Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 90-251]

Viruses, Serums, Toxins, and Analogous Products; Sampling of Autogenous Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations pertaining to sampling of autogenous biologics as follows: (1) Producers are no longer required to submit serial samples of autogenous biologics when the serial does not exceed 50 containers; and (2) for autogenous biologics serials that exceed 50 containers, the number of samples required per serial is reduced from 12 to 10. Producers are still required to select and maintain reserve samples of autogenous biologics for all serials regardless of size.

This rule eliminates unnecessary submission of autogenous biologics samples, reducing the burden on producers.

EFFECTIVE DATE: April 15, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR 113.3(b)(10) pertain to the number of samples of an autogenous biologic serial that a producer must select and submit to the National Veterinary Services Laboratories (NVSL). In response to a request from industry, we reviewed the need for submitting samples from small serials of autogenous biologics.

On October 22, 1990, we published a proposed rule in the **Federal Register** [55 FR 42577-42578, Docket No. 90-163] that would reduce the number of required sample submissions from 12 to 10 for serials with more than 50 containers and from 2 to 0 for smaller serials. Our proposal invited the submission of written comments, which were required to be received on or before December 21, 1990.

We received two comments, one of which supported the proposed rule as written. The other comment supported reducing the number of required sample submissions from 12 to 10 for serials with more than 50 containers, but objected to the elimination of the sample submission requirement for smaller serials. This objection was based upon two concerns. First, "If NVSL receives a complaint on that serial, it has no authenticated sample available for examination or testing." Second, "Elimination of the requirement to submit samples from every serial of federally licensed biologic produced in a licensed facility would create 2 classes of federally licensed product; those which must have samples submitted and those which would not" whereas "It was the desire of Congress to have uniform standards for all veterinary biologics."

The rationale for not accepting this comment is as follows: (1) Regardless of serial size, reserve serial samples for each licensed autogenous biologic are collected by a designated sampler and retained by the licensee. If a complaint is received, these samples may be obtained by NVSL for testing. (2) There already exist USDA-licensed biologics for which no serial sample submission is required. These are allergenic extract prescription products, product code 9531.00. Such products are prepared in accordance with a veterinarian's prescription for an individual animal. Thus, this rule does not create a lack of uniformity, but rather eliminates the requirement for sample submission from another product category where there is undue regulatory burden when small serials are produced.

Small serials of autogenous biologics are intended for use in the herd or flock from which the seed organism was isolated, unless specifically authorized by the Administrator for use in adjacent or nonadjacent herds in accordance with 9 CFR 113.113. This usually involves a limited number of animals in a limited area. As provided in § 113.3(c) of the regulations, the producer is required to retain reserve samples in case the serial needs to be tested because of adverse reactions or other problems. This applies to all serials regardless of the number of containers, and is not affected by this rule. Furthermore, all producing establishments are subject to inspection. We conclude that it is appropriate to amend the regulations pertaining to the number of samples of autogenous biologics that must be sent to the National Veterinary Services Laboratories.

This rule eliminates the requirement to submit samples for a serial not exceeding 50 containers, and reduces the number of samples for a serial exceeding 50 containers from 12 to 10. This reduction in required sample submissions will not adversely affect the product inspection activities of the veterinary biologics program. For the reasons set forth in this document, we are adopting the provisions of the proposal as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291 and Departmental Regulation 1512-1 and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule eliminates the requirement for a producer to submit samples of an autogenous biologics serial if the serial includes no more than 50 containers. For an autogenous biologics serial with more than 50 containers, it reduces the number of submitted samples from 12 to 10. Thus, any economic effect will be to

reduce the cost of producing autogenous biologics.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, the Administrator of the Animal and Plant Health Inspection Service finds good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The Administrator has determined that this rule should become effective upon publication because this rule relieves undue burden. The rule eliminates the requirement to submit serial samples of autogenous biologics for serials of no more than 50 containers, and reduces the number of submitted samples from 12 to 10 for larger serials.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 113

Animal biologics.

Accordingly, we are amending 9 CFR part 113 as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.15, and 371.2(d).

2. Section 113.3, paragraph (b)(10) is revised to read as follows:

§ 113.3 Sampling of biological products.

* * * * *

(b) * * *

(10) *Autogenous biologics.* Ten samples shall be selected from each serial of autogenous biologic that exceeds 50 containers. No samples, other than those required by paragraph (c) of this section, are required for a serial of autogenous biologic with 50 or fewer containers.

* * * * *

Done in Washington, DC, this 9th day of April 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–8721 Filed 4–12–91; 8:45 am]

BILLING CODE 3410–34–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Loan Participation; Purchase, Sale, and Pledge of Eligible Obligations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final amendment.

This final amendment clarifies that loans purchased under § 701.23(b)(1)(i) and subsequently refinanced are not subject to the 5% of unimpaired capital and surplus limitation of section 107(13) of the FCU Act (12 U.S.C. 1757(13)).

