 1982 PRS, but are included in the "Total Revenue" column of that study. The data shown above for Eastern Division Firm and Western Division Firm are summed on the 1982 PRS and shown as "Firm Commercial."

Explanation of Rate Development Process and Supporting Documents Chronological Discussion

Proceedings on the proposed rate adjustment were initiated on March 19, 1984, when a letter announcing the informal customer meetings was mailed to all firm power customers and other interested persons. The informal customer meetings were also advertised with a March 30, 1984, press release. These meetings were conducted at four different locations from April 16 through April 19, 1984. At these preliminary meetings, Western representatives explained the need for the increase and answered questions from interested persons.

On June 29, 1984, a formal 90-day customer consultation and comment period was initiated with an announcement of the proposed rate adjustment published in the **Federal Register** at 49 FR 26797. This notice also announced four public information forums conducted July 16 through July 19, 1984, and four public comment forums conducted August 20 through August 23, 1984. The information forums were further advertised with a June 29, 1984, press release. On June 27, 1984, a mailing of a final customer brochure was made to all customers and other interested parties. This mailing also included a letter anouncing the public information and comment forums. At the information forums, Western representatives again explained the need for the rate increase and answered questions from interested persons. The comment forums were conducted to give the public an opportunity to comment for the record. Other public comments were received through September 29, 1984, and have been considered in the preparation of this rate order.

Project History

The Missouri River Basin Project was authorized by section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 877, Pub. L. 534, 78th Congress, 2nd session), which approved the general comprehensive plan set forth in Senate Document 191 and House Document 475, as revised and coordinated by Senate Document 247, 78th Congress, 2nd session. The comprehensive plan has been funded through numerous appropriaton acts with the intention of development of the water resources in the Missouri River Basin.

The Missouri River Basin Project, later renamed the Pick-Sloan Missouri Basin Program to honor its two principal authors, has been under construction since 1944. The project encompasses a comprehensive program of flood control, navigation improvement, irrigation, municipal and industrial water development, and hydroelectric production for the entire Missouri River Basin. Multipurpose projects have been developed on the Missouri River and its tributaries in Montana, North Dakota, South Dakota, Wyoming, and Colorado. Electric transmission facilities have also been constructed in those States, as well as in Minnesota, Nebraska, Iowa, and

Missouri. The P–SMBP is divided into an Eastern Division and a Western Division. The two Divisions cannot, at this time, be operated fully integrated because of differing electric characteristics. In addition to the multipurpose water development projects which were authorized by section 9 of the Flood Control Act of 1944, certain older existing projects have been integrated with the P–SMBP for power marketing and operational purposes. Four projects, Colorado-Big Thompson, Kendrick, Shoshone and Riverton were combined with P–SMBP in 1954 for marketing, operation, and repayment purposes and the fifth, North Platte, was combined in 1959. These projects are known as the "Integrated Projects" of the P–SMBP, Western Division. The Riverton Project was reauthorized as a unit of the P–SMBP by Pub. L. 91–409 on September 25, 1970. The Flood Control Act of 1944 also authorized integration of the Fort Peck Project with the P–SMBP for operations and repayment purposes. Largely as a result of these projects, which pre-dated the P–SMBP, the Eastern Division and Western Division have different power rates.

The P–SMBP has been heralded since its authorization as a pioneer in comprehensive basinwide multipurpose development. All functions of the project were maximized within the water resource with some functions assisting others in repayment beyond the ability of the beneficiary. An innovative feature of the program was its basinwide, rather than individual project, financial management mandate which extended the scope of financial assistance to irrigation and established that repayment of all features be based on ultimate development of the program.

Power, flood control, and navigation are the most advanced features and have been providing benefits to the Basin States for many years. Upper basin States have received hydropower since 1943 and downstream States have received flood control and navigation benefits. Yet to be advanced to a comparable status of development are the Federal irrigation projects which were included in the comprehensive plan to replace land lost to project reservoirs in the upper basin States.

The planning, development, and operation of the P–SMBP have been successfully carried out for close to 40 years by the Departments of the Interior and Army, and most recently, the DOE. The success of the program can be attributed to sound financial management, wherein power rates and revenues have been carefully scheduled to meet program and repayment obligations.

Western was established on December 21, 1977, pursuant to section 302 of Pub. L. 95–91, DOE Energy Organizational Act, dated August 4, 1977. Western is responsible for the Federal electric power marketing and transmission functions in 15 Central and Western States encompassing a 1.3-million-square-mile geographic area, which includes the P–SMBP marketing area.

Power Repayment Studies

General History

The PRS's for the P–SMBP are prepared by Western with the cooperation of the USBR and the Corps of Engineers. Basic river basin hydrology, water depletions, power generation, and project development data are among the many items USBR and the Corps of Engineers contribute to the studies.

The PRS's are prepared in accordance with P–SMBP authorizing legislation and with DOE Order No. RA 6120.2 on Power Marketing Administration (PMA) financial reporting. The studies array historic income, expense, and investment to be repaid from power revenues, along with estimates for future years. They also portray the annual repayment of production and transmission costs of the power system, as well as nonpower costs assigned to power for repayment, through the application of revenues over the repayment period of the project. The studies show, among other items, estimated revenues and expenses, the estimated amount of unpaid Federal investment which will be repaid, and the total estimated amount of Federal investment year-by-year over a 100-year period. The studies do not deal with rate design.

Special Study B–5, documented in the "Report on Financial Position MRBP, December 1963," was submitted to Congress and set forth a broad statement of repayment principles. Basic guides and criteria established therein have been incorporated in the annual PRS's. Payout criteria and interest rates beginning in FY 1966 have been endorsed by the Garrison Diversion Unit Act of August 5, 1965. Our current studies reflect resources, marketing, operation and maintenance (O&M) expenses, replacements, payments to the integrated projects, investment, and irrigation development date available as of 1982.

General Description of Power Repayment Study Components

The repayment study consists of four main parts: (1) Annual revenues; (2) annual revenue deductions; (3) repayment of replacement; and (4) repayment of investments.

Capacity and energy are based on the latest hydrology, depletions, and marketing projections for the P–SMBP. They are converted to annual power revenues by the application of appropriate rates. These power revenues are first applied to repayment of annual revenue deductions which are composed of O&M costs, wheeling expense, payments to integrated projects, purchased energy, and interest expense.

Any remaining power revenues are then applied to the repayment of interest-bearing commercial power investment. The study is designed to repay the investment carrying the highest-interest-rate first. However, each power investment is required to be repaid within 50 years of the date on which it was placed in service.

Interest rates of 2½ and 3 percent are used on existing transmission facilities and power generating facilities in accordance with provisions of the Garrison Diversion Unit Act of August 5, 1965 (Pub. L. 89–108, 89th Congress HR 237). New investments beyond the scope of that act will be subject to the current interest rates pursuant to DOE Order No. RA 6120.2

Replacements are investments required to replace original investments as their economic or physical usefulness declines. In the FY 1982 PRS, replacements are subject to the same interest rates as the original investments. In future studies, replacements made after 1981 will be subject to current interest rates.

The FY 1972 PRS and previous studies forecast future replacement costs based on the original installed cost of the facility. Starting with the FY 1973 PRS, estimated future replacement costs have been indexed to current levels, and are treated as capital investments which are repaid over their service lives.

Besides repayment of power investments, revenues must repay a portion of the irrigation investments, including part of the investment for multipurpose reservoirs.

The legislative history of the P–SMBP, principally Senate Document No. 191, recognized that portions of the power-producing capacity of the project would be used for Federal project irrigation and drainage pumping service. It also established that the cost of that portion of the power system reserved for irrigation pumping would be interest-free. Accordingly, all analyses of the program have assumed that a percentage of the power investment would be reserved for irrigation pumping, and as such, the same percentage of the power investment would be suballocated as interest-free irrigation pumping cost. The percentage for suballocation of the costs have been determined by the relationship of total ultimate project pumping peakload demand at the generators to power system generating capacity (538,622 kW of ultimate pumping requirements divided by 2,522,600 kW of total system capacity). The application of this ratio in the present study results in 21.4 percent of the costs allocated to power being suballocated to pumping purposes. These suballocated costs are scheduled for repayment with the associated irrigated projects.

Pursuant to the Garrison Diversion Unit Act, costs relating to specific irrigation units (including main stem and other reservoir storage and irrigation pumping power cost assignments, if appropriate) constructed or under construction on June 30, 1964, are to be repaid within the earliest practicable time period after completion of repayment of interest-bearing commercial power investment, but prior to irrigation units constructed after that date. Costs relating to new (after June 30, 1964) and future irrigation units, divisions, or irrigation blocks (including main stem and other reservoir storage and irrigation pumping power cost assignments if appropriate) are to be repaid within 50 years following the allowable development period (usually 10 years) after the individual unit, division, or irrigation block becomes benefit-producing.

Costs of the multiple-purpose investments have been allocated by the agency having construction jurisdiction. The "Separable Costs-Remaining Benefits" method of allocation has been used on main stem reservoirs and multipurpose reservoirs. Federally financed alternative costs have been used for determining the annual cost of the single-purpose power alternative in the cost allocation procedures. This is consistent with the statement of "Policies, Standards, and Procedures in the Formulation, Evaluation, and Review of Plans for Use and Development of Water and Related Land Resources," approved by the President on May 15, 1962, and printed as Senate Document No. 97, 87th Congress, 2nd Session.

Study Inputs

The following items are entered into the repayment study as historical data and/or as short-term future budget estimates. These data are then used in the study to make long-term projections of revenues and expenses. The inputs are generally classified as revenues, expenses, and project investments.

Revenues

The historical power and energy sales are based on accounting records through September 30, 1982. The FY 1983 sales were based on the best estimates available using the most current system hydrology. Thereafter, total annual energy and capacity sales are based on average and adverse water conditions, respectively. Basic data for determining power generated at USBR tributary powerplants and the Corps of Engineers main stem powerplants were obtained from latest available reservior operational studies. The generation data were then reduced to reflect future irrigation depletions.

The "gross revenue data" for this study include revenues from sales of long-term firm commercial power, sales of peaking power, sales of irrigation energy, and other revenues. These other revenues come from sources such as: replacement service, summer firm, maintenance service, wheeling income, joint transmission system charges, the Southwestern Power Administration's share of intertie costs, Canyon Ferry headwater benefits, and a conservative estimate of revenue from above adverse water year peaking capability.

Expenses

O&M Expenses

O&M expenses shown in the PRS reflect the costs associated with the operation of powerplants, substations, and dispatch offices; the maintenance of powerplants, substations, and transmission lines; supplies associated with maintenance; any nonrecurring maintenance; administrative overhead; and wheeling payments for use of transmission capacity in other systems.

Historical O&M expenses are based on accounting records through September 30, 1982. Projected O&M expenses are based on the program documents contained in the FY 1984 budget dated December 1982. Nonrecurring O&M is included as a part of the O&M expense through the budget period, but has been removed from the cost estimate beyond that point. No attempt has been made to forecast changes in the operation or maintenance costs beyond the budget period; therefore, the variance observed in the future data is due solely to declining future wheeling expenses. Wheeling expenses decline proportionately as firm power sales decline.

Purchased Power

Historical purchased power costs are based on accounting records through September 30, 1982. The FY 1983 purchased power cost is based on the FY 1984 budget justification program documents dated December 1982. No future purchased power costs are projected beyond 1983, because the PRS is based on average water year data for the period 1984 through 2082.

Integrated Projects

Four projects, Colorado-Big Thompson, Kendrick, Riverton, and Shoshone, were combined with the P-SMBP in 1954 for power marketing, operation, and repayment purposes and the fifth, North Platte, was combined in 1959. These projects are known as the "Integrated Projects" of the P-SMBP, Western Division. The Riverton Project was reauthorized as a unit of P-SMBP on September 25, 1970, by Pub. L. 91-409. Basically, the integration combined the projects' powerplants and transmission systems for operational, power marketing, and repayment purposes. Irrigation development of the Integrated Projects was completed in accordance with plans contemplated in the authorizing legislation. Long-term contracts established the share of the costs allocated to irrigation that the irrigation districts would repay. The remaining irrigation development costs were assigned to be repaid from power revenues. An annual transfer of funds from the P-SMBP to the Integrated Projects is made in an amount sufficient to cover O&M expenses, repayment of the interest-bearing power investment, and replacements. In addition to these annual costs, payments are made periodically to repay the portion of the irrigation investment assigned to power.

The historical integrated project expenses are based on accounting records through September 30, 1982. Future expenses are based on studies which are conducted jointly by the Lower Missouri Region of the USBR and Western's Loveland-Fort Collins Area Office.

Interest

Rates of interest applicable to the interest-bearing commercial power investments (including interest during construction) were established in accordance with the Garrison Diversion Unit Act, Pub. L. 89-108, 89th Congress, August 5, 1965.

All investments in existing power generation facilities constructed by the Corps of Engineers and USBR were charged 3-percent interest from the date of investment to June 30, 1965. Thereafter, the interest rate on the unpaid balance of the investment allocated to commercial power is 2½ percent per annum for Corps of Engineers related investments and 3 percent per annum for USBR related investments. The commercial power investment in the transmission and operating facilities for the P–SMBP is divided between the 2½- and 3-percent interest rates. This division is made in the same ratio as that of the power generating capacity installed by the Corps of Engineers compared to the power generating capacity installed by the USBR.

Future power system investments beyond the scope of the Garrison Diversion Act of 1965 are subject to the current interest rate. That interest rate was 9½ percent at the time of the FY 1982 study.

Project Investment

Power Investments

The cumulative power investment and the allowable unpaid balance are increased by the cost of an investment in the year a facility is placed in service, and the allowable unpaid balance is correspondingly reduced by the amount of this investment 50 years later.

The interest-bearing power investments represented in the repayment studies are the total specific power costs plus a share of the multipurpose functions allocated to power, less the suballocation to interest-free irrigation. The historical data are based on accounting records through September 30, 1982. Future investments are projected through the budget period only and are based on cost estimates for FY 1984 budget justification.

Power Replacements

Beginning in FY 1973, future replacement costs were treated as capital investments and identified in repayment studies. Repayment periods associated with replacements are based on the estimated service life of each unit of property included in the total electric plant investment, but do not exceed 50 years. The units of property and service life factors used in this study to estimate future replacements beyond the budget period are based on an August 1981 publication entitled "Replacements-Units, Service Lives, Factors" published by the USBR and Western. The estimated service lives of the units of property reflect the retirements that have been experienced over the years with various facilities. The total P–SMBP electric plant investment (including that suballocated to irrigation for repayment purposes) is used in computing replacement costs.

The FY 1982 study and previous studies forecast future replacement costs based on the original installed cost of the facility. Beginning in FY 1973, the original installed costs are indexed to current cost levels for estimating replacement costs. The costs are not indexed beyond current levels, and do not reflect possible continued escalation of costs or expenses.

Historical replacement costs are based on accounting records through September 30, 1982. Estimated replacement costs for the immediate future are based on the program documents included with the FY 1984 budget justification dated December 1982. The estimated replacement costs beyond the budget period in the program documents are indexed to 1982 cost levels.

Irrigation

Required aid to irrigation reflects the cumulative P–SMBP irrigation investment to be repaid from power revenues after crediting revenues anticipated from irrigation and existing municipal and industrial water agreements. Repayment periods, except for existing units, reflect a development period after the unit becomes benefit-producing plus a 50-year repayment period.

Irrigation investment is comprised of three separate categories of units. The first category, "Existing Units," includes all units that have been constructed and are now in operation. All of the existing units were either constructed or under construction on June 30, 1964. The second category, called "Projects in Construction Phase," consists of individually itemized units which are under construction or for which construction is expected to be completed, all of which would require irrigation aid during the PRS or by the year 2082. The third category, "Other Units" includes those for which future development is anticipated. "Other Units," developed through the year 2022 would requie irrigation aid during the life of the study.