SUMMARY: This change was proposed pursuant to its regulatory review program.

EFFECTIVE DATE: April 15, 1991.

ADDRESSES: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Office of General Counsel, at the above address or telephone (202) 682–9630.

SUPPLEMENTARY INFORMATION

A. Background

Pursuant to its regulatory review program, the NCUA Board proposed to amend § 701.22 ("Loan Participation") and § 701.23 ("Purchase, Sale, and Pledge of Eligible Obligations") of the NCUA's Regulations. The proposed amendments would have broadened the loan participation and purchase, sale, and pledge authority.

Since the time that the proposed amendments were issued, NCUA has become aware of several credit union transactions involving loan participations and the acquisition of eligible obligations of other depository institutions that were operationally questionable. Furthermore, recent events in several northeastern states have reinforced NCUA's concerns in this area. Recent examinations of some credit unions have uncovered a lack of due diligence in their involvement in loan participations. There is some evidence of credit unions relying on the competence of the primary underwriter and failing to perform an independent analysis on the merits of the participation. The failure of credit unions to perform an independent analysis contributed to participation loan losses that have been spread among various credit unions. Further, the comments received indicate that there is not strong sentiment among credit unions that an expansion of these authorities is needed. A broadening of the rules under these circumstances is inadvisable and unnecessary.

The NCUA Board is satisfied that the current rule allows prudent and reasonable loan participations. Accordingly, the NCUA Board has decided to adopt only one proposed amendment which clarifies that loans purchased under § 701.23(b)(1)(i) and subsequently refinanced are not subject to the 5% of unimpaired capital and surplus limitation of Section 107(13) of the FCU Act (12 U.S.C. 1757(13)). The remaining proposed amendments are not adopted.

B. Comments

The NCUA Board issued a proposed rule on January 11, 1990, with a ninety-day comment period (55 FR 1827, 1/19/90). Thirteen public comment letters were received. One was from a state credit union regulator, two were from national credit union trade associations, four were from state credit union leagues and one was from a national savings and loan trade association. Four comments were received from federal credit unions and one was from an attorney who represents credit unions. All of the commenters, except the state credit union regulator, agreed in general with the proposed amendments.

C. Discussion

Regulatory Interpretation of the Term "Participation Loan"—Proposal to Delete Requirement that Loan Participation Agreement Precede Loan Disbursement—Proposed §§ 701.22(a)(1) and (b)(2).

The authority of FCU's to engage in loan participations is set forth in section 107(5)(E) of the FCU Act (12 U.S.C. 1757(5)(E)). Until issuance of the proposed rule, NCUA has interpreted the term "participation loan" to mean arrangements made prior to disbursements of the loan proceeds. In the preamble to the proposed rule, the Board stated that this interpretation may be too restrictive and proposed deleting it. Eight commenters specifically addressed this proposed change and all agree with it. The reasons given in support of the change were that it would provide added flexibility to credit unions, specifically for credit unions with liquidity problems, and that the

current restriction puts credit unions at a competitive disadvantage. One commenter noted that this change will blur the distinction between loan participations and loan purchases and sales.

After further deliberation and review, the NCUA Board believes that removal of this restriction may contribute to safety and soundness problems. The Board believes any benefit arising from an increase in flexibility, especially for those credit unions with liquidity problems, is offset by an increase in risk to the credit union. There are two basic safety and soundness concerns with the proposed change. FCUs may have a decreased interest in properly underwriting a loan if they know they can later reduce their risk by selling participation interests in it. Alternatively, FCUs interested in obtaining a participation after the loan is made may not properly investigate the loan and may instead rely on the original participants to have properly underwritten the loan. FCUs may jump in without a proper due diligence review. Recent problems with credit unions in Rhode Island and other northeastern states have corroborated these concerns. Accordingly, the NCUA Board declines to adopt the proposed change and will continue to require a written commitment to participate in a loan precede final disbursement.

Application of Statutory Limitations to Open-End Loans—Proposed §§ 701.22(c) and 701.232 (b)(3)

Section 107(5)(E) of the FCU Act (12 U.S.C. 1757(5)(E)) requires an FCU that is an originating lender to retain an interest of at least 10 per centum of the face amount of each loan ("the 10% limitation"). This limitation is also set forth in § 701.22(c) of NCUA's Regulations.

Section 107(13) of the FCU Act (12 U.S.C. 1757(13)) limits the aggregate of the unpaid balances of loans purchased to 5% of unimpaired capital and surplus ("the 5% limitation"). The limitation is set forth in § 701.23(b)(3) of NCUA's Regulations. The regulation excepts certain types of loans from the 5% limitation.

Although the NCUA Board realized that these limitations are difficult to apply to open-end loans, it nevertheless requested comments on how the limitations should be applied to them. Six commenters addressed this issue. Three stated that the limitations should apply to the total line of credit because that is the credit union's contingent liability. One stated that the limitation should apply to only the outstanding balance of the line of credit. One commenter believes that Congress did not intend for these limitations to apply to lines of credit and that such application would cause an accounting nightmare. This commenter believes that open-end loans should be excluded from the limitations. Since the 10% and 5% limitations are in the FCU Act, they cannot be waived or excluded by the NCUA Board. The last commenter stated that FCUs should be prohibited from engaging in open-end participations.

The NCUA Board is not swayed by the comments that the operational problems can be resolved. No suggestion has adequately overcome the accounting problems perceived by the NCUA Board. Moreover, there is no demonstration that such participations are safe and beneficial for FCUs. To a lesser degree, similar problems arise in the purchase, sale or pledge of open-end loans. Therefore, it is the position of the NCUA Board that, due to these concerns, participations in or purchase, sale or pledge of open-end loans should be discouraged. NCUA will continue to monitor any participations in or purchase, sale or pledge of open-end loans and will take appropriate action if problems arise. However, if credit unions engage in participations or purchase, sale or pledge of open-end loans, the NCUA Board believes that the 10% and 5% limitations apply to the total line of credit and not just the outstanding balance.

Definitions of Financial Organization and Credit Union Organization—Proposed § 701.22(a)(2)

The present participation regulation allows FCUs to participate in loans with certain defined entities (credit union organizations, financial organizations and other credit unions). The Board requested comment on the current definition of financial organization (federally chartered or insured financial institutions, not to include insurance and finance companies, retirement and investment funds) and also proposed to change credit union organization to credit union service organization as an eligible entity, making the definition consistent with § 701.27 of NCUA's Rules and Regulations. This proposed change would provide FCU's with the additional authority to engage in loan participations with organizations that principally provide services to credit unions as well as credit union members, as opposed to organizations that provide services only to credit unions.

Six commenters specifically addressed this issue. Two commenters agreed that insurance companies should not be included in the definition of financial organization while one commenter believes that the definition is too narrow and that insurance companies should be included within the definition. One commenter stated that the Board should give some flexibility to the definition by allowing the Board to approve additional entities on a case-by-case basis. Two commenters noted their agreement with the change from credit union organizations to credit union service organizations.

After further review of the legislative history, the NCUA Board remains convinced that insurance companies are not within the definition of financial organization for purposes of engaging in participation loans with FCUs. House Report 95–23 (February 22, 1977) (*see* 1977 U.S. Code Cong. & Ad. News 105), which was issued when Congress authorized loan participation, defines financial organization as "any federally chartered or federally insured financial institution." Insurance companies do not fit this definition. Further, the Board believes there is no demonstrated need for any expansion of this authority. Therefore, the limitation on FCUs engaging in participations with only credit union organizations, financial organizations and credit unions will remain.

Sixty Days to Refinance—Proposed § 701.23(b)(1)(i)

The Board requested comment on the requirement that eligible obligations of members purchased by an FCU be refinanced within 60 days unless they are loans that the FCU is empowered to grant. Six commenters addressed this issue. Two commenters agreed with the 60-day requirement. One commenter suggested 90 days and another suggested six months. One commenter suggested that a longer period be provided to credit unions that document it is needed, while another commenter suggested that the requirement be deleted.

The NCUA Board believes that there has been no demonstration that the 60-day requirement is a burden to FCUs and needs to be extended. The 60-day time frame is flexible, prudent and provides sufficient time for an FCU to process and document the refinanced loan.

Board of Directors or Investment Committee Approval for Loan Purchases—Proposed § 701.23(b)(2)

The Board proposed that the requirement for board of director or investment committee approval of purchase of member loans from any

source be deleted. Four commenters addressed this issue and they all agreed with the proposal.

Since the proposed change was published for comment, the NCUA Board proposed a separate amendment requiring all federally-insured credit unions to apply for and receive permission from the NCUA Board before either purchasing or acquiring loans or other investment assets or assuming or receiving assignment of any deposits, shares or liabilities of any credit union not insured by the NCUSIF, of any other depository institution, of any successor in interest to either such institution, or of any NCUSIF-insured credit union not in liquidation. Federal credit union purchases of real estate loans and student loans to facilitate packaging of a pool for the secondary market are not subject to the proposed approval process. (*See* 55 FR 49059, 11/26/90.) The November proposed amendment retains the requirement for board of director or investment committee approval for purchase of member loans, and thus conflicts with the previously proposed change.

The NCUA Board has determined to reconcile the conflict in favor of maintaining the requirement for board of director or investment committee approval for the purchase of member loans. The decision to engage in these transactions may have a significant effect on the operations of the FCU. Further, the NCUA Board believes it becomes even more important to retain the approval of the board of directors or investment committee if it is necessary to have the approval of the NCUA Board for these types of transactions. Therefore, the proposed amendment deleting this requirement is not adopted.