Future irrigation investments are based on 1982 cost levels. Assistance from power revenues is required by law to repay irrigation investment beyond the irrigators' ability to repay.

Order of Repayment

In accordance with repayment criteria, the repayment study first applies all revenues to payment of annual O&M and interest costs. An annual transfer of funds from P–SMBP is made to the Western Division Integrated Projects which is sufficient to cover the operation, maintenance and replacement (OM&R) expenses, repay the interest-bearing power investment, and make the aid to irrigation payments within their established repayment periods. These annual payments are treated as an operating expense by P–SMBP. Remaining revenues are applied to repayment of investment. Costs of each unit, division, or separable feature allocated to commercial power are repaid with interest on the unpaid balance. In no case does the repayment exceed 50 years from the date when the unit, division, or separable feature became revenue-producing. After repayment of these commercial power investments, revenues are utilized to provide aid to irrigation.

Basis for Rate Development

For the Eastern Division, the monthly demand charge was proportioned in accordance with the overall ratio of increase and rounded to an even $1.65/kW. The energy component was assigned the balance of the required increase. This structure yields a desirable split, approximately 50/50 between the demand and energy components of the rate schedule. The wide deversity of types of load in the service area results in customers with widely divergent load factors. An approximate 50/50 split between demand and energy components does not give unfair advantage or penalty to any one customer group.

Based upon the load characteristics of the Western Division's firm power obligation, a monthly capacity charge of $1.65 per kW (the same as the Eastern Division) together with an energy charge of 5.1 mills per kWh, will yield the required 8.54 mills per kWh average return. The proposed rate for peaking power is the same as the proposed firm power rate. The proposed transmission service rate was obtained by increasing the current transmission service rate by the ratio of the proposed firm power rate to the present firm power rate, and is expressed to the nearest one tenth of a mill.

The proposed effective date of the new rate schedules is the first day of the first full billing period beginning after January 1, 1985. This supersedes the language in 49 FR 26798, June 29, 1984, which states "The proposed rates are expected to go into effect on an interim basis with the beginning of the January 1985 billing period."

Discussion of Issues—Public Comments

Questions Regarding P-SMBP O&M Cost

Western received several requests from customers and other interested parties to show in greater detail the components making up O&M cost in the 1982 PRS. There was a mistaken perception by some who read the preliminary Draft Customer Rate Brochure that projected O&M costs had risen 36 percent between 1980 and 1982. Western's preliminary Draft Customer Rate Brochure actually showed an increase of 18 percent between the 100-year projections of O&M in the 1980 PRS versus the 100-year projections in the 1982 PRS. Also, some customers mistakenly assumed that Western had built a 9-percent-per-year inflation factor into its projected O&M expenses. Western responded that the increase in projected O&M costs between the two PRS's was 18 percent in the Draft Customer Rate Brochure, not 36 percent. In addition, Western reexamined some O&M data and assumptions related to O&M which resulted in reductions in projected O&M in the final 1982 PRS. In the final rate analysis, the 100-year projection of O&M expense was 13 percent higher than the 100-year projection of O&M expense in the 1980 PRS. Western also responded that a 9-percent inflation rate was not factored into projected O&M costs. Western's O&M expenses for the first 6 years of the study period are taken directly from budget documents. The O&M estimates for this "budget period" include any expected increases in the cost of materials and supplies, or additional work due to new facilities. Western does index costs and prices for materials and supplies during the budget period based on a targeted level provided by the Office of Management and Budget. Salary increases for General Schedule employees are not projected and union agreements for Wage Board employees are assumed to remain constant. All nonrecurring and extraordinary maintenance is removed from the estimate for the last year of the budget period, and the resulting "routine O&M expense" is held constant from the last budgeted year through the remainder of the 100-year projection period except for some slight variance in wheeling expense. Wheeling expense is adjusted annually up or down in proportion to firm power sales. In addition to these responses, Western sent to two parties a breakdown of O&M expense by major category; i.e., the Corps of Engineers, Western's Billings Area Office, Western's Loveland-Fort Collins Area Office, USBR's Lower Missouri and Upper Missouri Offices, and a breakdown of wheeling expenses. A further breakdown of O&M expense to identify funds spent on transmission lines, substations, communications, power marketing and other expenses was shown for Western's Billings and Loveland-Fort Collins Area Offices.

Questions Regarding Irrigation Aid

Several questions and comments were received concerning the amount of irrigation aid shown in the 1982 PRS and its effect on power rates. One commentor expressed full support for the ultimate development concept, but also expressed the thought that the increase in irrigation aid from $2.2 billion to $3.2 billion betwen the 1980 and 1982 PRS was not justified. Also questioned was the inflation rate used to estimate future irrigation aid. Another interested party also asked for the specific reasons why irrigation aid repaid increased $1 billion between the 1980 and 1982 PRS. In addition, they commented that presently authorized irrigation projects would be constructed by the year 2000 and were curious as to why irrigation aid continued to increase after that date. They also commented that the unpaid balance of irrigation aid continually increased throughout the 1982 PRS even as payments were being made toward that unpaid balance. They asked why this unpaid balance remained at the end of the study. In addition to these comments and questions on total irrigation aid, there were numerous inquiries regarding specific projects and data relating to total irrigation aid.

One party was specifically interested in obtaining information concerning the Norden Dam-O'Neill irrigation project. Their questions concerned the present cost of the project, its portion of irrigation aid, its effect on Western's power rates, the likelihood of increases in its cost estimate in future years, and the effect on power rates of cost overruns and inflation related to irrigation units. Another interested party asked what the effect would be on rural electric customers of any large irrigation project being constructed. Another inquiry was concerned about the content of the rule relating to the irrigators' "ability to pay" for irrigation projects and who determines these rules.

Western responded to these questions by saying that the increase from $2.2 to $3.2 billion in total irrigation aid repayment since the 1980 PRS is due both to an indexing of unit costs to October 1982 levels, and to the rescheduling of units. Approximately 75 percent of the $1 billion increase results from rescheduling of units. The remaining 25 percent results from cost indexing to October 1982; there is no inflation factor (beyond 1982) in this item. Formerly, the USBR scheduled units of the P-SMBP individually. Yearly updates saw many changes in near-term projects, while long-term projects went essentially unreviewed. Over the years, these changes resulted in a discrepancy between scheduled acres and the P-SMBP "Ultimate Development" acreage total.

"Ultimate Development," for purposes of financial management of the P-SMBP, is defined in terms of the total acreage (3,768,000 acres) incorporated in the 1958 study, "Economic Analysis: Missouri River Basin Project." That acreage was validated by congressional review, and corresponds to the Corps of Engineers main stem cost allocations of the same year. Beginning with the 1981 PRS, the USBR changed their unit scheduling approach. Proposed units of the P-SMBP are now individually scheduled only if the unit has been reauthorized, and the USBR is actively seeking construction funds from Congress. Remaining acres of the P-SMBP are scheduled over the remainder of a 100-year development period based on an equal annual schedule resulting in a composite investment over the period.

The reason there is an unpaid balance at the end of the study is that after 1995, irrigation construction continues at about $67.5 million per year through 2082. Through 2082, slightly less than $67.5 million is being paid off per year; thus a net increase in the balance to be repaid results. Each $67.5 million increment of construction has a 60-year repayment period (50-year repayment plus 10-year development).

Therefore, to actually pay the last increment of construction, the study would have to be run to approximately the year 2142 (2082 + 60 years). Since the study is only run to 2082, a 100-year period, an "unpaid" balance is observed.

In regard to the questions concerning the Norden Dam-O'Neill Unit, Western responded that financial aid to irrigation for the O'Neill Project, estimated at approximately $304 million, is included in the base for the current proposed rate increase. This estimate is an increase of approximately $31 million over the estimate used in the FY 1980 PRS. Of the total increase to irrigation aid, 1.6 percent is attributable to the O'Neill Project. (The total increase is from $5.3 billion to $7.2 billion, or $1.9 billion.) The total estimated cost of the O'Neill Project, as of September 1981, is approximately $368.7 million. Of this amount, approximately $304 million would be repaid by power. As current information becomes available, all project costs are increased (or decreased) to reflect the latest data.

Therefore, the construction cost estimate for the O'Neill Project will be adjusted as the USBR's most current estimates dictate. As the USBR estimates change, whether they increase or decrease, the changes will be reflected in the PRS.

Inflation or deflation has an effect on the rate at such time as one or the other is reflected in the data elements that go into the PRS. Inflationary trends would eventually show up as increased estimated costs and have an upward effect on rates. Deflation would cause decreases in estimated costs and would have a downward effect. Cost overruns will show up as increases in actual costs, and have the effect of raising rates; if projects come in under estimated costs, the effect is to suppress rates. Western runs a PRS every year. These costs, actual or estimated, increasing or decreasing, will impact the study when they are entered into the data base from which the PRS is run.

In answer to the question of the effect on power rates caused by the construction of a large irrigation project, Western responded that repayment of irrigation features of the P-SMBP is conducted under the ultimate development concept. Although the acreage and pumping power requirements are fixed under this concept, the scheduling of the construction of the individual projects in not. PRS's conducted annually by Western utilize the latest construction schedules available from the USBR. If a large irrigation project were constructed according to previously anticipated schedules, and at previously estimated costs, there would be no impact on the PRS's nor on the firm power rates of our customers. Because of the 100-year scope of the PRS's, there is the possibility that an acceleration in scheduling and subsequent project construction could require that a project be repaid within the current PRS's 100-year term, where previously that had not been the case. That increase in payments would be reflected in the firm power rate. The reverse of the above situation could also occur. Scheduling could be delayed to the extent that a project previously requiring repayment within a current PRS could fall outside the scope of a subsequent PRS. This would tend to delay the need for a rate increase. Consideration is given to the ultimate development irrigation pumping requirements during any marketing study. As scheduled irrigation projects come into existence, there are three impacts on the firm power customers: (1) Water is depleted from the hydrosystem so there is less Federal generation available to sell as firm power; (2) more of the available hydrogeneration must be used in the form of pumping power, again, less of the resource is available for firm power users; and (3) there is less revenue available for repayment because more of the resource is being sold at the 2½-mill/kWh pumping rate which is lower than the firm power rate. Any loss in revenue is reflected in higher firm power rates.

Rate Level and Structure

Several comments contained suggestions that the irrigation pumping rate be changed from 2.5 mills to a level that would reflect increasing OM&R power costs. Another suggestion concerning rate structure was that the increase in firm power rates be implemented in two equal annual increases instead of a single application.

Western responded that the project pumping rate of 2.5 mills/kWh was initially recommended in Senate Document 191. The project pumping rate is a responsibility of the USBR, and efforts are underway by the USBR to determine if this rate is still adequate. There is a possibility that a change may require congressional notification. Until such time as the existing rate is changed, Western feels compelled to use it in the PRS's.

The absolute magnitude of the impact on the ultimate consumer caused by this proposed rate increase does not appear to justify a two-step implementation. An increase of 1.34 mills/kWh on only that portion of the energy purchased by the ultimate consumer is very small when compared to the current retail rate, which is estimated to be in excess of $0.05 per kWh.

Replacements

One comment was concerned with how replacement costs were estimated and what rate of inflation was used in making these estimates. In addition, the commentors asked if these replacement facilities were included in the Joint Transmission System (JTS) and were being paid for in the JTS rate. Another questioner asked why projected replacements vary so dramatically from year to year, instead of being paid in equal annual installments.

Western responded that costs for future replacements are indexed to the study year (in this instance 1982 dollars) and the frequency of replacement is projected on the basis of the expected service lives of categories of facilities that make up the total power system investment, except costs of nonreplaceable items (such as lands, dams, and reservoirs) which are allocated to power. The replacement projections are accomplished through the use of a computer program which estimates future annual replacements based on replaceable investment by plant account for the study rather than showing the replacement of individual pieces of equipment.

Replacements are repaid with interest over their useful lives. However, they are not repaid in equal annual installments. Repayment of replacements is done in the same manner as repayment of investments; i.e., they have a specific length of time within which they must be fully repaid, and highest interest-bearing groups are repaid first within those specific periods. All, or only a fraction, of a replacement cost may be paid in the first year of its repayment period, the last year of its repayment period, or any year in between. The only requirement is that the total replacement cost (plus interest) be recovered within the allotted repayment period.

Western's replacements occur in a cyclical manner, with different equipment having different useful lives. The study projects high replacement costs in some years and low replacement costs in others, based on an analysis of historic replaceable investment by plant accounts as published in the August 1981 booklet entitled "Replacements—Units, Service Lives, Factors" published jointly by the USBR and Western.

The cost of the P-SMBP transmission system which serves as Western's share of the JTS is included in PRS. However, this inclusion of costs is negated because Western also includes the revenue received from JTS payments to reduce commensurately the revenue which the firm power rate must yield.

Miscellaneous Issues

An inquiry was made as to Western's method of choosing a test year or critical year for revenue requirements. Western does not target a specific test year. Western is required to generate revenues sufficient to cover annual expenses as well as any required payments during the 100-year study period.

In each year, the study repays costs in the following priority:

(1) Annual expenses (O&M, interest, integrated projects, and purchased power);

(2) Power replacements and investments;

(3) Irrigation aid.

Power investment must be repaid within 50 years from an inservice date, while irrigation aid has 50 years plus a development period, usually totaling 60 years, before required payment. Replacements have various repayment periods ranging from 10 years to 50 years. A rate adjustment is triggered if, for any year of the 100-year projection period of the RPS, there is an amount of required payments combined with annual expenses such that revenues will not offset all of the costs. Whatever year within the 100-year study period that this occurs is, in effect, Western's "test year."

Several parties wanted assurance that the procedures used to conduct the 1982 PRS were not altered from those historically used. Western responded that the procedures used in the 1982 PRS, based upon a cost-based approach, have not deviated from those used in past studies.

These procedures will continue to be used in future power repayment studies, barring congressional or other actions which might alter the overall repayment methodology.

FERC Comments

In its "Order Confirming and Approving Rate Schedules Noting Interventions and Denying Requests for Hearing" issued February 17, 1984, FERC raised two issues that they felt should not continue unchecked indefinitely. The first of these involves the length of time Western allows certain irrigation projects to be repaid. According to FERC.

> . . . an examination of WAPA's PRS indicates that investments made during the years 1950–1980 improperly reflect repayment periods ranging from 61 to 83 years for irrigation projects. The repayment criteria recommended in the December 1963 Special Study B–5 report (which recommendations were considered and endorsed by Congress with the passage of section 4(b) of the Garrison Diversion Act), provide that irrigation projects should be repaid within 50 years plus a maximum permissible development period of 10 years. There is no indication that the Administrator has intentionally deviated from this recommendation here, and WAPA's next PRS should be adjusted accordingly or provide a justification for the deviation.

Western responds that the December 1963 Special Study B–5 report also states on page 42 that:

> Costs relating to specific irrigation units (this includes mainstem reservior storage and irrigation pumping power cost assignments if appropriate) contructed or under construction on June 30, 1964, would be returned within the earliest practicable time period after completion of repayment of interest-bearing commercial power investment. These costs would be fully repaid with net power revenues before any such revenues would be made available for return of costs relating to irrigation units to be placed under construction subsequent to June 30, 1964.

In both the 1980 and the 1982 PRS's, all irrigation projects constructed or under contruction on June 30, 1964, are repaid after completion of repayment of interest-bearing commercial power investment and before repayment from power revenues begins for irrigation units placed under construction subsequent to June 30, 1964. Thus, Western has confirmed that the irrigation repayment criteria set down by Special Study B–5 are being adhered to correctly.