Refinanced Loans not Subject to 5% Limitation—Proposed § 701.23(b)(1)(i)

The proposed rule clarified that loans purchased under § 701.23(b)(1)(i) and subsequently refinanced are not subject to the 5% of unimpaired capital and surplus limitation of Section 107(13) of the FCU Act. The one comment received on this issue agreed with NCUA's clarification. This modification is adopted in the final rule.

Purchase of Real Estate Secured Loans of Nonmembers—Proposed § 701.23(b)(1)(iv)

No changes were proposed to this section although the NCUA Board did request comment on whether FCUs should be allowed greater flexibility to purchase mortgage loans made by other credit unions and any conditions that should apply to such purchases. Three comments were received on this issue and all three commenters indicated that credit unions do not need any further flexibility in purchasing mortgage loans. The NCUA Board believes no changes are necessary in this area.

Correction

A typographical error was made in § 701.22(b)(1) of the proposed amendments. No change from the present rule was proposed to this section. The proposed section stated that a federal credit union could not obtain an interest in a participation loan if the sum of that interest and any (other) indebtedness owing to the federal credit union by the borrower exceeds 20 per centum of the federal credit union's unimpaired capital and surplus. The percentage should be 10 according to 107(5)(A)(x) of the FCU Act. The correct percentage is contained in the current regulation.

Regulatory Requirements

Paperwork Reduction Act

The Office of Management and Budget has approved the collection requirements contained in § 701.22 and § 701.23 of NCUA's Regulations (OMB No. 3133–0126 and OMB No. 3133–0127, respectively) all of which are contained in the existing regulation.

Regulatory Flexibility Act

The NCUA Board hereby certifies that the final amendment does not have a significant impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

This amendment does not affect state regulation of credit unions. It implements provisions of the Federal Credit Union Act applying only to federal credit unions.

List of Subjects in 12 CFR Part 701

Loan participation, Participation, Loans, Purchase, Sale and pledge of eligible obligations.

By the National Credit Union Administration Board on April 4, 1991.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, 12 CFR part 701 is amended as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789 and P. L. 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1861 and 42 U.S.C. 3601–3610.

§ 701.23 [AMENDED]

2. In § 701.23, paragraph (b)(3) is revised to read as follows:

§ 701.23 Purchase, sale, and pledge of eligible obligations.

* * * * *

(b) * * *

(3) The aggregate of the unpaid balance of eligible obligations purchased under paragraph (b) shall not exceed 5 percent of the unimpaired capital and surplus of the purchaser. Student loans purchased in accordance with paragraph (b)(1)(iii), real estate loans purchased in accordance with paragraph (b)(1)(iv), and eligible obligations purchased in accordance with paragraph (b)(1)(i) that are refinanced by the purchaser so that they are loans it is empowered to grant shall not be included in considering this 5 percent limitation.

[FR Doc. 91–8676 Filed 4–12–91; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

[T.D. 91-33]

Customs Regulations Amendments Relating to User Fees

AGENCY: Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document amends the Customs Regulations to reflect the changes to the Customs user fee statute (19 U.S.C. 58c) effected by section 111 of the Customs and Trade Act of 1990, as amended by section 10001 of the Omnibus Budget Reconciliation Act of 1990. These changes include a new fee structure to cover the costs of processing imported merchandise, consisting of an ad valorem rate with maximum and minimum fees in the case of merchandise subject to formal entry or release procedures, a surcharge on merchandise that is formally entered or released through manual procedures, and flat-rate fees for informal entry or release except for certain user fee facilities to which lump sum payments

apply. Other changes include the addition of a conditional exemption from the fees for products of Israel, the inclusion of a limitation on the fee chargeable for U.S. agricultural products processed and packed in a foreign trade zone, the inclusion of a provision allowing daily aggregation of the ad valorem fee for temporary monthly entry programs, the inclusion of a provision treating the fees as Customs duties for administrative, enforcement, and judicial purposes, and a modification to the fee limitation applied to the arrival of railroad cars originating and terminating in the same country.

DATES: Interim rule effective April 15, 1991; comments must be received on or before June 14, 1991.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Harry Carnes, Office of Inspection and Control (202–566–8648); Legal Aspects: William Rosoff, Office of Regulations and Rulings (202–566–5856).

SUPPLEMENTARY INFORMATION:

Background

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99–272, established a schedule of fees chargeable to users of various services provided by the Customs Service in connection with the processing of persons, aircraft, vehicles, railroad cars, vessels, broker permits, and mail arriving in the U.S. These statutory fees were codified at 10 U.S.C. 58c, and interim implementing Customs regulations were published on June 11, 1986 as T.D. 86–109, 51 FR 21152. The bulk of the interim regulatory provisions implementing those fees are set forth at 19 CFR 24.22.

Section 8101 of the Omnibus Budget Reconciliation Act of 1986, Public Law 99–509, amended the 1985 Act by adding thereto subsections (a) (9) and (10) (19 U.S.C. 58c(a) (9) and (10)) to provide for the assessment of a merchandise processing user fee on formal entries of imported merchandise. This merchandise processing fee was set at 0.22 percent ad valorem for the fiscal year ending on September 30, 1987, and thereafter the fee was to be either 0.17 percent ad valorem or an ad valorem rate established by the Secretary of the Treasury under statutory guidelines; excluded from application of the fee were products provided for in schedule 8 of the tariff schedules (now chapter 98 of the Harmonized Tariff Schedule of the United States) and products of Caribbean Basin Initiative beneficiary countries, least developed developing countries, or U.S. insular possessions. On December 1, 1986, interim Customs regulations were published as T.D. 86–205, 51 FR 43188, to implement the merchandise processing fee; these interim regulations were set forth at 19 CFR 24.23. In addition, on December 23, 1988, T.D. 89–3 was published at 53 FR 51769 to amend the interim regulations to set forth the staged reductions of the merchandise processing fee applicable to products of Canada under the U.S.-Canada Free Trade Agreement.

On August 20, 1990, President Bush signed into law the Customs and Trade Act of 1990, Public Law 101–382 (the Act). Section 111 of the Act sets forth a number of significant changes with regard to Customs user fees. The principal change involves a complete restructuring of the ad valorem fee set forth in 19 U.S.C. 58c(a) (9) and (10) to conform it to the international obligations of the United States under Article VIII of the General Agreement on Tariffs and Trade (GATT). The restructured fee has the following three main elements:

1. An ad valorem fee of 0.17 percent applicable to merchandise that is formally entered or released, subject to a maximum fee of $400 and a minimum fee of $21.

2. A surcharge of $3 in the case of a formal manual entry or release of merchandise, to be added to the ad valorem fee.

3. In the case of informal entries or releases, specific, flat-rate fees of $2 if the entry or release is automated and not prepared by Customs, $5 if the entry or release is manual and not prepared by Customs, and $8 if the entry or release is prepared by Customs. Exceptions are made in the case of a centralized hub facility, an express consignment carrier facility or a user fee airport or other user fee facility, for which payment (equal to the annual reimbursement paid to Customs) is provided in lieu of these specific fees.

The Act also amends 19 U.S.C. 58c(b)(1)(B) to provide that, with effect from July 7, 1986, the pre-existing exemption from the railroad car arrival fee applies with reference to the movement (journey) of the railroad car; thus, the car, rather than the arriving train of which it is a part, must originate and terminate in the same country in order for the exemption to apply. In addition, the Act provides that, with effect from the date of enactment of the Act, any fee provided for under 19 U.S.C. 58c(a) shall be treated as a Customs duty (1) for purposes of applying the administrative and enforcement provisions of the Customs laws and regulations (including for purposes of computing penalties) except in the case of drawback or where otherwise provided in regulations, and (2) for purposes of determining the jurisdiction of any U.S. court or agency. Finally, the Act reinserts the exemption for least developed countries, provides for the daily aggregation of the ad valorem fee for temporary monthly entry programs in effect prior to July 1, 1989, sets forth a limitation on the merchandise fee chargeable for U.S. agricultural products processed and packed in a foreign trade zone, and provides a conditional exemption from the fees for products of Israel.

On November 5, 1990, President Bush signed into law the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 (the Budget Act). Section 10001 thereof made a number of changes to the user fee provisions of section 111 of the Act, including the following: (1) Revision of the definition of a manual entry or release, with effect from November 5, 1990; (2) provision for application of the specific, flat-rate informal fees, rather than the annual reimbursement sum, in the case of a small airport or other user fee facility which handled not more than 25,000 informal entries during the preceding fiscal year, with effect from October 1, 1990; and (3) provision for an adjustment of the ad valorem rate by the Secretary of the Treasury under public notice and Congressional review procedures.

In light of the significant amendments to the Customs user fee statute effected by the Act, as amended by the Budget Act, and in consideration of the fact that those amendments principally took effect on October 1 and November 5, 1990, it is necessary to promulgate implementing regulations at the earliest practicable date. Accordingly, Customs has determined that the implementing regulations should be published as an interim rule with opportunity for public comment. The regulatory amendments are discussed below.

Section 24.17

This section is being amended to set forth the reimbursement required under law to be paid to Customs for services rendered at centralized hub facilities, express consignment carrier facilities, and user fee ariports or other user fee facilities. These provisions thus describe the nature of the reimbursement which is the basis for the fee paid by these facilities in lieu of the informal fees.

Section 24.22

Paragraph (d)(5) is being revised to set forth the new terms of the railroad car arrival fee exemption.