The second issue raised by FERC relates to the application of current interest rates to project additions and replacements. FERC's comments in this regard are as follows:

> . . . we note that WAPA's does not reflect current interest rate on project additions and replacements as indicated in the February 1982 Customer Brochure on the P–SMBP (P.V–3). Instead, WAPA computes interest expenses on project additions and replacements utilizing 2.5% and 3% interest rates for certain facilities. WAPA defends this practice in a letter dated January 13, 1983, stating that 2.5% and 3% interest rates are authorized in section 9(c) of the 1939 Reclamation Act and section 4(b) of the Garrison Diversion Act. However, while those statutes do permit the use of the specified interest rates on existing and authorized facilities, we are unable to find statutory authority for using those interest rates on project additions and replacements. Accordingly, WAPA should compute interest expenses on project additions and replacements utilizing a current interest expense as specifically required by DOE Order No. RA 6121.2.[14]
>
> It therefore appears that the Assistant Secretary has *not* waived this provision under RA 6120.2, and indeed, intends that the current interest rate be applied to project additions and replacements.

Western responds that section 4(d) of the Garrison Diversion Act states that:

> From and after July 1, 1965, the interest rate on the unamortized balance of the investment allocated to commercial power in facilities constructed or under construction on June 30, 1965, by the Department of the Army in the Missouri River Basin, the commercial power from which is marketed by the Department of the Interior, and in transmission and marketing facilities associated therewith, shall be 2½ per centum per annum.

Until 1982, the position of Western, and of the USBR prior to Western, was that a portion of all additions to and replacements of transmission and marketing facilities was associated with the Department of the Army facilities constructed or under construction on June 30, 1965. The remaining portion of additions to and replacements of transmission and marketing facilities was associated with USBR investments bearing interest at 3 percent per year. In 1982, Western reappraised this position was concluded that all the transmission and marketing facilities associated with the Department of the Army facilities constructed or under construction on June 30, 1965, have been constructed, and that beginning with 1982 all additions and replacements would be subject to current interest rates pursuant to DOE Order No. RA 6120.2.

However, an exception was provided for the P–SMBP to allow updating of automatic data processing programs to accommodate these interest rate changes. This updating has been completed, and Western's new additions and replacements in the P–SMBP will be subject to current interest rates beginning with the FY 1983 PRS.

Other Considerations

Environmental Analysis

In accordance with DOE Guidelines for Compliance with the National Environmental Policy Act of 1969 (NEPA) published in the **Federal Register** (45 FR 20694–20701, 48 FR 685–686), Western determined that under section D of these guidelines an environmental assessment (EA) was required for compliance with NEPA. Section D states that for rate adjustments for PMAs, the need for an EA is dependent on the magnitude of the proposed rate adjustment in comparison to the rate of overall inflation over the same time period. In this case, the rate of inflation was exceeded by the proposed rate adjustment, and an EA was prepared.

Other DOE guidelines (Memorandum to the Director, Office of Power Marketing Coordination, April 13, 1979) stipulate other aspects that need to be addressed in the EA. These include:

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[14] We (FERC continued) note in this regard that the order signed by the AS/CE states: Interest rates of 2½ and 3 percent are used on *existing and authorized transmission facilities* and on *existing generating facilities* in accordance with provisions of the Garrison Diversion Act of August 5, 1965. *New investments* beyond the scope of that act are *subject to the current interest* rate . . . (emphasis added)

1. The percentage of total power requirements in the service area supplied by the PMA.

2. The relative prices of PMA supplied power and other sources.

3. The level of induced fuel switching that might occur as a result of the proposed rate increase.

4. The socioeconomic impact to the consumer.

The EA prepared by Western addressed the potential impact of the proposed rate adjustment on both the physical/natural environment and on socioeconomics. As the adjustment would not involve any new construction, or result in a change from the present pattern of operations, the physical and natural environment will not be impacted by the action. Furthermore, as Federal hydropower will remain far less expensive than alternative sources, no secondary environmental effects resulting from, for example, increased thermal generation or fuel switching will occur.

Socioeconomic effects were measurable. Though the percent increase of Federal hydropower was rather large at the wholesale level, at the consumer level rate blending had reduced the increase to a modest 2.1- to 2.4-percent increase to consumers purchasing their power from municipal utilities, and 0.7- to 0.9-percent increase to consumers purchasing from cooperatives.

The conclusions of the final EA were that no significant impact would occur to the human environment as a result of the proposed action. Consequently, Western has requested that a Finding of No Significant Impact determination be made for this action.

Submission to FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm, approve, and place in effect on an interim basis, effective the first day of the first full billing period after January 1, 1985, Rate Schedules P-SED-F2, P-SED-FP2, P-SWD-F2, P-SWD-FP2, P-SWD-T3, and P-SWD-T4. These rate schedules shall shall remain in effect on an interim basis until the FERC confirms and approves them or substitute rates, on a final basis.

Issued in Washington, D.C., November 28, 1984.

Danny J. Boggs,

Deputy Secretary.

DEPARTMENT OF ENERGY

Western Area Power Administration, Billings Area Office

[Schedule P-SED-F2 (Supersedes Schedule P-SED-F1)]

Pick-Sloan Missouri Basin Program, Eastern Division, Schedule of Rates for Wholesale Firm Power Service

Effective

The first day of the first full billing period beginning after January 1, 1985.

Available

In the area served by the Eastern Division of the Pick-Sloan Missouri Basin Program.

Applicable

To wholesale power customers for general power service normally supplied through one meter at one point of delivery, or at the voltage and delivery points designated in the power sales contract.

Character and Conditions of Service

Alternating current, 60 hertz, three-phase, delivered and metered at the voltage and points established by contract.

Monthly Rate

Capacity Charge

$1.65 per kilowatt of billing demand.

Energy Charge

4.41 mills per kilowatthour for all energy use up to and including that associated with a 60 percent load factor.

7.79 mills per kilowatthour for all additional energy use up to, but not in excess of, the delivery obligations under the power sales contract; provided that any contract provisions regarding minimum energy purchase requirements will be modified at the customer's request to reduce said minimum to an amount associated with a 60 percent load factor.

Billing Demand

The billing demand will be the highest 30-minutes integrated demand established during the month up to, but not in excess of, the delivery obligation under the power sales contract.

Minimum Bill

$1.65 per month per kilowatt of the effective contract rate of delivery.

Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overruns shall be billed at ten (10) times the above rate.

Adjustments

For Character and Conditions of Service. Customers who receive deliveries at transmission voltage may in some instances be eligible to receive a 5 percent discount on capacity and energy charges when facilities are provided by the customer which result in a sufficient savings to the United States to justify the discount. The determination of eligibility for receipt of the voltage discount shall be exclusively vested in the United States.

For Transformer Losses. If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased 2 percent to compensate for transformer losses, unless the power customer, the transmission agent (if any), and the auxiliary supplier agree to use calculated or measured transformer losses.

For Power Factor. None. The customer will normally be required to maintain a power factor at the point of delivery between 95 percent lagging and 95 percent leading.

DEPARTMENT OF ENERGY

Western Area Power Administration, Billings Area Office

[Schedule P-SED-FP2 (Supersedes Schedule P-SED-FP1)]

Pick-Sloan Missouri Basin Program, Eastern Division, Schedule of Rates for Wholesale Peaking Power Service

Effective

The first day of the first full billing period beginning after January 1, 1985.

Available

Within and adjacent to the marketing area of the Eastern Division of the Pick-Sloan Missouri Basin Program.

Applicable

To customers with generating resources enabling them to utilize it.

Character and Conditions of Service

As specifically established by contract. Delivery will be made from the transmission system of the United States at transmission voltages, and normally only during peak hours of the purchaser's load. Return of all energy furnished shall normally be required.

Monthly Rate

Capacity Charge

$1.65 per kilowatt of the effective contract rate of delivery for peaking power or the maximum amount scheduled, whichever is the greater.

Energy Charge

4.41 mills per kilowatthour for all energy scheduled for delivery without return.

Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual obligation for peaking capacity and/or energy, such overrun shall be billed at ten (10) times the above rate.

Adjustments

For Power Factor

None. The customer will normally be required to maintain a power factor at the point of delivery between 95 percent lagging and 95 percent leading.

DEPARTMENT OF ENERGY

Western Area Power Administration, Loveland-Fort Collins Area Office

[Schedule P-SWD-F2 (Supersedes Schedule P-SWD-F1)]

Pick-Sloan Missouri Basin Program, Western Division, Schedule of Rates for Wholesale Firm Power Service

Effective

The first day of the first full billing period beginning after January 1, 1985.

Available

In the area served by the Western Division of the Pick-Sloan Missouri Basin Program.

Applicable

To wholesale power customers for general power service normally supplied through one meter at one point of delivery, or at the voltage and delivery points designated in the power sales contracts.

Character and Conditions of Service

Alternating current, 60 hertz, three-phase, delivered and metered at the voltage and points established by contract.

Monthly Rate

Capacity Charge

$1.65 per kilowatt of billing demand.

Energy Charge

5.1 mills per kilowatt hour for all energy use up to, but not in excess of, the delivery obligation under the power sales contract.

Billing Demand

The billing demand will be the highest 30-minute integrated demand established during the billing period up to, but not in excess of, the delivery obligation under the power sales contract.

Minimum Bill

$1.65 per month per kilowatt of the effective contract rate of delivery.

Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overruns shall be billed at ten (10) times the above rate.

Adjustments

For Character and Conditions of Service

Customers who receive deliveries at transmission voltage may in some instances be eligible to receive a 5 percent discount on capacity and energy charges when facilities are provided by the customer which result in a sufficient savings to the United States to justify the discount. The determination of eligibility for receipt of the voltage discount shall be exclusively vested in the United States.

For Transformer Losses

If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For Power Factor

None. The customer will normally be required to maintain a power factor at the point of delievery of between 95 percent lagging and 95 percent leading.

DEPARTMENT OF ENERGY

Western Area Power Administration Loveland-Fort Collins Area Office

[Schedule P-SWD-FP2 (Supersedes Schedule P-SWD-FP1)]

Pick-Sloan Missouri Basin Program, Western Division; Schedule of Rates for Wholesale Peaking Power Service

Effective

The first day of the first full billing period beginning after January 1, 1985.

Available

In the area served by the Western Division of the Pick-Sloan Missouri Basin Program.

Applicable

To wholesale power customers purchasing such service under long-term contracts. Because of the nature of this class of service, it is applicable only to customers with other resources enabling them to utilize it.

Character and Condition of Service

As specifically established by contract. Delivery will be made from the transmission system of the United States at transmission voltage and normally only during peak hours of the purchaser's load. Return of all energy furnished shall normally be required.

Monthly Rate

Capacity Charge

$1.65 per kilowatt of the effective contract rate of delivery for peaking power or the maximum amount scheduled, whichever is greater.

Energy Charge

5.1 mills per kilowatthour for all energy scheduled for delivery without return.

Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overruns shall be billed at ten (10) times the above rate.

Adjustments

For Power Factor

None. The customer will normally be required to maintain a power factor at the point of delivery of between 95 percent lagging and 95 percent leading.

DEPARTMENT OF ENERGY

Western Area Power Administration Loveland-Fort Collins Area Office

[Schedule P-SWD-T3 (Supersedes Schedule P-SWD-T1)]

Pick-Sloan Missouri Basin Program, Western Division Schedule of Rates for Firm Transmission Service

Effective

The first day of the first full billing period beginning after January 1, 1985.

Available

In the area served by the Western Division of the Pick-Sloan Missouri Basin Program.

Applicable

To firm transmission service customers where power and energy are supplied to the Western Division system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the Western Division system specified in the service contract.

Character and Conditions of Service

Transmission service for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Rate

Transmission Service Charge

1.3 mills per kilowatthour delivered at the point of delivery or $11.40 per year for each kilowatt contracted for at the point of delivery, as specified in the contract; payable monthly at the rate of 1.3 mills per kilowatthour or $0.95 per kilowatt of effective contract rate of delivery.

Adjustments

For Reactive Power

None. There shall be no entitlement to transfer of reactive kilovoltamperes at delivery points, except when such transfers may be mutually agreed upon by Contractor and Contracting Officer or their Authorized Representatives.

For Losses

Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

DEPARTMENT OF ENERGY

Western Area Power Administration, Loveland-Fort Collins Area Office

[Schedule P-SWD-T4 (Supersedes Schedule P-SWD-T2)]

Pick-Sloan Missouri Basin Program, Western Division, Schedule of Rates for Nonfirm Transmission Service

Effective

The first day of the first full billing period beginning after January 1, 1985.

Available

In the area served by Pick-Sloan Missouri Basin Program, Western Division.

Applicable

To nonfirm transmission service customers where power and energy are supplied to the Western Division systems at points of interconnection with other systems and transmitted and delivered subject to the availability of transmission capacity, less losses, to points of delivery on the Western Division systems specified in the service contract.

Character and Conditions of Service

Transmission service on an intermittent basis for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Rate

Transmission Service Charge

1.3 mills per kilowatthour delivered at the point of delivery for each kilowatthour schedule; payable monthly.

Adjustments

For Reactive Power

None. There shall be no entitlement to transfer of reactive kilovoltamperes at delivery points, except when such transfers may be mutually agreed upon by Contractor and Contracting Officer or their Authorized Representatives.

For Losses

Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

[FR Doc. 84-31943 Filed 12-6-84; 8:45 am]

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federal register

Friday
December 7, 1984

Part V

Department of the Treasury

Customs Service

19 CFR Part 10

Caribbean Basin Initiative and Generalized System of Preferences; Final and Proposed Rules

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 84-237]

Customs Regulations Amendments Relating to Caribbean Basin Initiative and Generalized System of Preferences

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to implement the provisions of the Caribbean Basin Economic Recovery Act which created an economic recovery program for nations of the Caribbean and Central America and provided for the waiver of duties until September 1995 on most products imported from any of the designated beneficiary countries. On January 5, 1984, the interim Customs Regulations were published as T.D. 84-14 in the **Federal Register** (49 FR 852). This present document, in part, sets forth the final regulations on the Caribbean Basin Initiative and, consistent with statutory differences, modifies the "imported directly" provisions of the Generalized System of Preferences to conform them to the definition of "imported directly" used in the Caribbean Basin Initiative.

DATE: This rule is effective on January 7, 1985.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: William L. Marchi, Duty Assessment Division (202-566-2957); Legal Aspects: Francis W. Foote, Esq., Classification and Value Division (202-566-2938);

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

SUPPLEMENTARY INFORMATION:

Background

Subtitle A, Title II, Pub. L. 96-67, the Caribbean Basin Economic Recovery Act (the "Act"), commonly referred to as the Caribbean Basin Initiative (CBI), implements an economic recovery program for nations of the Caribbean and Central America. The Act provides for the waiver of duties until September 30, 1995, on most products imported from any of the Caribbean and Central American countries designated as beneficiary countries. Beneficiary countries must meet several criteria before the President is authorized to designate them as eligible under the CBI. Further, certain products cannot be declared duty-free. Under other provisions of law, duty-free treatment can be withdrawn for articles imported in such quantities as to cause injury to a competing U.S. industry. A rule of origin specifies under what conditions articles will be considered products of a beneficiary country, and, therefore, entitled to duty-free entry.

Pursuant to Presidential Proclamation 5133 dated November 30, 1983 (48 FR 54453), the President designated the countries and territories or successor political entities set forth in the Annex to the Proclamation as "beneficiary countries", thus conferring duty-free treatment for all eligible articles from those beneficiary countries. This action was effective with respect to all articles that were entered, or withdrawn from warehouse for consumption, on or after January 1, 1984, and on or before September 30, 1995. Presidential Proclamation 5142 of December 29, 1983 (49 FR 341), amended Presidential Proclamation 5133 and the Annex to that document to extend the benefits of the Act to additional Caribbean and Central American countries.

To implement the duty-free aspects of the CBI, Customs published interim regulations as T.D. 84-14 in the **Federal Register** on January 5, 1984 (49 FR 852). The interim regulations provided for a 60-day public comment period which was subsequently extended by a notice published in the **Federal Register** on March 8, 1984 (49 FR 8600), to May 4, 1984.