Paragraph (j) is being added to set forth the provision in the Act regarding the treatment of user fees as a Customs duty for administrative, enforcement, and judicial purposes, which applies to the fees covered by § 24.22. For the sake of clarity, the statutory language has been somewhat simplified in the regulatory text.

Section 24.23

This section is being extensively revised to set forth the new fee structure for processing merchandise contained in the Act and the Budget Act. The section has also been retitled to reflect the restructuring of the fee.

Paragraph (a) sets forth definitions. The definitions of "centralized hub facility" and "express consignment carrier facility" include the descriptions of those facilities as contained in 19 CFR part 128. The definition of "manual" formal or informal entry or release reflects the amended Budget Act language, consistent with operational and administrative realities of Customs and the private sector. The definition of "small airport or other facility" is intended to give effect to the Budget Act provision regarding application of the flat-rate informal fees at facilities handling not more than 25,000 informal entries during the preceding year.

Paragraph (b) sets forth the basic terms of the restructured merchandise processing fee.

Paragraph (c) sets forth the exemptions and limitations which apply to the merchandise processing fees. In addition to the exemptions historically provided under the user fee statute and regulation, this paragraph includes an exemption for other cases in which Customs has not applied a merchandise processing fee. It also clarifies the statutory application of the fees to articles of HTSUS subheadings 9802.00.60 and 9802.00.80 and sets forth the provisions in the Act regarding Israeli products and regarding U.S. agricultural products processed and packed in a foreign trade zone.

Paragraph (d) sets forth the provision in the Act regarding the daily aggregation of the ad valorem fee for entries under existing temporary monthly entry programs.

Finally, paragraph (e) sets forth the provision in the Act regarding the treatment of the fees as a Customs duty for administrative, enforcement, and judicial purposes, which is equally applicable to the fees covered by this section.

Comments

Before adopting these interim regulations as a final rule, consideration will be given to any written comments (preferably in triplicate) timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, 1301 Constitution Avenue NW., Washington, DC.

Inapplicability of Notice and Delayed Effective Date Requirements

Because these regulations set forth requirements and procedures of which the public needs to be informed in order to pay the fees required under law, it is determined pursuant to 5 U.S.C. 553(b)(B) that notice and public procedures are impracticable, unnecessary, and contrary to the public interest. Furthermore, for the above reasons and because the regulations set forth requirements effective on October 1 and November 5, 1990, it is determined that good cause under the provisions of 5 U.S.C. 553(d)(3) for dispensing with a delayed effective date.

Executive Order 12291

Because this document willl not result in a "major rule" as defined in E.O. 12291, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Taxes, Wages, User fees.

Amendments to the Regulations

For the reasons set forth above, part 24, Customs Regulations (19 CFR part 24) is amended as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citiation for part 24 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58a–58c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, 31 U.S.C. 9701; Public Law 99–662, unless otherwise noted.

2. Section 24.17 is amended by adding paragraphs (a)(12)–(14) to read as follows:

§ 24.17 Other services of officers; reimbursable.

(a) * * *

(12) When a Customs officer or employee is assigned to a centralized hub facility for the purposes of processing express consignment shipments under part 128 of this chapter, the compensation (including overtime) and expenses of such officer or employee shall be reimbursed to the Government by the centralized hub facility.

(13) When a Customs officer or employee is assigned to an express consignment carrier facility for the purpose of processing express consignment shipments under Part 128 of this chapter, the cost (including overtime) of the inspectional services provided by such officer or employee shall be reimbursed to Customs by the express consignment carrier facility.

(14) When a Customs officer or employee is assigned to provide Customs services at an airport or other facility under 19 U.S.C. 58b, the facility shall reimburse to the Government an amount equal to the salary and expenses of such officer or employee (including overtime) plus any other expenses incurred in providing those Customs services at the facility.

* * * * *

3. Section 24.22 is amended by revising paragraph (d)(5) and adding paragraph (j) to read as follows:

§ 24.22 Fees for certain services.

* * * * *

(d) * * *

(5) *Exemptions.* No fee shall be collected under this paragraph for Customs services provided in connection with the arrival of any railroad car whose journey originates and terminates in the same country, provided that no passengers board or disembark from the train and no cargo is loaded or unloaded from the car while the car is within any country other than the country in which the car originates and terminates.

* * * * *

(j) *Treatment of fees as Customs duty.*—(1) *Administration and enforcement.* Unless otherwise specifically provided in this chapter, all administrative and enforcement provisions under the Customs laws and regulations, other than those laws and regulations relating to drawback, shall apply with respect to any fee provided for under this section, and with respect to any person liable for the payment of such fee, as if such fee is a Customs duty. For purposes of this paragraph, any penalty assessable in relation to an amount of Customs duty, whether or not any such duty is in fact due and payable, shall be assessed in the same manner with respect to any fee required to be paid under this section.

(2) *Jurisdiction.* For purposes of determining the jurisdiction of any court or agency of the United States, any fee provided for under this section shall be treated as if such fee is a Customs duty.

4. Section 24.23 is revised to read as follows:

§ 24.23 Fees for processing merchandise.

(a) *Definitions.* The following definitions apply for the purposes of this section:

(1) *Centralized hub facility.* A "centralized hub facility" is a separate, unique, single purpose facility normally operating outside of Customs operating hours approved by the district director for entry filing, examination, and release of express consignment shipments, as provided for in part 128 of this chapter on July 30, 1990.

(2) *Entered or released.* Merchandise is "entered or released" if the merchandise is:

(i) Released under a special permit for immediate delivery under 19 U.S.C. 1448(b);

(ii) Entered or released from Customs custody under 19 U.S.C. 1484(a)(1)(A); or

(iii) Withdrawn from warehouse for consumption.

(3) *Express consignment carrier facility.* An "express consignment carrier facility" is a separate or shared specialized facility approved by the district director soley for the examination and release of express consigment shipments, as provided for in part 128 of this chapter on July 30, 1990.

(4) *Manual entry or release.* Any reference to a "manual" formal or informal entry or release shall not include:

(i) Any formal or informal entry or release filed by an importer or broker who is operational for cargo release through the Automated Broker Interface (ABI) of the Customs Automated Commercial System (ACS) at any port within the United States;

(ii) Any formal or informal entry or release filed at a port where cargo selectivity is not fully implemented if filed by an importer or broker who is operational for ABI entry summary; or

(iii) Any informal entry or any Line Release filed at a part where cargo selectivity is fully implemented if filed by an importer or broker who is operational for ABI entry summary.

(5) *Small airport or other facility.* A "small airport or other facility" is any airport or other facility which has been designated as a user fee facility under 19 U.S.C. 58b and at which more than 25,000 informal entries were processed during the proceding fiscal year.

(b) *Fees.*—(1) *Formal entry or release.*—(i) *Ad valorem fee.*—(A) *General.* Except as provided in paragraph (c) of this section, merchandise that is formally entered or released is subject to the payment to Customs of an ad valorem fee of 0.17 percent. The fee shall be due and payable to Customs by the importer of record of the merchandise at the time of presentation of the entry summary and shall be based on the value of the merchandise as determined under 19 U.S.C. 1401a.

(B) *Maximum and minimum fees.* Subject to the provisions of paragraphs (b)(1)(ii) and (d) of this section relating to the surcharge and to aggregation of the ad valorem fee resepctively, the ad valorem fee charged under paragraph (b)(1)(i)(A) of this section shall not exceed $400 and shall not be less than $21.

(ii) *Surcharge for manual entry or release.* In the case of any formal manual entry or release of merchandise, a surcharge of $3 shall be assessed and shall be in addition to any ad valorem fee charged under paragraphs (b)(1)(i)(A) and (B) of this section.

(2) *Informal entry or release.* (i) Except as provided in paragraphs (b)(2)(ii) and (c) of this section, merchandise that is informally entered or released is subject to the payment to Customs of a fee of:

(A) $2 if the entry or release is automated and not prepared by Customs personnel;

(B) $5 if the entry or release is manual and not prepared by Customs personnel; or

(C) $8 if the entry or release, whether automated or manual, is prepared by Customs personnel.

(ii) With respect to the processing of merchandise that is informally entered or released at a centralized hub facility, an express consignment carrier facility, or a small airport or other facility, the following payments shall be made in lieu of the specific fees provided for in paragraph (b)(2)(i) of this section:

(A) In the case of a centralized hub facility or small airport or other facility, payment by the facility in an amount equal to the reimbursement (including overtime) which the facility is required to make during the fiscal year under § 24.17 of this chapter; and

(B) In the case of an express consignment carrier facility, payment by the facility in an amount equal to the cost (including overtime) of the Customs inspectional services provided at the facility during the fiscal year for which Customs is reimbursed under § 24.17 of this chapter.

(c) *Exemptions and limitations.* (1) The ad valorem fee, surcharge, and specific fees provided for under paragraphs (b)(1) and (b)(2)(i) of this section shall not apply to:

(i) Except as provided in paragraph (c)(2) of this section, articles provided for in chapter 98, Harmonized Tariff Schedule of the United States (HTSUS; 19 U.S.C. 1202);

(ii) Products of insular possessions of the U.S. (General Note 3(a)(iv), HTSUS);

(iii) Products of beneficiary countries under the Caribbean Basin Economic Recovery Act (General Note 3(c)(v), HTSUS);

(iv) Products of least-developed beneficiary developing countries (General Note 3(c)(ii)(B), HTSUS); and

(v) Merchandise described in General Note 4, HTSUS, merchandise released under 19 U.S.C. 1321, and merchandise imported by mail.