Numerous comments were received in response to the interim regulations. A particularly large number of comments were received on § 10.198 of the interim regulations which concerns the documentary evidence of country of origin and requires the submission of a declaration of the manufacturer or exporter together with an endorsement thereof by the importer or consignee. In light of the comments received and the changes Customs deemed necessary, it was decided to modify the provisions of § 10.198 and republish them as an interim regulation for further public comment. The document containing the modified § 10.198 is set forth elsewhere in this issue of the **Federal Register**. A complete discussion of the comments received and the analysis of those comments is contained in that document. The discussion of comments received on all other aspects of the interim regulations is set forth below:

Discussion of Comments

A. Foreign Trade Zones

Four comments were received concerning the manner in which foreign trade zones (FTZs) can be used for the purpose of adding value in the U.S. or Puerto Rico. These commenters were of the opinion that the interim regulations prevent or discourage the use of FTZs as production locations in contravention of the aim of the CBI which was both to create jobs in the U.S. and in the Caribbean Basin and to integrate the Caribbean Basin into the U.S. economic framework. One commenter suggested that, in order to embody the basic understanding and intent behind the CBI legislation, the following principles should be accepted by Customs in interpreting the statute: (1) Products which are considered to have originated in a beneficiary country and which meet the value-content requirement at the time of entry will not be disqualified from duty-free treatment under the direct importation rule merely because they pass through an FTZ prior to entry, and (2) subject to the 15 percent maximum limitation, the cost or value of any materials produced in a U.S. FTZ and included in an article may be counted toward the value-added requirement. Two commenters specifically recommended that § 10.195 be amended to provide (1) that U.S. FTZs be considered U.S. customs territory, (2) that temporary residency, handling, or processing of otherwise qualified merchandise in an FTZ not disqualify previously added value or origin attributed to a beneficiary country, and (3) that value added in an FTZ may, to the allowable limit, be included for purposes of determining the total value added in beneficiary countries. One of these commenters further suggested that these stipulations should be subject to appropriate documentary and procedural controls to be established by Customs.

As concerns the direct importation issue, a review has been made of prior rulings issued both under the GSP and in other contexts. The GSP rulings have concluded that merchandise which passes through an FTZ after exportation from a beneficiary developing country, but prior to entry, is considered to have been imported directly for purposes of the GSP. In addition, in another ruling it was held that the 5-year limitation for merchandise to remain in a Customs bonded warehouse commenced not on the date when the merchandise was transferred from an FTZ to the warehouse, but rather on the date when the merchandise originally entered the FTZ, which was the date of importation for Customs purposes. This latter ruling specifically revoked that portion of an earlier ruling which stated that "merchandise is deemed to have been imported into the Customs territory at the time of its constructive transfer from the zone" to the bonded warehouse. Since the clear implication arising from these rulings is that merchandise does not lose its status of having been imported into the customs territory merely from the fact that it subsequently passed through an FTZ prior to entry, Customs agrees that such merchandise would not be disqualified from CBI duty-free treatment by application of the direct importation requirement so long as the merchandise had been imported directly from a beneficiary country prior to its entry into the FTZ. Customs believes that it is not necessary or appropriate to amend § 10.193 of the interim regulations to clarify this point because it was never considered necessary to amend the corresponding GSP regulation in this respect, and an otherwise direct importation involving subsequent use of an FTZ prior to entry is covered by § 10.193(a) of the CBI regulations.

With regard to the other comments and proposals made on the FTZ issue, Customs notes the following:

Section 213(a)(1) of the CBI statute refers to the cost or value of materials "produced in the customs territory of the United States" as being includable in an article (up to 15 percent of the appraised value) for purposes of the value-added requirement. In light of this statutory language, and in consideration of the fact that under the Foreign-Trade Zones Act (19 U.S.C. 81a–81u), and the regulations issued thereunder (19 CFR Part 146), FTZs are treated as being outside the customs territory, Customs is of the opinion that there is no latitude to provide that the cost or value of materials produced in a U.S. FTZ may be counted toward the value-added requirement.

As to FTZs located in Puerto Rico, § 213(a)(1) of the CBI statute defines "beneficiary country" as including "the Commonwealth of Puerto Rico" for purposes of the value-content requirement but without any reference to the customs territory. Thus, the cost or value of a material produced in (and the direct costs of processing operations incurred in) an FTZ located in Puerto Rico may be counted toward that requirement. While this could result in unequal treatment as between U.S. and Puerto Rican FTZs, this appears to be unavoidable based on the special status of Puerto Rico under the statute.

Finally, it would be inappropriate to provide in these regulations that FTZs are to be considered as part of the customs territory since this would create a direct conflict with the FTZ Act and the regulations issued thereunder. Nor can these regulations permit unrestricted processing in an FTZ since a substantial transformation of an article in an FTZ located in the U.S. or Puerto Rico immediately prior to entry would cause the article to lose its status as a product of a beneficiary country.

Therefore, in addition to allowing merchandise entered into an FTZ to be considered directly imported, the only points set forth in the comments to which Customs agrees are (1) that temporary residency, handling, or processing (short of a substantial transformation) of an article would be permissible and would not disqualify previously added value, and (2) that value added to an article in an FTZ, subject to the statutory limitation as concerns U.S materials, may be counted toward the value-added requirement. Because the CBI regulations do not mention FTZs and thus do not on their face preclude these conclusions, there does not appear to be any necessity to amend those regulations to further clarify these points. Finally, it should be noted that the movement of merchandise into and out of FTZs under these circumstances would be subject to the documentary and procedural controls established under the FTZ Act and under § 10.198(c)(3) of the CBI interim regulations. (As discussed earlier, the document containing the modified § 10.198(c)(3) is set forth elsewhere in this issue of the **Federal Register**).

B. Addition of Value in Puerto Rico

Four comments were received concerning the role of Puerto Rico under the CBI, specifically as regards the addition of value to a partially manufactured article in Puerto Rico at the end of the manufacturing process (the "twin-plant" concept). These commenters stated either that the regulations do not address the question of the circumstances under which goods may enter Puerto Rico for the purpose of adding value, or that the regulations do not provide any guidelines concerning what types of controls will be exercised over the goods once they have entered Puerto Rico. The following specific proposals were made:

1. The scope of activities in Puerto Rico should not be limited to the use of foreign trade zones or Customs bonded warehouse facilities. The regulations should provide for the provisional duty-free entry of merchandise for the purpose of adding value anywhere in Puerto Rico either under a bonding procedure (whereby a bond would be taken in an amount to cover the potential duty, with cancellation of the bond upon presentation of documentary evidence to show that the merchandise after processing qualifies for CBI duty-free treatment) or for a period of up to 120 days pending the filing of a CBI entry for the finished goods.

2. Customs should develop guidelines concerning (a) the type of supervision to be exercised over the Puerto Rican operations, (b) whether the article must remain in Customs custody, (c) how long the article may remain in Puerto Rico prior to formal entry, and (d) how Customs will verify that the processing in Puerto Rico has been accomplished as claimed.

3. The regulations should clarify the following points: (a) That the entire 35 percent value requirement need not be satisfied when the article enters Puerto Rico from a beneficiary country in order to meet the imported directly requirement; (b) that value added in Puerto Rico and value added subsequently in a beneficiary country may both be taken into account when the article reenters Puerto Rico for further processing in order to meet the value-content requirement (this commenter also wants Puerto Rico to be specifically mentioned in one of the examples in § 10.196(a) and on the declaration of the manufacturer or exporter); and, (c) that the portion of a process started in Puerto Rico and the portion executed in a beneficiary country may be taken into account together to meet the substantial transformation test.

Under General Headnote 2, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), the customs territory includes the Commonwealth of Puerto Rico. Therefore, the procedures governing the importation and entry of merchandise into the U.S. are also applicable to Puerto Rico. Under present law, merchandise may be imported into the customs territory and may remain there without the filing of a consumption entry (at which time the dutiable status of the merchandise is normally determined) only under the following circumstances:

1. Under 19 U.S.C. 1557 and 1562 and Part 144, Customs Regulations (19 CFR Part 144), merchandise may be sent to a Customs bonded warehouse for storage, cleaning, sorting, or repacking (*i.e.*, for manipulation but not for manufacture). Such merchandise may be subsequently withdrawn from warehouse for consumption and, under 19 U.S.C. 1315, the dutiable status of the merchandise is determined at the time of withdrawal. Inasmuch as no manufacturing operation may be performed in these warehouses, there is a practical limit as to the amount of Puerto Rican value which may be added to the merchandise while in the warehouse.

2. Under 19 U.S.C. 1311 and Part 19, Customs Regulations (19 CFR Part 19), merchandise may be sent to a Customs bonded manufacturing warehouse. Under the statute and § 19.15, Customs Regulations (19 CFR 19.15), imported merchandise subjected to a manufacturing process in such a warehouse may not be withdrawn for consumption but rather must be exported.

3. Under item 864.05, TSUS, and § 10.31, Customs Regulations (19 CFR 10.31), merchandise may be imported under a temporary importation bond (TIB) for repair, alteration, or processing (including manufacture). Although merchandise imported under a TIB does not remain in Customs custody (*e.g.* in a Customs bonded warehouse), the statute and regulations require that the imported merchandise be exported or destroyed under Customs supervision within 1 year (or within up to 3 years if extensions are granted) from the date of importation. Failure to export or destroy the merchandise within the required time period will subject the importer to the payment of liquidated damages. This provision effectively bars the addition of value in Puerto Rico at the tail end of the manufacturing process.

Following passage of the CBI statute, section 213(a) thereof was amended by Pub. L. 98–573 which was signed by the President on October 30, 1984, to provide that, notwithstanding 19 U.S.C. 1311, the products of a beneficiary country which are imported directly from such country into Puerto Rico may be entered into a bonded manufacturing warehouse in Puerto Rico. The Public Law also provides that the finished product may be withdrawn from warehouse for consumption and no duty will be imposed on the withdrawal of the product of such processing or manufacturing so long as the product meets the 35 percent value-content requirement at the time of withdrawal. Customs believes that this amendment was specifically intended to allow processing or manufacturing in Puerto Rico at the tail end of the manufacturing process so as to enable a product to meet the 35 percent value-content requirement. Moreover, since the amending language refers specifically to 19 U.S.C. 1311, it appears that the intent was to allow the addition of such value in a Customs bonded manufacturing warehouse without the requirement for exportation; Customs does not believe that this amendment constitutes authority to establish new bonding procedures in addition to those established under 19 U.S.C. 1311. However, this amendment results in a significant change in the CBI rules of origin since a product could be substantially transformed in the warehouse so as to lose its status as a product of a beneficiary country but would still be entitled to duty-free treatment upon withdrawal provided that (1) the article entered in the warehouse was a product of, and was imported directly from, a beneficiary country, and (2) the article withdrawn from the warehouse meets the 35 percent value-content requirement.

As concerns the proposal to amend the CBI regulations to provide for the provisional duty-free entry of merchandise for the purpose of adding value in Puerto Rico, Customs is of the opinion that there is no statutory authority which would permit such an amendment. Moreover, the need for such provisional duty-free entry would appear to be obviated by the CBI statutory amendment discussed above which was passed after receipt of the comments. Nor does Customs believe that it is necessary to develop new guidelines, in these regulations or otherwise, concerning procedural controls to cover the addition of value in Puerto Rico; the existing statutory and regulatory procedures, *e.g.*, as concerns the entry of merchandise in a Customs bonded warehouse and the withdrawal of merchandise therefrom, will control in these cases. The requirements concerning the documentary evidence of country of origin under the CBI, as set forth elsewhere in this issue of the **Federal Register**, specifically cover a case involving the addition of value in Puerto Rico after final exportation from a beneficiary country.

As concerns the suggestion that the regulations should clarify three specific points, Customs is of the opinion that those points are covered by the basic CBI statutory and regulatory provisions and need not be further addressed. However, the following should serve to clarify those points:

1. The entire 35 percent value requirement does not have to be satisfied when the article enters Puerto Rico from a beneficiary country in order to meet the direct importation requirement. The value requirement and the direct importation requirement are separate, and each must be satisfied for the imported article to receive CBI duty-free treatment. Therefore, netiher requirement directly affects the other even though both requirements affect duty-free eligibility.

2. Value added in Puerto Rico and value added subsequently in a beneficiary country may both be taken into account when the article reenters Puerto Rico for further processing in order to meet the value-content requirement. Neither the CBI statute nor the CBI regulations place any limitations on the extent to which, or the sequence in which, value may be added in different beneficiary countries (including Puerto Rico and the U.S. Virgin Islands). Customs does not agree with the suggestion to amend the regulations by mentioning Puerto Rico in one of the examples under § 10.196(a) and on the declaration. The mention of the Virgin Islands in the fourth example should be sufficient to cover Puerto Rico since both are mentioned together in the statute and regulations in the context of the value-content requirement, and Puerto Rico is clearly covered by the reference to "beneficiary country" on the declaration.

3. As concerns the third contention, *i.e.*, that the portion of a process started in Puerto Rico and the portion executed in a beneficiary country may be taken into account together to meet the substantial transformation test, this is clearly incorrect as concerns the origin of an imported article. Whereas the value of materials which are the product of beneficiary countries may be cumulated between two or more beneficiary countries (for purposes of the value-content requirement), the origin of an imported article can only be attributed to one country. Therefore, an article which originates in Puerto Rico and is subsequently processed in a beneficiary country will be entitled to CBI duty-free treatment only if it is substantially transformed by the processing in the latter country so as to become a product thereof.

C. Direct Importation from the U.S. Virgin Islands

Four comments were received on the question of direct importation from the Virgin Islands which concerns the statement at the end of § 10.195(b) that any value added in the Virgin Islands must be included in the article prior to its final exportation from a beneficiary country to the U.S. Each commenter opposed this limitation and made the following specific points:

—The Virgin Islands will be prevented from engaging in tail-end processing operations, and this is contrary to the intent behind the inclusion of Virgin Islands value which was to allow the Virgin Islands to participate fully in the CBI;

—Additional time and expense will be involved if an article must be returned to a beneficiary country from the Virgin Islands for exportation to the U.S.;

—The Virgin Islands will be prevented from establishing a transshipment industry;
—The treatment of the Virgin Islands and Puerto Rico (the latter not being subject to this limitation) should be the same in the regulations since they are treated the same in the statute;
—Section 212(d) of the CBI statute was intended to allow insular possessions of the U.S. to obtain full benefits of the CBI, and this limitation nullifies that effect;
—The Caribbean neighbors of the Virgin Islands have trade advantages under non-U.S. programs which are not available to the Virgin Islands; and
—No witness testifying in respect of the proposed CBI legislation indicated that such a limitation would apply to the Virgin Islands.

One commenter proposed that § 10.195 be amended to state that for purposes of CBI duty-free treatment the Virgin Islands shall be considered to be "U.S. Customs Territory", that temporary residency, handling, or processing of an article shall not disqualify previously added values or origin attributed to a beneficiary country, and that value added in the Virgin Islands may be included for purposes of determining the total value added in beneficiary countries.

This issue arises because section 213(a)(1) of the CBI statute defines the term "beneficiary country" as including the Virgin Islands for purposes of the value-content requirement, and section 213(a)(1)(A) requires that the article be "imported directly from a beneficiary country" but does not make any reference to the Virgin Islands in this context. The statement at the end of § 10.195(b) of the interim regulation was inserted specifically to clarify the legal effect of these provisions as they apply to the Virgin Islands. As concerns the specific points made by the commenters, Customs notes the following:

1. Under the CBI statute the Virgin Islands is not treated as a beneficiary country for the purpose of the direct importation requirement. Consequently, the Virgin Islands will be prevented from engaging in tail-end processing operations unless the article is returned to a beneficiary country prior to final exportation to the U.S. The clear statutory language is the best proof of legislative intent and militates against the argument that the intent was otherwise in this context.

2. The Virgin Islands will not be prevented from establishing a transshipment industry, provided that it is a mere transshipment situation within the meaning of § 10.193 which concerns the direct importation requirement.