(2) In the case of any article provided for in subheading 9802.00.60 or 9802.00.80, HTSUS:

(i) The surcharge and specific fees provided for under paragraphs (b)(1)(ii) and (b)(2)(i) of this section shall remain applicable; and

(ii) The ad valorem fee provided for under paragraph (b)(1)(i) of this section shall be assessed only on that portion of the cost or value of the article upon which duty is assessed under subheadings 9802.00.60 and 9802.00.80.

(3) In the case of goods originating in Canada within the meaning of General Note 3(c)(vii), HTSUS, the ad valorem fee, surcharge, and specific fees provided for under paragraphs (b)(1) and (b)(2)(i) of this section shall be assessed according to the following schedule:

(i) With respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1990, the amount shall be 80 percent of the amount otherwise applicable on that date;

(ii) With respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1991, the amount shall be 60 percent of the amount otherwise applicable on that date;

(iii) With respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1992, the amount shall be 40 percent of the amount otherwise applicable on that date;

(iv) With respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1993, the amount shall be 20 percent of the amount otherwise applicable on that date; and

(v) With respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1994, no fee or surcharge shall be assessed.

(4) In the case of agricultural products of the U.S. that are processed and packed in a foreign trade zone, the ad valorem fee provided for under paragraph (b)(1)(i) of this section shall be applied only to the value of any material used to make the container for such merchandise, but only if that merchandise is subject to entry and the container is of a kind normally used for packing such merchandise.

(5) The ad valorem fee, surcharge, and specific fees provided for under paragraphs (b)(1) and (b)(2)(i) of this section shall not apply to products of Israel that are entered, or withdrawn from warehouse for consumption, on or after the effective date of a determination made under section 112 of the Customs and Trade Act of 1990.

(d) *Aggregation of ad valorem fee.* (1) Notwithstanding any other provision of this section, in the case of entries of merchandise made under any temporary monthly entry program established by Customs before July 1, 1989, for the purpose of testing entry processing improvements, the ad valorem fee charged under paragraph (b)(1)(i) of this section for each day's importations at an individual port shall be the lesser of the following, provided that those importations involve the same importer and exporter:

(i) $400; or

(ii) The amount determined by applying the ad valorem rate under paragraph (b)(1)(i)(A) of this section to the total value of such daily importations.

(2) The fees as determined under paragraph (d)(1) of this section shall be paid to Customs at the time of presentation of the monthly entry summary. Interest shall accrue on the fees paid monthly in accordance with section 6621 of the Internal Revenue Code of 1986.

(e) *Treatment of fees as Customs duty.*—(1) *Administration and enforcement.* Unless otherwise specifically provided in this chapter, all administrative and enforcement provisions under the Customs laws and regulations, other than those laws and regulations relating to drawback, shall apply with respect to any fee provided for under this section, and with respect to any person liable for the payment of such fee, as if such fee is a Customs duty. For purposes of this paragraph, any penalty assessable in relation to an amount of Customs duty, whether or not any such duty is in fact due and payable, shall be assessed in the same manner with respect to any fee required to be paid under this section.

(2) *Jurisdiction.* For purposes of determining the jurisdiction of any court or agency of the United States, any fee provided for under this section shall be treated as if such fee is a Customs duty.

Approved: March 28, 1991.

Carol Hallett,

Commissioner of Customs.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

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Internal Revenue Service

26 CFR Parts 31, 301, and 602

[T.D. 8344]

RIN 1545-AJ29

Penalty for Failure To Include Correct Information on Information Returns and Payee Statements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations on the penalty for failure to provide correct information on information returns and payee statements. Congress enacted this penalty in section 1501 of the Tax Reform Act of 1986 (Pub. L. 99-514). The penalty was subsequently revised by section 7711 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239). These regulations do not reflect any revisions under the 1989 Act. These regulations affect persons who are required to file information returns with the Internal Revenue Service and to furnish statements to payees.

DATES: These regulations are effective April 15, 1991 except § 301.6723-1A is effective January 1, 1987, as applicable to information returns and payee statements the due date for which (determined without regard to extensions) is after December 31, 1986, and before January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Renay France of the Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:T) (202-377-9344, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-0909. The estimated average annual burden per respondent, depending on individual circumstances, is 5 hours and 46 minutes.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document contains final regulations to be added to the Employment Taxes and Collection of Income Tax at Source Regulations (26 CFR part 31) and the Regulations on Procedure and Administration (26 CFR part 301) under section 6723 of the Internal Revenue Code of 1986. Section 6723 was added to the Internal Revenue Code by the Tax Reform Act of 1986 (Pub. L. 99-514).

On September 10, 1987, the **Federal Register** published a notice of proposed rulemaking (52 FR 34358) by cross reference to temporary regulations published the same day in the **Federal Register** (52 FR 34355) under section 6723 of the Internal Revenue Code. A