3. Customs does not agree that the treatment of the Virgin Islands and Puerto Rico can be the same in all aspects of the regulations because they are treated the same for a particular purpose, that of the value-content requirement. Because Puerto Rico is part of the customs territory and the Virgin Islands are not, each has a different status under the customs laws.

4. Customs is of the opinion that section 212(d) of the CBI statute (which amended General Headnote 3(a), TSUS, to provide that importations from insular possessions under that headnote will not receive duty treatment less favorable than that accorded to CBI importations) is not inconsistent with the treatment of the insular possessions in the interim regulations. Application of the more liberal value requirement under General Headnote 3(a) (whereby items such as profit and indirect processing costs may be counted and which requires only 30 present of the eligible value content to be of insular possessions origins) have been provided by Congress to ensure that this is the case.

The argument that section 212(d) makes all insular possessions of the U.S., in effect, full CBI beneficiary countries does not appear to be correct. If this were true, (a) it would not have been necessary to refer separately to the Virgin Islands as being a beneficiary country in the specific and limited context of the value-content requirement, and (b) this would mean that materials or direct processing costs attributable to Guam, American Samoa, and other entities entitled to General Headnote 3(a) benefits could be counted toward the CBI 35 percent value-content requirement. There is nothing in the CBI legislative history which indicates that Congress intended such a result.

5. The fact that some Caribbean neighbors of the Virgin Islands have trade advantages under non-U.S. programs (*e.g.*, under the ACP–EEC Lomé Convention) is not relevant to the question of the proper interpretation of the CBI statutory provisions. This argument ignores the separate duty-free benefits accorded to the Virgin Islands under General Headnote 3(a), TSUS, which are not available to other Caribbean entities.

6. Customs does not agree with the assertion that no witness testifying on the CBI legislation indicated that the limitation in question would apply to the Virgin Islands. To the contrary, the printed record of the hearings before the Subcommittee on Trade of the House Committee on Ways and Means, Serial 97–52, p. 69, reflects that there was specific testimony on this point on March 23, 1982. Although it was requested at that time that the bill be amended to avoid the limitation, the provisions of the CBI statute reflect that this proposal was not adopted.

For the above reasons, Customs is of the opinion that the limitation at the end of § 10.195(b) is entirely consistent with the CBI statute and therefore must be retained. As concerns the specific proposals to amend § 10.195, Customs believes for the following reasons that such amendments are inappropriate or unnecessary: (a) The regulation cannot be amended to provide that the Virgin Islands shall be considered to be "U.S. Customs Territory" because this could be inconsistent with the terms of the CBI statute and General Headnote 2, TSUS, (b) the regulation cannot authorize unlimited processing in the Virgin Islands because a substantial transformation of the article in the Virgin Islands would cause the article to lose its status as a product of a beneficiary country, and (c) although it is correct that temporary residency, handling, or processing (short of a substantial transformation) of an article in the Virgin Islands will not disqualify value previously added in a beneficiary country and that value added in the Virgin Islands may be included for purposes of determining the total value added in beneficiary countries, it is believed that the regulations are sufficiently clear on these points.

Customs recognizes that § 10.193(a) of the interim regulations could be misinterpreted to appear to allow a direct importation from the Virgin Islands, since this provision refers to direct shipment from any beneficiary country to the U.S. without passing through the "territory of any other country. The word "other" could be taken to refer to the U.S., and because the Virgin Islands are territory of the U.S., a direct importation from the Virgin Islands could be taken to fall within this language. As such an interpretation would conflict with the CBI statutory provisions as discussed above, § 10.193(a) has been amended to refer to the "territory of any non-beneficiary country." Thus, the words "non-beneficiary country" in the amended text would cover the Virgin Islands because, as already pointed out, the Virgin Islands are not a beneficiary country in the context of the imported directly requirement.

D. Assembly Operations

Six comments were received on the issue of assembly operations which concerns both the scope of the term "simple combining" operations and the fact that, although § 10.195(a) of the interim regulations refers to an article which is wholly the growth, product, or manufacture of a beneficiary country or which has been grown, produced, or manufactured in a beneficiary country, there is no reference to goods "assembled" in a beneficiary country. The specific comments were as follows:

1. Several commenters were under the impression that the interim regulations excluded all assembly operations as permissible activities resulting in a product of a beneficiary country. Two commenters alleged that this result was contrary to the CBI statute because (a) the legislative history clearly showed that meaningful assembly operations were to be permitted, (b) the CBI statute and regulations indicated that assembly costs may be counted as direct costs of processing operations, thus showing that assembly operations were allowed, and (c) assembly operations are permitted under the GSP, and as the CBI was modeled on the GSP, it should be administered in the same way. These commenters took the position that "meaningful" or "substantial" assembly operations or assembly operations "using substantial labor and skills" should be allowed.

2. One commenter stated that the language in the interim regulations was confusing, particularly as concerns the meaning of "simple combining" operations.

The following specific proposals to amend the regulations were made:

1. Insert the word "assembly" in § 10.195(a) (presumably after the words "wholly the growth, product, or manufacture" in the first part of the first sentence) so that not all assembly operations would preclude duty-free treatment.

2. Insert the word "assembled" after the words "grown, produced, or manufactured" in the second part of the first sentence of § 10.195(a) so that all doubt is removed concerning permissible assembly operations.

3. Provide a technical yardstick setting forth the departure point from which a processing (*e.g.*, assembly) operation is no longer considered to be a simple combining operation.

4. Clarify whether a product resulting from a simple combining operation would be excluded from duty-free treatment even if it meets the 35 percent value requirement.

It was never assumed in drafting the interim regulations that no assembly operations could result in an article which is a product of a beneficiary country. Because the statute referred to "simple" (rather than "mere") combining operations, anything that was beyond a simple assembly operation would qualify (this interpretation is clearly supported by the legislative history). However, as sections 213(a)(1) and (2) of the CBI statute do not contain the word "assembly" or "assembled" (presumably for the reason that the Congress decided not to use the language found in the GSP regulations so as to avoid a conflict between a positive mention of "assembly" and a negative mention of "simple combining"), it was deemed preferable to use the precise statutory language in the regulation and to merely interpret "product or manufacture" and "produced or manufactured" to include assembly operations which are more than "simple."

Based on the comments received, it appears that there is a considerable amount of confusion of this matter. Therefore, Customs agrees that changes must be made to clarify the points raised. However, before discussing the specific changes which have been made, Customs has the following comments concerning certain specific proposals made by the commenters for regulatory amendments:

1. Insertion of the word "assembly", as proposed, would be inappropriate because the word "wholly" modifies the words which follow. A product created merely by an assembly operation could not be considered to be "wholly" of a beneficiary country as that term is defined in § 10.191(b)(3).

2. Insertion of the word "assembled", as proposed, would be inappropriate because this would make this term coequal with "grown," "produced," and "manufactured," in clear contravention of the statutory limitation concerning simple combining operations. The fact that assembly costs may be counted toward the 35 percent value requirement is irrelevant. The statutory and regulatory provisions in question are entirely separate and thus involve different contexts.

3. It is not beneficial to provide a technical yardstick setting forth a specific departure point from which a processing operation is no longer considered to be a simple combining operation because of the numerous processing and combining possibilities which do not lend themselves to a regulatory yardstick. Such an approach would have a very limited application, would provide minimal guidance, and could be misleading as to certain operations.

Customs is of the opinion that the best approach would be to amend § 10.195(a) in the following manner: (a) By modifying the words "simple combining or packaging operations" in the second sentence to read "simple (as opposed to complex or meaningful) combining or packaging operations" and (b) by adding at the end thereof a new subsection setting forth specific examples of operations which fall both within and outside the limiting statutory language.

As concerns the first amendment, the following points should be noted: (a) Use of the word "assembly" or "assembled" in this context would not be appropriate because "combining" covers other processes such as mixing, (b) consistent with the statutory language and legislative intent, the parenthetical expression would apply equally to packaging operations, (c) the word "complex" is useful because it is the opposite of "simple", and (d) the word "meaningful" was used at page 13 of House Report 98–266 to clarify the intended scope of the statutory language.

With regard to the second amendment, the following should be noted: (a) The first sentence has been inserted in response to one of the comments to clarify that, consistent with the statutory language, an article resulting from a simple combining or packaging operation or from mere dilution would not be entitled to duty-free treatment even though the 35 percent value-content requirement is met, (b) the examples of operations covered by the statutory language are taken from House Report 98–266, (c) the examples of operations which fall outside the statutory language are based on individual cases which have come to the attention of Customs, and (d) the last sentence has been included to clarify that the negative simple combining, etc. language does not necessarily establish the limits concerning application of the substantial transformation rule for purposes of the CBI.

E. Sections 10.193 and 10.194

One commenter stated that the Customs officer is not the appropriate person to determine either compliance with the direct importation requirement or the sufficiency of the documentary evidence to demonstrate compliance because his subjective decision and incomplete knowledge could lead to delays. It was therefore recommended that responsibility for certifying the evidence of direct shipment be delegated to a competent authority in a beneficiary country. This commenter also requested confirmation that only retail sales are excluded as a permissible activity by § 10.193(c)(3) and that a sale by a middleman from a beneficiary country other than the beneficiary country of manufacture would be permissible. Further, the commenter was of the opinion that § 10.194 should clearly state what is implicit therein, *i.e.*, that the district director has the discretion to renounce his right to ask for the documentation immediately upon receipt of the shipment.

Customs does not agree that these amendments are necessary. As concerns the first point, only the Customs officer can make these decisions. Certification by a beneficiary country authority would not be acceptable and might even be impossible for various reasons, *e.g.*, the facts concerning the actual manner of shipment to the U.S. are not ascertainable at the time of exportation. In regard to the second point, the regulation applies only to sales "other than at retail" and thus would apply to sales by such middlemen except for the fact that subsection (c) contemplates only non-retail sales in a non-beneficiary country. As concerns the third point, what this commenter thinks is implicit in the regulation is, in fact, explicit. The regulation specifies a period of 60 days to submit the evidence if required by the district director.

One commenter stated that it is necessary to clarify whether a direct importation within the meaning of § 10.193 includes a product which enters a duty-free area of a non-beneficiary country but which is intended for export to the U.S.

Customs does not agree. It is clear that such a case would be considered to constitute a direct importation provided that the specific terms of subsection (b) or (c) are met.

F. Sections 10.195 and 10.196

One commenter was of the opinion that it is necessary to amend the second sentence of § 10.195(b), to clarify whether an article must be returned to a specific beneficiary country if value is added to the article in the Virgin Islands after exportation from the beneficiary country of production.

No amendment is necessary. It is clear that the article could be sent to any beneficiary country because § 10.193(a) refers to direct shipment from "any" beneficiary country. The significance of the use of the word "any" was fully explained in the section-by-section analysis relating to interim § 10.193(a) in the January 5, 1984, **Federal Register** document (49 FR 853).

Three commenters believe the regulations do not adequately deal with the concept of substantial transformation. One commenter suggested that an example of a substantial transformation be included in § 10.195 and that the best example would be that of integrated circuits or other semiconductor devices produced in a beneficiary country from the assembly (*i.e.*, manufacture) of imported components. Another commenter suggested that the substantial transformation rule which has been used under the GSP should be replaced, for purposes of the CBI, by the Japanese and EEC rule whereby a sufficient transformation is deemed to have taken place when a change in tariff heading results from the processing.

Customs does not agree. The concept of substantial transformation is sufficiently well known or ascertainable through the ruling process under Part 177, Customs Regulations (19 CFR Part 177), and the inclusion of a specific example of a substantial transformation would hardly be illuminating in other cases involving different facts. In addition, given the longstanding administrative and judicial precedent, it would not be possible to adopt the Japanese and EEC rule. Under those rules a change in tariff heading is only one of a number of factors to be considered in determining whether a substantial transformation has taken place.

One commenter suggested that the words "of commerce" be deleted from the double substantial transformation test discussion in §10.196(a) because the intermediate substantially transformed article need not be an article of commerce (*i.e.*, it is sufficient that it be a new or different material). Another commenter was of the opinion that the distinction between a "material" and an "article" should be eliminated and that recognition should be given to the fact that an article may be both an article and a material and vice versa.

Customs does not agree. As concerns deletion of the words "of commerce", this should not be done because the question of whether a particular process results in an ariticle or material which is commercially different is an objective, and thus useful, test, and the words "of commerce" are used in section 213(a)(2) of the CBI statute. The regulations cannot totally eliminate the distinction between an ariticle and a material because section 213(a)(2) of the CBI statute makes this distinction which is essential in order to apply the value-content requirement. While all products imported under the CBI, including raw materials, are "articles" for purposes of duty-free treatment, the value-content requirement mandates that a distinction be made between the imported article and the separately identifiable materials which are incorporated in that article.

G. Section 10.197

One commenter suggested that the word "assists" be added to the list of items includable as direct costs of processing operations.

This proposal should not be adopted because assists are not always included in the appraised value and thus are not always countable as direct costs of processing operations, and an assist would fall within § 10.197(a) only to the extent that in each individual case the assist is, in fact, incurred as a recognized direct processing cost.

Another commenter proposed that the direct costs of processing operations include marketing costs.

This proposal cannot be adopted. Whereas marketing costs are costs of doing business, such costs are incurred separately from the actual production process. Therefore, they are not costs of manufacturing the product but, rather, are in the nature of general expenses of doing business which, under section 213(a)(3) of the CBI statute, are specifically not covered by the phrase "direct costs of processing operations".

H. Other Comments

One commenter noted that, in order to take account of the import sensitivity of the U.S. citrus industry, Customs and the Department of Agriculture must collect and maintain statistics on CBI citrus imports. The commenter suggested that a section be added to the regulations to provide for an exchange of this information between those agencies.

Customs believes it would be inappropriate to include a provision directed to the interests of one segment of U.S. industry. Moreover, such a provision in the Customs Regulations could not be considered binding on the Department of Agriculture. Customs understands that the Department of Agriculture is collecting and maintaining statistics on the importation of all agricultural products in order to monitor such imports for purposes of carrying out the "fast track" procedures for import relief under section 213(f) of the CBI statute.

A commenter stated that the regulations should cite the country of origin marking statute and regulations in order to clarify that those provisions apply to products imported under the CBI.

In view of recent questions raised by segments of the importing community and some foreign manufacturers, we agree. Section 10.195(e) mentions that country of origin marking requirements apply to articles entered under the CBI regulations.

Finally, one commenter stated that clarification is necessary as concerns the continuing status of the GSP and of TSUS items 806.20, 806.30, and 807.00 which appear to be replaced by the CBI.

The GSP and TSUS items 806.20, 806.30, and 807.00 are entirely separate statutory provisions which are neither mentioned in, nor directly affected by, the CBI. Inasmuch as those programs will continue in operation totally independent of the CBI, there does not appear to be any reason to mention them in the CBI regulations.

I. Issues Not Raised in the Comments

In addition to the changes made in response to the comments, Customs is of the opinion that, based on further consideration of the interim text, some additional changes should be incorporated in the final text. These involve the following:

1. The standards to be applied for determining the origin of materials for purposes of the value-content requirement should be consistent under the CBI. Therefore, the following sentence has been added at the end of § 10.195(c) (dealing with the inclusion of material produced in the U.S.): "In the case of materials produced in the customs territory of the U.S., the provisions of § 10.196 shall apply." Thus, for example, the "simple combining" etc. limitation and the substantial transformation test would apply in this case. It should also be noted that it is not necessary to have a similar provision in § 10.195(b) (dealing with value added in Puerto Rico and the Virgin Islands). They are covered by the term "beneficiary country" in § 10.196.

2. Example 2 under § 10.196(a) may be misleading because the second sentence refers to the cost or value of the "tanned skin" as not being countable toward the value-added requirement. Because only one substantial transformation takes place under this example, and because the costs of the tanning operation are clearly countable, the example has been revised to more properly refer to the cost or value of the "raw skin". In addition, to aid the reader's comprehension, the following sentence has been added at the end of this example: "Thus, the tanned skin would be eligible for duty-free treatment only if the direct costs attributable to the tanning operation represent at least 35 percent of the appraised value of the imported article."

3. Paragraph (c) of § 10.193, which concerns the "imported directly" requirement, allows the shipment from any beneficiary country to the U.S. through the territory of any non-beneficiary country under certain circumstances. One circumstance is that the articles must be wholly the growth, product, or manufacture of a beneficiary country. Within the regulatory framework of the GSP, § 10.175(d) contains a similar limitation. Customs sees no justifiable basis for continuing this limitation in either the CBI or GSP context, if the article otherwise meets the country of origin criteria, and accordingly has modified §§ 10.175(d) and 10.193(c) to eliminate the limitation. This change will allow a producer to more liberally use a customs bonded warehouse in an intermediate country as a distribution center for certain sales at wholesale.

Both §§ 10.175(d) and 10.193(c) also contain a reference to the basic rules of origin. Because the origin requirements are contained elsewhere in both the CBI and GSP regulations, Customs can see no reason to restate them in the "imported directly" provisions. Accordingly, these references have also been removed from §§ 10.175(d) and 10.193(c). Further, non substantive changes have been made to the provisions of §§ 10.175(b) and 10.193(b) to remove the need for cross-references in those paragraphs.

Executive Order 12291

These amendments do not constitute a "major rule" as defined by section 1(b) of Executive Order 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 not applicable to these amendments because the rule will not have a significant economic impact on a substantial number of small entities. With respect to the CBI amendments, any economic impact flows directly from the Caribbean Basin Economic Recovery Act and not from the implementing regulations.

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

Paperwork Reduction Act

The regulation is subject to the Paperwork Reduction Act of 1980, Pub. L. 96–511. Accordingly, applicable sections of the regulation have been cleared by the Office of Management and Budget and assigned control number 1515–0112.

Drafting Information

The principal author of this document was John Elkins, Esq., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices and the Office of the United States Trade Representatives participated in its development.

List of Subjects in 19 CFR Part 10

Caribbean Basin Initiative, Customs duties and inspection, Generalized System of Preferences, Imports.

Amendments to the Regulations

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below.

William von Raab,

Commissioner of Customs.

Approved: November 29, 1984.

John M. Walker, Jr.

Assistant Secretary of the Treasury.

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

1. Section 10.175(b) is amended by revising it to read as follows:

§ 10.175 Imported directly defined.

* * * * *

(b) If the shipment is from a beneficiary developing country to the U.S. through the territory of any other country, the merchandise in the shipment does not enter into the commerce of any other country while en route to the U.S., and the invoice, bills of lading, and other shipping documents show the U.S. as the final destination; or

* * * * *

2. Section 10.175(d) is amended by revising it to read as follows:

§ 10.175 Imported directly defined.

* * * * *

(d) If the shipment is from any beneficiary developing country to the U.S through the territory of any other country and the invoices and other documents do not show the U.S as the final destination, the articles in the shipment upon arrival in the U.S. are imported directly only if they:

(1) Remained under the control of the customs authority of the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the district director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the latter's sales agent; and

(3) Were not subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition.

3. Interim §§ 10.191 through 10.197 and the centerheading, as added by T.D. 84-14, are revised to read as follows:

Caribbean Basin Initiative

Caribbean Basin Initiative

§ 10.191 General.

(a) *Statutory authority.* Subtitle A, Title II, Pub. L. 98-67, entitled the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701-2706) and referred to as the Caribbean Basin Initiative (CBI), authorizes the President to proclaim duty-free treatment for all eligible articles from any beneficiary country.

(b) *Definitions.—(1) Beneficiary country.* For purposes of § 10.191 through § 10.198 and except as otherwise provided in § 10.195(b), the term "beneficiary country" means any country or territory or successor political entity with respect to which there is in effect a proclamation by the President designating such country, territory or successor political entity as a beneficiary country in accordance with section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(a)(1)(A)).

(2) *Eligible articles.* Except as provided herein, for purposes of § 10.191(a), the term "eligible articles" means any merchandise which is imported directly from a beneficiary country as provided in § 10.193 and which meets the country of origin criteria set forth in § 10.195. The following merchandise shall not be considered eligible articles entitled to duty-free treatment under the CBI.

(i) Textile and apparel articles which are subject to textile agreements.

(ii) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated on August 5, 1983, as eligible articles for the purpose of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461-2465).

(iii) Tuna, prepared or preserved in any manner, in airtight containers.

(iv) Petroleum, or any product derived from petroleum, provided for in Part 10, Schedule 4, Tariff Schedules of the United States (TSUS).

(v) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which TSUS column 2 rates of duty apply.

(vi) Sugars, sirups, and molasses, provided for in item 155.20 or item 155.30, TSUS, to the extent that importation and duty-free treatment of such articles are limited by Headnote 4, Schedule A, Part 10, Schedule 1, TSUS.

(vii) Articles subject to the provisions of Subpart A, Part 2, Appendix, TSUS, to the extent that such provisions have not been modified or terminated by the President pursuant to section 213(e)(5) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(e)(5)).

(viii) Merchandise for which duty-free treatment under the CBI is suspended or withdrawn by the President pursuant to sections 213 (c)(2), (e)(1), or (f)(3) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703 (c)(2), (e)(1), or (f)(3)).

(3) *Wholly the growth, product, or manufacture of a beneficiary country.* For purposes of § 10.191 through § 10.198, the expression "wholly the growth, product, or manufacture of a beneficiary country" refers both to any article which has been entirely grown, produced, or manufactured in a beneficiary country or two or more beneficiary countries and to all materials incorporated in an article which have been entirely grown, produced, or manufactured in any beneficiary country or two or more beneficary countries, as distinguished from articles or materials imported into a beneficiary country from a non-beneficiary country whether or not such articles or materials were substantially transformed into new or different articles of commerce after their importation into the beneficiary country.

(4) *Entered.* For purposes of § 10.191 through § 10.198, the term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the U.S.

§ 10.192 Claim for exemption from duty under the CBI.

A claim for an exemption from duty on the ground that the CBI applies shall be allowed by the appropriate district director only if he is satisfied that the requirements set forth in this section and § 10.193 through § 10.198 have been met. Duty-free treatment may be claimed at the time of filing the entry summary by placing the symbol "C" as a prefix to the TSUS item number for each article for which such treatment is claimed on that document. If duty-free treatment is claimed subsequent to the time of filing the entry summary but before liquidation becomes final, the filing of the Certificate of Origin or declaration as required in § 10.198 shall constitute the written claim.

§ 10.193 Imported directly.

To qualify for treatment under the CBI, an article shall be imported directly from a beneficiary country into the customs territory of the U.S. For purposes of § 10.191 through § 10.198 the words "imported directly" mean:

(a) Direct shipment from any beneficiary country to the U.S. without passing through the territory of any non-beneficiary country; or

(b) If the shipment is from any beneficiary country to the U.S. through the territory of any non-beneficiary country, the articles in the shipment do not enter into the commerce of any non-beneficiary country, while en route to the U.S. and the invoices, bills of lading, and other shipping documents show the U.S. as the final destination; or

(c) If the shipment is from any beneficiary country to the U.S. through the territory of any non-beneficiary country, and the invoices and other documents do not show the U.S. as the final destination, the articles in the shipment upon arrival in the U.S. are imported directly only if they:

(1) Remained under the control of the customs authority of the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the district director is satisfied that the importation results from the original commericial transaction between the importer and the producer or the latter's sales agent; and

(3) Were not subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition.

§ 10.194 Evidence of direct shipment.

(a) *Documents constituting evidence of direct shipment.* The district director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were "imported directly", as that term is defined in § 10.193. Any evidence of direct shipment required shall be subject to such verification as deemed necessary by the district director.

(b) *Waiver of evidence of direct shipment.* The district director may waive the submission of evidence of direct shipment when otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise was, in fact, imported directly and that it otherwise clearly qualifies for treatment under the CBI.

§ 10.195 Country of origin criteria.

(a) *Articles produced in a beneficiary country.*— (1) *General.* Except as provided herein, any article which is either wholly the growth, product, or manufacture of a beneficiary country or a new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country, may qualify for duty-free entry under the CBI. No article or material shall be considered to have been grown, produced, or manufactured in a beneficiary country by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. Duty-free entry under the CBI may be accorded to an article only if the sum of the cost or value of the material produced in a beneficiary country or countries, plus the direct costs of processing operations performed in a beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(2) *Combining, packaging, and diluting operations.* No article which has undergone only a simple combining or packaging operation or a mere dilution in a beneficiary country within the meaning of paragraph (a)(1) of this section shall be entitled to duty-free treatment even though the processing operation causes the article to meet the value requirement set forth in that paragraph.

(i) For purposes of this section, simple combining or packaging operations and mere dilution include, but are not limited to, the following processes:

(A) The addition of batteries to devices;

(B) Fitting together a small number of components by bolting, glueing, soldering etc.;

(C) Blending foreign and beneficiary country tobacco;

(D) The addition of substances such as anticaking agents, preservatives, wetting agents, etc.;

(E) Repacking or packaging components together;

(F) Reconstituting orange juice by adding water to orange juice concentrate; and

(G) Diluting chemicals with inert ingredients to bring them to standard degrees of strength.

(ii) For purposes of this section, simple combining or packaging operations and mere dilution shall not be taken to include processes such as the following:

(A) The assembly of a large number of discrete components onto a printed circuit board;

(B) The mixing together of two bulk medicinal substances followed by the packaging of the mixed product into individual doses for retail sale;

(C) The addition of water or another substance to a chemical compound under pressure which results in a reaction creating a new chemical compound; and

(D) A simple combining or packaging operation or mere dilution coupled with any other type of processing such as testing or fabrication (*e.g.*, a simple assembly of a small number of components, one of which was fabricated in the beneficiary country where the assembly took place).

The fact that an article or material has undergone more than a simple combining or packaging operation or mere dilution is not necessarily dispositive of the question of whether that processing constitutes a substantial transformation for purposes of determining the country or origin of the article or material.

(b) *Commonwealth of Puerto Rico and U.S. Virgin Islands.* For purposes of determining the percentage referred to in paragraph (a) of this section, the term "beneficiary country" includes the Commonwealth of Puerto Rico and the U.S. Virgin Islands. Any cost or value of materials or direct costs of processing operations attributable to the Virgin Islands must be included in the article prior to its final exportation from a beneficiary country to the U.S.

(c) *Materials produced in the U.S.* For purposes of determining the percentage referred to in paragraph (a) of this section, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the U.S. (other than the Commonwealth of Puerto Rico). In the case of materials produced in the customs territory of the U.S., the provisions of § 10.196 shall apply.

(d) *Articles wholly grown, produced, or manufactured in a beneficiary country.* Any article which is wholly the growth, product, or manufacture of a beneficiary country, including articles produced or manufactured in a beneficiary country exclusively from materials which are wholly the growth, product, or manufacture of a beneficiary country or countries, shall normally be presumed to meet the requirements set forth in paragraph (a) of this section.

(e) *Country of origin marking.* The general country of origin marking requirements that apply to all importations are also applicable to articles imported under the CBI.

§ 10.196 Cost or value of materials produced in a beneficiary country or countries.

(a) *"Materials produced in a beneficiary country or countries" defined.* For purposes of § 10.195, the words "materials produced in a beneficiary country or countries" refer to those materials incorporated in an article which are either:

(1) Wholly the growth, product, or manufacture of a beneficiary country or two or more beneficiary countries; or

(2) Subject to the limitations set forth in § 10.195(a), substantially transformed in any beneficiary country or two or more beneficiary countries into a new or different article of commerce which is then used in any beneficiary country in the production or manufacture of a new or different article which is imported directly into the U.S.

Example 1. A raw, perishable skin of an animal grown in one beneficiary country is sent to another beneficiary country where it is tanned to create nonperishable "crust leather". The tanned product is then imported directly into the U.S. Because the material of which the imported article is composed is wholly the growth, product, or manufacture of one of more beneficiary countries, the entire cost or value of that material may be counted toward the 35 percent value requirement set forth in § 10.195.

Example 2. A raw, perishable skin of an animal grown in a non-beneficiary country is sent to a beneficiary country where it is tanned to create nonperishable "crust leather". The tanned skin is then imported directly into the U.S. Although the tanned skin represents a new or different article of commerce produced in a beneficiary country within the meaning of § 10.195(a), the cost or value of the raw skin may not be counted toward the 35 percent value requirement because (1) the tanned material of which the imported article is composed is not wholly the growth, product, or manufacture of a beneficiary country and (2) the tanning operation creates the imported article itself rather than intermediate article which is then used in the beneficiary country in the production or manufacture of an article imported into the U.S. The tanned skin would be eligible for duty-free treatment only if the direct costs attributable to the tanning operation represent at least 35 percent of the appraised value of the imported article.

Example 3. A raw, perishable skin of an animal grown in a non-beneficiary country is sent to a beneficiary country where it is tanned to create nonperishable "crust leather". The tanned material is then cut, sewn and assembled with a metal buckle imported from a non-beneficiary country to create a finished belt which is imported directly into the U.S. Because the operations performed in the beneficiary country involved both the substantial transformation of the raw skin into a new or different article and the use of that intermediate article in the production or manufacture of a new or different article imported into the U.S., the cost or value of the tanned material used to make the imported article may be counted toward the 35 percent value requirement. The cost or value of the metal buckle imported into the beneficiary country may not be counted toward the 35 percent value requirement because the buckle was not substantially transformed in the beneficiary country into a new or different article prior to its incorporation in the finished belt.

Example 4. A raw, perishable skin of an animal grown in U.S. Virgin Islands is sent to a beneficiary country where it is tanned to create nonperishable "crust leather", which is then imported directly into the U.S. The tanned skin represents a new or different article of commerce produced in a beneficiary country within the meaning of § 10.195(a), and under § 10.195(b), the raw skin from which the tanned product was made is considered to have been grown in a beneficiary country for the purpose of applying the 35 percent value requirement. The tanned material of which the imported article is composed is considered to be wholly the growth, product, or manufacture of one or more beneficiary countries with the result that the entire cost or value of that material may be counted toward the 35 percent value requirement.

(b) *Questionable origin.* When the origin of a material either is not ascertainable or is not satisfactorily demonstrated to the appropriate district director, the material shall not be considered to have been grown, produced, or manufactured in a beneficiary country.

(c) *Determination of cost or value of materials produced in a beneficiary country.* (1) The cost or value of materials produced in a beneficiary country or countries includes:

(i) The manufacturer's actual cost for the materials;

(ii) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(iii) The actual cost of waste or spoilage (material list), less the value of recoverable scrap; and

(iv) Taxes and/or duties imposed on the materials by any beneficiary country, provided they are not remitted upon exportation.

(2) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of:

(i) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(ii) An amount for profit; and

(iii) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

If the pertinent information needed to compute the cost or value of a material is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

§ 10.197 Direct costs of processing operations performed ir a beneficiary country or countries.

(a) *Items included in the direct costs of processing operations.* As used in § 10.195 and § 10.198, the words "direct costs of processing operations" mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported merchandise:

(1) All actual labor costs involved in the growth, production, manufacture or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(2) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(3) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise and;

(4) Costs of inspecting and testing the specific merchandise.

(b) *Items not included in the direct costs of processing operations.* Those items which are not included within the meaning of the words "direct costs of processing operations" are those which are not directly attributable to the merchandise under consideration or are not "costs" of manufacturing the product. These include, but are not limited to:

(1) Profit; and

(2) General expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

(R.S. 251, as amended, secs. 623, 624, 46 Stat. 759, 211 *et seq.*, Gen. Hdnt. 11, sec. 101, 76 Stat. 72 *et seq.*, sec. 503(b), 88 Stat. 2069, 97 Stat. 384 *et seq.* (19 U.S.C. 66, 1202, 1623, 1624, 2463(b), 2701 *et seq.*))

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19 CFR Part 10

[T.D. 84-238]

Customs Regulations Amendments Relating to Caribbean Basin Initiative and Generalized System of Preferences

AGENCY: Customs Service, Treasury.

ACTION: Interim regulations, solicitation of comments.

SUMMARY: The Caribbean Basin Economic Recovery Act implements an economic recovery program for nations of the Caribbean and Central America. The Act provides for the waiver of duties until September 1995 on most products imported from Caribbean and Central American countries designated as beneficiary countries.

On January 5, 1984, interim Customs Regulations were published as T.D. 84-14 in the **Federal Register** (49 FR 852). Based upon public comments received in response to the solicitation of comments provision of that document, it has been decided to modify the documentation requirements of the interim regulations. In addition, to ensure that the documentary requirements of the Caribbean Basin Initiative (CBI) and the Generalized System of Preferences (GSP) do not detract from one another and to avoid unnecessary confusion among parties using these programs, the GSP documentary requirements are modified by this document to conform them to the CBI documentary requirements except for the requirement of foreign government certification of the GSP Certification of Origin Form A. A notice of proposed rulemaking is published elsewhere in this issue of the Federal Register, which proposes to modify the requirement of foreign government certification.

EFFECTIVE DATE: These interim regulations are effective on January 7, 1985.

Comments: Written comments received on or before February 5, 1985 will be considered in determining whether any further changes to the interim regulations are required before a final rule is published.

ADDRESS: Comments may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: William L. Marchi, Duty Assessment Division (202-566-2957);

Legal Aspects: Francis W. Foote, Esq., Classification and Value Division (202-566-2938);

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

SUPPLEMENTARY INFORMATION:

Background

Subtitle A, Title II, Pub. L. 96-67, the Caribbean Basin Economic Recovery Act (the "Act"), commonly referred to as the Caribbean Basin Initiative (CBI), implements an economic recovery program for nations of the Caribbean and Central America announced by the President on February 24, 1982, in an address to the Organization of American States.

The Act provides for the waiver of duties until September 30, 1985, on most products imported from Caribbean and Central American countries designated as beneficiary countries. Beneficiary countries must meet several criteria before the President is authorized to designate them as eligible under the CBI. Further, certain products cannot be declared duty-free. Under other provisions of law, duty-free treatment can be withdrawn for articles imported in such quantities as to cause injury to a competing U.S. industry. A rule of origin specifies under what conditions articles will be considered products of a beneficiary country, and, therefore, entitled to duty-free entry.

Pursuant to Presidential Proclamation 5133 dated November 30, 1983 (48 FR 54453), the President designated the countries and territories or successor political entitles set forth in the Annex to the Proclamation as "beneficiary countries", thus conferring duty-free treatment for all eligible articles from those beneficiary countries. This action, was effective with respect to all articles that were entered, or withdrawn from warehouse, for consumption, on or after January 1, 1984, and on or before September 30, 1995. Presidential Proclamation 5142 of December 29, 1983 (49 FR 341), amended Presidential Proclamation 5133 and the Annex to the Proclamation to extend the benefits of the Act to certain additional Caribbean and Central American nations.

To implement the duty-free aspects of the CBI, Customs published interim regulations as T.D. 84-14 in the **Federal Register** on January 5, 1984 (49 FR 852). The interim regulations provided for a 60-day public comment period which was subsequently extended by a notice published in the **Federal Register** on March 8, 1984 (49 FR 8600), to May 4, 1984.

Numerous commenters submitted observations and proposals for amendments to the interim CBI regulations. A particularly large number of comments were received on § 10.198 of the interim Customs Regulations amendments (19 CFR 10.198), which concerns the documentary evidence of country of origin and requires the submission of a declaration of the manufacturer or exporter together with an endorsement thereof by the importer or consignee. In light of the comments received, as discussed below, it is apparent that some changes should be made in this regard. However, after consideration of the comments and proposals submitted, Customs is of the opinion that none of the commenters has presented a proposal which would represent a proper solution to the documentary evidence issue. Accordingly, it has been decided to modify the interim regulations and submit the modification, which differs from both the initial interim regulatory provision and the various proposals put forth by the commenters, for further public comment. This document discusses only the comments received on the documentary aspect of the CBI interim regulation and the corresponding changes made to the GSP regulations except for changes to the requirement for foreign government certification of the GSP Certificate of Origin Form A. A notice of proposed rulemaking is published elsewhere in this issue of the **Federal Register** relating to foreign government certification. The changes to the GSP provisions were made to ensure that the documentary requirements of the CBI and the GSP do not detract from one another and to avoid unnecessary confusion among parties using these programs. All other comments received in response to the interim regulations are discussed in the CBI final rule document published elsewhere in this issue of the **Federal Register.**

Summary of Comments Received

Fifteen comments were received on the documentary evidence of country of origin requirements set forth in § 10.198. These comments were largely negative and ranged from total rejection of the declaration/endorsement approach to specific complaints concerning certain aspects of one or both of these documents.

As concerns the declaration, 11 commenters complained that the declaration requires the disclosure of confidential business information concerning costs, profit, and production processes which, if revealed to the importer, could compromise the manufacturer's bargaining position vis-a-vis the importer. Several of these commenters also argued that a manufacturer could similarly lose his competitive position vis-a-vis other competitors exporting the same product under the GSP or other manufacturers in any beneficiary country who further process the article prior to exportation to the U.S. Four commenters further argued that the declaration vests too much discretion in the Customs officer to evaluate compliance with the value-added requirement, including the power to request further documentary or other proof to show compliance. These commenters referred specifically to the Customs officer's lack of knowledge of manufacturing processes and markets, to the possibility that different criteria will be used, and to the fact that the subjective view of the Customs officer will make it impossible to determine the amount of information which must be put on the declaration. Five commenters stated that the format of the declaration is overly detailed. One commenter complained that the inclusion of costs of processing operations and materials will require the exporter or manufacturer to undertake a detailed study which is difficult because these costs either are not normally determined in detail or can vary from shipment to shipment depending on the quantity of the merchandise. Finally, one commenter observed that operational difficulties could arise where costs of processing operations are incurred in a second beneficiary country because it is not clear as to who would be responsible for computing and including those costs on the declaration.

A number of comments also were received in opposition to use of the endorsement by the importer or consignee. Two commenters argued that the endorsement violates the normal commercial relationship between the exporter and the importer. Six commenters alleged that the endorsement imposes an unnecessary and unreasonable burden on the importer because in most cases the importer will not be privy to the facts necessary to verify the information on the declaration. Three commenters were of the opinion that the endorsement is intimidating to the importer, particularly in a case where retroactive penalties could be imposed if the claim for duty-free treatment is found to be invalid. Three commenters argued against using the procedure under item 807.00, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), for purposes of the CBI since, whereas under item 807.00 the importer has knowledge of the facts which he endorses, this would not always be the case in a CBI transaction. Finally, one commenter argued that the need for an enforcement mechanism, as provided by the endorsement, must be weighed against the foreign policy implications in the event that the CBI should fail due to reluctance on the part of an importer to vouch for the statements made on the declaration.

The following comments were made on the overall declaration/endorsement approach: (1) This approach will complicate and delay the entry process and thus will discourage use of the CBI, (2) the CBI was intended to involve minimal paperwork and the required documentation runs counter to this aim and conflicts with the Regulatory Flexibility Act and the Paperwork Reduction Act of 1980, and (3) the legislative history relating to the CBI indicates that less burdensome documentation paralleling that used for the GSP would be required.

Based on these objections, the following proposals were made by various commenters to modify the documentary requirements:

(1) The declaration/endorsement approach should be abandoned in favor of the GSP Certificate of Origin Form A approach which involves a declaration signed by the exporter (stating that the details set forth on the Form A are correct, that the goods described on the Form A were produced in the GSP country, and that the goods comply with the origin requirements under the GSP) which is then certified as being correct by the appropriate governmental certifying authority of the exporting country. Several commenters specifically endorsed the GSP use of percentages on the Form A to demonstrate compliance with the value-added requirement. One commenter further suggested that product information developed under the GSP could serve as a basis for the CBI since many products eligible for CBI duty-free treatment are also covered by the GSP. The commenter stated that, as concerns products covered by the CBI but not by the GSP, the competent authority in the beneficiary country should send a report to the competent U.S. authority setting forth the existence of producers of the new product category in question, the sources of supply of the raw material, and a statement as to why the product is considered to have been grown, produced, or manufactured in the beneficiary country. This commenter further suggested (a) that the competent beneficiary country authority should prepare an evaluation as to whether each shipment satisfies the CBI country of origin criteria, (b) that the beneficiary country authority should be capable of making the pertinent verifications either on its own initiative or as requested by U.S. authorities, and (c) that Customs should periodically review both the preparation of the proposed preliminary report and the mechanisms for certification by the beneficiary country authority. Another commenter suggested that the beneficiary country certifying authority should be allowed to make an initial certification for a given product and thereafter only periodically, unless the cost data changes either more than 5 percent or in such a way as to affect the qualifying status of the product.

(2) The documentary requirements should be relaxed to avoid the problems set forth above, and the format of the declaration should be modified to protect the manufacturer's interests and avoid discouraging use of the CBI.

(3) A blanket approval of a declaration should be allowed, *e.g.*, on a 6-month or yearly basis, rather than requiring a separate declaration for each shipment.

(4) The endorsement should be replaced by a certification of the declaration signed by a beneficiary country governmental authority.

Finally, one commenter preferring the GSP Form A approach suggested that the following points be clarified: (a) Whether indirect labor and indirect costs of fabrication may be aggregated or whether they must be listed separately for each individual processing operation performed on the article, (b) whether the inclusion of the cost or value of materials produced in the U.S. has the effect of reducing the appraised value of the article or lowering the required beneficiary country input to 20 percent, and (c) in a case where an article is processed in two beneficiary countries, the manner in which the processing costs should be computed if an unexpected failure occurs in the cost structure in the second beneficiary country. Another commenter similarly requested clarification as to the extent to which details must be included on the declaration to show compliance with the value-added requirement.

Analysis of Comments

Based on the large number of negative comments received, particularly as concerns the confidentiality issue and the negative implications believed to arise from the endorsement of the importer, Customs agrees that a solution must be found which would better ensure effective use of the CBI while still ensuring proper administration of this important program. However, before outlining the modification to the interim regulations to handle the documentary evidence of country of origin, the following is noted as concerns those comments with which Customs disagrees:

(1) Whereas Customs is in agreement that any unnecessary disclosure of confidential business information to the importer should be avoided, there does not appear to be any effective means of avoiding the disclosure of details concerning the costs of materials or processing operations as between manufacturers in different beneficiary countries. Given the fact that the CBI statute allows for unlimited cumulation of value among multiple beneficiary countries, in a case involving such cumulation the detailed cost information must be passed forward from one country to another so that the documentary evidence of country of origin may be accurately prepared prior to exportation. Moreover, it is equally clear that disclosure of such information by a manufacturer to a different party (*e.g.*, a subsequent manufacturer or the exporter) in the same beneficiary country would also be unavoidable for essentially the same reason. Furthermore, given the statutory country of origin limitations concerning simple combining or packaging operations and mere dilution with water or other substances, which apply both to the final article and the materials incorporated therein, the disclosure of confidential information concerning production processes similarly cannot be avoided in these cases.

(2) Customs does not agree with the argument against the declaration that it vests too much discretion in the Customs officer, that Customs officers lack the necessary knowledge of manufacturing processes and markets, that different criteria will be used, and that the subjective view of the Customs officer will lead to uncertainty as to the details to be inserted thereon. While the statutory function of Customs in handling import transactions, including CBI transactions, by definition requires the exercise of a certain amount of discretion, there is no basis for assuming

that this discretion will be abused. Customs officers, by virtue of their experience and based on existing administrative procedures, have sufficient means to ensure the proper, uniform application of the CBI provisions.

(3) There does not appear to be any justifiable basis for the complaints that the declaration is overly detailed and that the declaration requires the exporter or manufacturer, to undertake a detailed study which would not normally be performed. In a case involving a statutory value-added requirement it will be necessary to compile very specific information in order to ensure compliance with that requirement. This is true also in the case of the GSP since the percentage placed on the Form A can only be derived from specific, detailed information concerning the cost or value of materials and the direct costs of processing operations. Customs cannot accept the implication from these comments that such cost details or the details concerning manufacturing processes can be ignored. The fact that Congress inserted very specific requirements in the CBI statute clearly indicates that such is not the case.

(4) Customs does not agree with the suggestions that the CBI was intended to involve no more or different documentation from that required under current GSP procedures, nor does Customs agree that the documentary requirements set forth in the interim regulations conflict with the Regulatory Flexibility Act and the Paperwork Reduction Act of 1980. As concerns the first point, in testimony before the Subcommittee on Trade of the House Committee on Ways and Means on March 17, 1982, Customs stated that consideration would be given to both the GSP Form A approach and the more detailed item 807.00, TSUS, approach. No Congressional committee or subcommittee subsequently demonstrated a clear, affirmative preference for the GSP approach. As concerns the second point, the document published in the **Federal Register** setting forth the interim regulations has already addressed this issue.

(5) The proposal of one of the commenters in favor of the GSP Form A approach should not be adopted for the following reasons: (a) The proposed reports to be sent to the U.S. authority by the beneficiary country authority concerning new product categories would be complex and unworkable since there are too many possible variables (*e.g.*, changes in material sources, the possibility of using different ports of entry) which would complicate the work of Customs, (b) the proposal places an undue burden and reliance on beneficiary country authorities, and (c) although the proposed procedures meet the approval of one commenter, because of the complexity, it is doubtful that the proposal would have general acceptance.

(6) The two proposals for a periodic or blanket approval of the country of origin documentation cannot be adopted. Customs is of the opinion that the required documentation should accompany each shipment because each entry, as a legal matter, must stand on its own and because operational problems could arise in the event that the same merchandise is sent to a different port. It also should be noted in this regard that on February 15, 1984, Customs sent an instruction to all ports stating that a blanket waiver of the GSP Form A should not be granted.

Discussion of Amendments to the CBI Regulations

To ensure that confidential information will not be given to the importer and to remove the objections lodged against the endorsement, Customs has, by this document, amended § 10.198(a) of the interim regulations to provide for submission of a GSP Certificate of Origin Form A in place of the declaration and endorsement. Inasmuch as each designated CBI beneficiary country also has been designated as a beneficiary developing country for purposes of the GSP, the GSP Form A should be available for use in CBI transactions. The words "Generalized System of Preferences" appearing in two places on the front of the Form A would simply be deleted and replaced by the words "Caribbean Basin Initiative". The Form A would be completed in the same manner as in the case of the GSP, including the insertion of the letter "P", or the letter "Y, followed by a percentage, or the letter "Z" followed by a percentage, in Box 8. It should be noted that the "Z" designation would be used in all cases of cumulation of value and thus would cover both cases involving multiple beneficiary countries (including the Commonwealth of Puerto Rico and the U.S. Virgin Islands) and cases involving the inclusion of a material produced in the customs territory of the United States.

The new text of § 10.198(a) set forth below is based on § 10.173(a) of the GSP regulations (19 CFR 10.173(a)), subject to minor editorial amendments which were already included in the interim text of § 10.198(a) and are still appropriate under the new text. Thus, the new text involves the following principal amendments to the interim text: (1) A redraft of subsection (a)(1) to provide for submission of the Certificate of Origin Form A, (2) deletion of subsection (a)(2) which concerns the endorsement by the importer or consignee, and (3) deletion of subsection (a)(3) concerning value added to the article in Puerto Rico after final exportation from a beneficiary country. The latter amendment is deemed necessary because an article sent to Puerto Rico for the addition of value in order to meet the 35 percent value-content requirement cannot be covered by a Certificate of Origin Form A which assumes compliance with the country of origin criteria at the time of exportation from the beneficiary country. Based on these changes, subsections (a) (4) to (7) have been renumbered as (2) to (5), and these subsections, as well as subsection (b), have been amended where appropriate to refer to the Certificate of Origin. It should be noted that the Certificate of Origin may be, but need not be, certified by the designated governmental authority. To ensure that the documentary requirements of the CBI and the GSP do not detract from one another and to avoid unnecessary confusion among parties using these programs, the documentary requirements have been conformed.

Customs remains of the opinion, that under certain circumstances it will be necessary to have more specific information than that provided on the Certificate of Origin Form A in order for Customs to carry out its statutory mandate to ensure that there is compliance with the CBI requirements. The legislative history relating to the CBI clearly indicates that Congress was concerned about pass-through operations, and this concern was reflected in section 213(a)(2) of the statute (19 U.S.C. 2703(a)(2)) by the words "new or different article of commerce which has been grown, produced, or manufactured in the beneficiary country" and by the limiting references to "simple combining or packaging operations" and "mere dilution" with water or another substance. Thus, in a case where the article is not wholly the growth, product, or manufacture of a beneficiary country, particular attention must be paid to the nature of the processing operations performed in a beneficiary country, with regard to both the imported article and the material incorporated therein, in order to verify compliance with the origin criteria.

Customs experience under the GSP has shown that the Certificate of Origin

Form A is often not sufficient to demonstrate compliance with the GSP country of origin requirements because the Form A does not provide for the inclusion of details concerning the foreign manufacturing operation. Inasmuch as Customs has ultimate responsibility to determine duty-free eligibility, it has in some cases been necessary for the district director to verify the information on the Form A pursuant to § 10.173(a)(4) of the GSP regulations. Such verification has involved both requests for further documentary evidence and the performance of investigations in the GSP exporting country. These efforts at verification have met with limited success in some cases because exporters were not fully aware of the need for maintaining information to support the Form A, nor were they aware of the type of information needed.

In order to clarify and to make explicit the need for documentary evidence to support the Form A, Customs has further amended § 10.198 of the interim CBI regulations by adding a new subsection (c) to require that the exporter be prepared to submit a declaration similar to the declaration set forth in the interim CBI regulations. Under the text of new subsection (c) as set forth below, (1) this declaration would only be required to be prepared when the exported article is not wholly the growth, product, or manufacture of a beneficiary country, (2) the information necessary to complete the declaration would be retained by the exporter in his files, and (3) the declaration would be required to be prepared and submitted directly to U.S Customs within 60 days of the date of the request or such additional period as the district director may allow for good cause shown, but only if a request for the declaration is made. Failure to submit the declaration to Customs within the required time period or authorized extensions would result in a denial of CBI duty-free treatment. Furthermore, as modified, the interim regulation provides for the mandatory submission of the declaration to Customs in lieu of the Form A in a case involving the addition of necessary value in a bonded warehouse or a foreign trade zone in either Puerto Rico or the U.S. after final exportation of the article from a beneficiary country since, as pointed out above, the Form A could not be prepared in a beneficiary country in such a situation. In addition, the modified interim regulation provides both for further verification of the information set forth on the declaration and for denial of duty-free treatment in the discretion of the district director if Customs is prevented from obtaining the necessary verification.

As the declaration would be given directly to Customs rather than to the importer and would, in most cases, be exempt from disclosure to any private party under the Freedom of Information Act (5 U.S.C. 552), Customs believes that this proposal would best ensure confidentiality while at the same time ensuring the proper administration of the CBI. Finally, it should be noted that (1) only the final exporter would be in a position to complete the declaration because he signs the declaration portion of the Form A and thus must have the details required to be included on this separate declaration, (2) both Customs and the exporter will be able to associate the specific Form A with the corresponding declaration because both documents provide for inclusion of the number and date of the invoice covering the shipment, and (3) the district director's decision to request the declaration will be made on a case-by-case basis.

Finally, the following should be noted concerning those points on which various commenters requested clarification:

(1) Under the modified interim regulation set forth in this document, it will be the responsibility of the exporter to prepare both the Form A and the separate declaration when required, except in the case of value added after final exportation where the responsibility for preparing the declaration will lie with the party who carries out the addition of such value in Puerto Rico or the U.S. It will be the responsibility of the party preparing either of these documents to obtain the necessary information from antecedent processors or material suppliers in a case involving cumulation of value.

(2) Indirect labor costs and other indirect costs of fabrication may not be included in determining the value added in a beneficiary country because they are not "direct" costs. Thus they cannot be listed on the declaration. As concerns direct costs of processing operations performed on an article, which are includable, it is permissible to aggregate such costs so long as the processing operations applied to the article are also listed on the declaration. For example, it would be sufficient to include a description of processing operations such as "sawing, shaping, grooving, sanding, painting" and to include one figure covering the total cost incurred in those processing operations. It is not necessary to describe the separate elements (labor, depreciation, testing, etc.) of such processing costs on the declaration, although such details may have to be made available to Customs if further verification is deemed necessary. It also should be noted that the method of production of a constituent material also must be included on the declaration. The declaration has therefore been modified to clarify this point.

(3) The inclusion of the cost or value of materials produced in the customs territory of the United States does not reduce the appraised value of the article but rather has the effect of reducing the required amount of beneficiary country input. Thus, for example, if U.S. materials are included up to the maximum 15 percent, only 20 percent of the required 35 percent must be added in a beneficiary country.

(4) In a case where an article is processed in two beneficiary countries and an unexpected failure occur in the cost structure in the second beneficiary country, the processing costs should be computed in the same manner as in any other case. It is the responsibility of the processor in the second country to ensure that enough value has been added, and the same is true in a case where a failure occurs in the cost structure in the first country.

(5) As concerns the question of the extent to which details must be included on the declaration to show compliance with the value-added requirement, this has been answered in part under point (2). In this regard it also should be noted that although consideration was given to the possibility of providing that the cost information would be required only to the extent necessary to show minimum (*i.e.*, 35 percent) compliance, this was rejected for the reason that any failure in the submitted cost structure could result in the denial of duty-free treatment even though, had other includable costs been listed, compliance with the value requirement would have been clearly demonstrated. Thus, the total value added must be reflected on the Form A and declaration even if it greatly exceeds the 35 percent minimum.

Discussion of Amendment to the GSP Regulations

Based on Customs experience in administering the GSP, there is a need to improve the regulations to clarify the obligation of the exporter to maintain information required to support the Form A and to ensure that pass-through operations will not occur under that program. In this regard, it is noted that although the GSP statute does not contain the limitations concerning simple combining or packaging operations or mere dilution, it is still necessary under the GSP to determine whether a substantial transformation of an article or material has taken place in a case where the imported article is not wholly the growth, product, or manufacture of a beneficiary developing country. Moreover, Customs believes that the documentary requirements under the CBI and the GSP should be essentially the same so that one program does not materially detract from the other except as a result of statutory differences. Accordingly, § 10.173 of the GSP regulations is amended by this document by adding a new subsection (c) to provide for a declaration to be prepared and submitted by the exporter under the same circumstances as provided in the modified CBI provisions. The text of the GSP declaration and the other portions of this new subsection (c), as set forth in this document are identical to the corresponding CBI provision except for (1) amendments to conform to a GSP context and (2) deletion of the provision concerning value added after exportation since this provision does not apply in the case of the GSP.

A separate notice of proposed rulemaking is published elsewhere in this issue of the **Federal Register** which proposes to modify the requirement of foreign government certification of the GSP Certificate of Origin Form A.

Comments

Before adopting the interim regulations as a final rule, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, U.S. Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Inapplicability of Notice Requirement

Pursuant to the provisions of 5 U.S.C. 553(a), public notice is inapplicable to this regulation because it is within the foreign affairs function of the U.S. Further, because these interim regulations liberalize the declaration procedures set forth in the initial interim regulation, thus benefitting the public, it is believed good cause exists for dispensing with the normal procedures.

Executive Order 12291

This interim regulation is not a "major rule" as defined by section 1(b) of Executive Order 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 not applicable to this document because the regulation will not have a significant economic impact on a substantial number of small entities. Any economic impact flows directly from the Caribbean Basin Economic Recovery Act and not from the implementing regulations.

Accordingly, it is hereby certified under the provisions of § 3, Regulations Flexibility Act (5 U.S.C. 605(b)), that the interim regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The interim regulations are subject to the Paperwork Reduction Act of 1980, Pub. L. 96-511. Accordingly, applicable sections of the interim regulations have been cleared by the Office of Management and Budget and assigned control number 1515-0112.

Drafting Information

The principal author of this document was John Elkins, Esq., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices and the Office of the U.S. Trade Representatives particpated in its development.

List of Subjects in 19 CFR Part 10

Caribbean Basin Initiative, Customs duties and inspection, Generalized System of Preferences, Imports.

Amendments to the Regulations

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below.

George C. Corcoran, Jr.,
Acting Commissioner of Customs.

Approved: November 29, 1984.

John M. Walker, Jr.;
Assistant Secretary of the Treasury.

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

1. Section 10.173 is amended by adding a new paragraph (c) to read as follows:

§ 10.173 Evidence of the country of origin.

* * * * *

(c) *Merchandise not wholly the growth, product, or manufacture of a beneficiary developing country*—(1) *Declaration of the exporter.* In a case involving merchandise valued in excess of $250 which is not wholly the growth, product, or manufacture of a single beneficiary developing country, the exporter in the country from which the merchandise is directly imported shall be prepared to submit directly to the district director, upon request, a declaration setting forth all pertinent detailed information, concerning the production or manufacture of the merchandise, which was relied upon in the preparation of the Certificate of Origin. When requested by the district director, the declaration shall be prepared in substantially the following form:

Number and date of invoices	Description of articles and quantity	Porcessing operations performed on articles		Materials produced in a beneficiary developing country or members of the same association	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of production	Cost or value of material

Declaration of Exporter

I, ———— (name), hereby declare that the articles described below (a) were produced or manufactured in ———— (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other country or countries which are members of the same association of countries as set forth below and (b) incorporate materials produced in the country named above or in any other country or countries which are members of the same association of countries as set forth below:

Date ————
Address ————
Signature ————
Title ————

(2) *Retention of records and submission of declaration.* The information necessary for preparation of the declaration shall be retained in the exporter's files for a period of 5 years. In the event that the district director requests submission of the declaration during the 5-year period, it shall be submitted by the exporter directly to the district director within 60 days of the date of the request or such additional period as the district director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(3) *Verification of documentation.* The evidence of country of origin submitted under this section shall be subject to such verification as the district director deems necessary. In the event that the district director is prevented from obtaining the necessary verification, he may treat the entry as dutiable.

2. Section 10.198 is amended by revising it to read as follows:

§ 10.198 Evidence of country of origin.

(a) *Shipments covered by a formal entry*—(1) *Certificate of Origin.* Except as provided in paragraphs (a)(4) and (c)(3) of this section, the importer or consignee of a shipment of merchandise covered by a formal entry for which treatment under the CBI is claimed, shall file with the district director with the entry summary, as evidence of the country of origin, the Certificate of Origin Form A adopted for use under the Generalized System of Preferences, as provided for in § 10.173 of this chapter. The references to "Generalized System of Preferences" appearing on the front of the Form A shall be replaced by the reference "Caribbean Basin Initiative", and the Form A shall be properly completed and signed by the exporter of the merchandise in the beneficiary country where the merchandise was produced or last processed. The Form A may be, but need not be, certified by the designated governmental authority in that country.

(2) *Release under bond.* If the required Certificate of Origin properly completed, is not filed with the entry summary, the entry summary shall be accepted, subject to compliance with the requirements set forth in §§ 10.192 through 10.197, only if the importer or consignee gives a bond in such amount as is required by the district director for the production of the Certificate of Origin. Within 60 days after filing the entry summary, or such additional period as the district director may allow for good cause shown, the importer or consignee shall deliver to the district director the Certificate of Origin. If the Certificate of Origin is not delivered to the district director within 60 days of the date of filing the entry summary, or such additional period as the district director, for good cause, may allow, the district director shall treat the entry as dutiable and may cancel the bond or the charge against the bond, as appropriate, in accordance with § 172.22(c) of this chapter.

(3) *Duplicate Certificate of Origin.* In the event of the loss, theft, or destruction of a Certificate of Origin, the district director shall accept a duplicate Certificate of Origin endorsed with the word "duplicate" in box 4. The duplicate shall bear the date of issue of the original Certificate of Origin and will be effective from that date.

(4) *Waiver of Certificate of Origin.* The district director may waive production of a Certificate of Origin when he is otherwise satisfied that the merchandise qualifies for duty-free entry under the CBI.

(b) *Shipments covered by an informal entry.* Although the filing of a Certificate of Origin is not required for shipments covered by an informal entry, the district director may require such other evidence of the country of origin as deemed necessary. The filing of a Certificate of Origin may be required in a case involving consolidation of individual shipments under § 143.22 of this chapter.

(c) *Articles not wholly the growth, product, or manufacture of a beneficiary country*—(1) *Declaration of the exporter.* In a case involving an article covered by a formal entry which is not wholly the growth, product, or manufacture of a single beneficiary country, the exporter in the beneficiary country where the article was produced or last processed shall be prepared to submit directly to the district director, upon request, a declaration setting forth all pertinent detailed information, concerning the production or manufacture of the article, which was relied upon in the preparation of the Certificate of Origin. When requested by the district director, the declaration shall be prepared in substantially the following form:

Declaration of Exporter

I, ——————— (name), hereby declare that the articles described below (a) were produced or manufactured in ——————— (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other beneficiary country or countries (including the Commonwealth of Puerto Rico and the U.S. Virgin Islands) as set forth below and (b) incorporate materials produced in the country named above or in any other beneficiary country or countries (including the Commonwealth of Puerto Rico and the United States Virgin Islands) or in the customs territory of the United States (other than the Commonwealth of Puerto Rico) as set forth below:

Declaration of Exporter

I, —————— (name), hereby declare that the articles described below (a) were produced or manufactured in —————— (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other beneficiary country or countries (including the Commonwealth of Puerto Rico and the U.S. Virgin Islands) as set forth below and (b) incorporate materials produced in the country named above or in any other beneficiary country or countries (including the Commonwealth of Puerto Rico and the United States Virgin Islands) or in the customs territory of the United States (other than the Commonwealth of Puerto Rico) as set forth below:

Number and date of invoices	Description of article and quantity	Processing operations performed on article		Material produced in a beneficiary country or in the U.S.	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of production	Cost or value of material

Date ——————
Address ——————
Signature ——————
Title ——————

(2) *Retention of records and submission of declaration.* The information necessary for the preparation of the declaration shall be retained in the exporter's files for a period of 5 years. In the event that the district director requests submission of the declaration during the 5-year period, it shall be submitted by the exporter directly to the district director within 60 days of the date of the request or such additional period as the district director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(3) *Value added after final exportation.* In a case in which value is added to an article in a bonded warehouse or a foreign-trade zone in the Commonwealth of Puerto Rico or in the U.S after final exportation of the article from a beneficiary country, in order to ensure compliance with the value requirement under § 10.195(a), the declaration provided for in paragraph (c)(1) shall be filed by the importer or consignee in lieu of the Certificate of Origin, with the entry summary, as evidence of the country of origin. The declaration shall be properly completed by the party responsible for the addition of such value.

(d) *Verification of documentation.* The evidence of country of origin submitted under this section shall be subject to such verification as the district director deems necessary. In the event that the district director is prevented from obtaining the necessary verification, the district director may treat the entry as dutiable.

(R.S. 251, as amended, secs. 623, 624, 46 Stat. 759, 211 *et seq.*, Gen. Hdnt. 11. sec. 101, 76 Stat. 72 *et seq.*, 97 Stat. 384 *et seq.* (19 U.S.C. 66, 1202, 1623, 1624, 2701 *et seq.*))

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